

ARUN KUMAR CHATTERJEE

v.

SOUTH EASTERN RAILWAY & ORS.

March 1, 1985

[A. P. SEN AND D. P. MADON JJ.,]

Civil Service

(1) *Railway Establishment Manual, Rule 312 read with Railway Board's Circular No. 1565A-Seniority of Railway Servants on Transfer-How to be fixed.*

(2) *Words and Phrases—"Officiating" and "Temporary"—Meaning of—"Officiating" does not include temporary staff.*

Rule 312 of the Railway Establishment Manual provides that seniority of railway servants transferred on their own request from one railway to another should be allowed below that of the existing confirmed/officiating railway servants in the relevant grade. To explain the purport and effect of r. 312, the Railway Board issued a Circular No. 1565A dated January 31, 1950 which provided that on transfer at the employee's own request his position should be at the bottom of the seniority list of all permanent employees of his grade, if he is permanent and at the bottom of the whole list of permanent and temporary employees if he is temporary. The Railway Board's subsequent Circular dt. 31st Dec. 1966 sought to clarify that the term 'officiating' in Rule 312 includes temporary staff as well.

The appellant, who was holding a substantive post of a clerk in the Northern Eastern Railway was transferred on October 15, 1958 on his own request to the South Eastern Railway and was posted at the Scaldah Division. He was however placed below the temporary staff, namely, respondents 7 to 45 in the seniority list of the clerks in the Scaldah Division prepared by the respondent-Southern Eastern Railway in 1967. After rejection of his two representations in the year 1967 and a reminder to the Chief Personnel Officer dated December 21, 1973 against the wrong fixation of his inter-se seniority, he filed a writ petition in the High Court on 30th April 1975 challenging the said seniority list. The learned Single Judge held that in pursuance of Rule 312, the relevant seniority of the appellant was governed by the Railway Board's Circular No. 1565A and not by its subsequent Circular dated December 31, 1966, and ordered the Railway Administration to refix his seniority below all perman-

ent and officiating clerks on the date of his transfer in the Scaldah Division, but above the temporary clerks in that Division with consequential benefits. On appeal by the respondent the Division Bench upheld the view of the learned single Judge but, observed that due to inordinate delay on the part of the appellant in moving the court, there was no justification for interfering with the promotions already made of respondents no. 7 to 45 and ordered that he should be placed immediately below the remaining respondents.

Allowing the appeal,

HELD : (1) It would appear from the facts that there was no delay, much less inordinate delay, on the part of the appellant in filing the petition under Art. 226 of the Constitution for the protection of his right as to inter-se seniority. In fact, he had made three representations in the matter but without any redress. [22E-F]

(2) There can be no doubt on the terms of r. 312 of the Manual read with Railway Board's Circular No. 1565A dated January 31, 1950 that the appellant had to be placed below all the existing confirmed and officiating staff in the relevant grade, irrespective of the date of his confirmation or the length of his service. He was not governed by the Railway Board's Circular dated December 31, 1966 on the date of his transfer. [23H; 24A]

(3) According to the ordinary connotation, the word 'officiating' is generally used when a servant having held one post permanently or substantively, is appointed to a post in a higher rank, but not permanently or substantively, while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation. In contrast, the word 'temporary' usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary i.e. for the time being, with no right to the post. Therefore, the Railway Board's interpretation in the aforesaid Circular dated December 31, 1966 of the 'officiating' in r. 312 of the Railway Establishment Manual, as including both officiating as well as temporary staff, was apparently wrong.

[24D-E]

(4) The Railway Board's Circular dated October 1, 1964 also provides that if a person has been promoted not on the date on which he should have been promoted to some administrative error then the employee should assigned correct seniority vis-a-vis his juniors already promoted irrespective of the date of promotion and the pay of such employee in higher grade on promotion be fixed proforma at the stage which he would have reached if he had been promoted at the proper time. Was no reason for the Railway Administration to have deprived the appellant of the benefit of the aforesaid circular, particularly in view of an earlier decision of the High Court in *Lal Mohan Paul's* case. [24H; 25A-B]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 387 (N) of 1981.

From the Judgment and order dated 11.2.1980 of the High Court of Calcutta in Appeal from Original order No. 588 & 594/79.

B *Gobind Das* and *R.P. Singh* for the Appellant.

O.P. Sharma, *R.C. Gubrel* and *R.K. Sharma* for the Respondants.

The Judgment of the Court was delivered by

C SEN, J. This appeal by special leave raises a question as to whether the appellant upon his transfer from the North-Eastern Railway, at his own request, to the South-Eastern Railway was entitled under r. 312 of the Railway Establishment Manual, to be placed in the seniority list below the existing confirmed and officiating staff in the relevant grade and not below the temporary staff.

D Put very shortly, the essential facts are these. The appellant was holding the substantive post of a Clerk in the Commercial Department of the North-Eastern Railway w.e.f. May 22, 1956 and had applied for his transfer to the South-Eastern Railway in the same post. On October 15, 1958, he was transferred from the North-Eastern Railway, at his own request, to the South-Eastern Railway and was posted at the Sealdah Division on his existing pay and scale against an existing vacancy. In 1967, the seniority list of the Clerks in the Sealdah Division was prepared by the South-Eastern Railway and in that list the appellant was placed below the temporary staff. Immediately upon his being placed below the temporary staff, the appellant made two representations, one dated March 4, 1967 and the other dated April 11, 1967, in the matter complaining that he could not be placed below the temporary staff, but without any avail.

G Finding that there was no redressal of the wrong done to him, the appellant sent a reminder to the Chief Personnel Officer by name dated December 21, 1973. The Chief Personnel Officer by his communication dated October 19, 1974, informed the appellant that his representation was rejected. On April 30, 1975, the appellant moved the Calcutta High Court under Art. 226 of the Constitution for the issue of an appropriate writ, direction or order in the matter

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of his inter-se seniority, and the High Court issued a *rule nisi*. During the pendency of that rule, respondents Nos. 7 to 45 arrayed in that petition whom the appellant considered to be junior to him were promoted to a higher post. On August 10, 1976, the appellant filed another petition under Art. 226 of the Constitution challenging their promotion. On the same day, the High Court issued a *rule nisi* and also directed that the South-Eastern Railway would be at liberty to confirm respondents nos. 7 to 45 in their post of promotion but such confirmation would be subject to the result of the rule. In view of the interim order passed by the High Court, the Chief Personnel Officer by his letter dated October 10, 1976 clarified.

“The above promotion orders are issued on provisional basis subject to result of the rule obtained by Sri Arun Kumar Chatterjee, Clerk CCS (Refunds) Office, in the Hon’ble High Court at Calcutta.”

A learned Single Judge by his judgment and order dated February 9, 1979 following the decision of Anil Kumar Sen, J. in *Lal Mohan Paul v. The General Manager, Eastern Railway, Calcutta & Ors.*⁽¹⁾ held that in pursuance of r. 312 the relative seniority of the appellant was governed by the Railway Board’s Circular No. 1565A dated January 31, 1950 and not by its subsequent circular dated December 31, 1966. The learned Single Judge accordingly set aside the impugned order of the Chief Personnel Officer, South-Eastern Railway dated October 7, 1974 and ordered that the Railway Administration should re-fix his seniority below all permanent and officiating Clerks on the date of his transfer in the Sealdah Division of the South-Eastern Railway but above the temporary Clerks in that Division. He further directed that the appellant would be entitled to promotion w.e.f. such date as he was eligible for such promotion according to the seniority so fixed.

The General Manager, South-Eastern Railway preferred an appeal under cl. 15 of the Letters Patent against the judgment of the learned Single Judge. A Division Bench of the High Court by its judgment dated February 11, 1980 while upholding the view expressed by the learned Single Judge as to the construction and effect of r. 312 of the Manual, held that the Circular No. 1565A

(1) Civil Rule No. 620 (W)/70 dated April 23, 1974.

A dated January 31, 1950 governed by the inter-se seniority of the appellant. It however observed that due to inordinate delay on his part in moving the Court, there was no justification for interfering with the promotions already made of respondents nos. 7 to 45 and made the following direction:

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D "In the circumstances, we do not think that we shall be justified in interfering with the promotions granted to the respondents. We, however, feel that the appellants should have placed the respondent no. 1 in the seniority list above the temporary staff. The Board's circular may be given effect to in the case of the transfer which had taken place after the date of the said Circular, but before that date we find no justification why in the face of Rule 312 the respondent no. 1 should not have been given the proper seniority by placing him above the temporary staff. In our opinion, the respondent no. 1 should be placed immediately below the remaining respondents in FMA 588 of 1979, the seniority list. The judgment of the learned Judge is modified to the extent indicated above."

E It accordingly modified the judgment and order of the learned Judge to the extent indicated above.

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G We have set out the facts at some length. It would appear from these facts that there was no delay, much less inordinate delay, on the part of the appellant in filing the petition under Art. 226 of the Constitution for the protection of his right as to inter-se seniority. Earlier, he had made three representations to the departmental authorities in the matter without any redress. If the attention of the learned Judges had been drawn to these facts, they would not have made the aforesaid modification. It is, however, argued that the order of posting on transfer communicated by the Chief Personnel Officer dated October 14, 1958 specifically stated that the seniority of the appellant would be counted from the date of his posting below all permanent and temporary Clerks. In his supplementary rejoinder, the appellant has controverted this fact and there is nothing on record to show that the said order of posting was ever communicated to him,

H Rule 312 of the Railway Establishment Manual reads as follows:

“Transfer on request—Seniority of Railway Servants transferred on their own request from one Railway to another should be allowed below that of the existing confirmed/officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating service of the transferred railway servant.”

We may then set out the two circulars issued by the Railway Board explaining the purport and effect of r. 312. Circular No. 1565A dated January 31, 1950 was explanatory and, insofar as material, reads :

“On transfer at the employee’s own request or to save his own interests his position should be at the bottom of the seniority list of all permanent, employees of his grade, if he is permanent, and at the bottom of the whole list of employees (both permanent and temporary) in his grade, if he is temporary.”

The Railway Board’s subsequent circular dated December 31, 1966 sought to clarify that the term ‘officiating’ in r. 312 includes temporary staff as well and that an employee transferred at his own request to a new establishment should be placed at the bottom of the seniority list in his relevant grade in that establishment. It provides :

“It has been brought to the notice of the Railway Board that the orders contained in their letter No. E55SR6/3 dated 19.5.55 have been interpreted by your administration so as to exclude temporary staff from the purview of the term officiating staff, occurring therein. The Board desire to point out that the term ‘officiating’ occurring in Board’s letter dated 19.5.1955 includes temporary staff as well. That is to say that an employee transferred at his own request to a new Establishment should be placed at the bottom of the seniority list in the relevant grade in that Establishment.”

There can be no doubt on the terms of r. 312 of the Manual read with Railway Board’s Circular No. 1565A dated January 31, 1950 that the appellant having been transferred, at his own request, from one railway to another, had to be placed below all the existing

A confirmed and officiating staff in the relevant grade, irrespective of the date of his confirmation or the length of his service. The appellant on the date of his transfer i.e. on October 15, 1958 was not governed by the Railway Board's Circular dated December 31, 1966. In *Lal Mohan Paul's* case, supra, Anil Kumar Sen, J. in a case where a railway employee was transferred on September 30, 1959, at his own request, from one railway to another held that he was governed by the Railway Board's Circular No. 1565A dated January 31, 1950 and not by the subsequent circulars and therefore was entitled to be placed in the seniority list below the existing confirmed and officiating staff in the relevant grade and not below the temporary staff. We uphold the view expressed by Sen, J. in *Lal Mohan Paul's* case, supra.

D That apart, the Railway Board's interpretation in the aforesaid Circular dated December 31, 1966, of the term 'officiating' in r. 312 of the Railway Establishment Manual, as including both officiating as well as temporary staff, was apparently wrong. According to its ordinary connotation, the word 'officiating' is generally used when a servant having held one post permanently or substantively, is appointed to a post in a higher rank, but not permanently or substantively while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation. Such officiating appointment may be made when there is a temporary vacancy in a higher post due to the death or retirement of the incumbent or otherwise. In contrast, the word 'temporary' usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary i.e. for the time being, with no right to the post.

F We find no justification for the attitude adopted by the Railway Administration in depriving the appellant of his legitimate rights. Loss of seniority of a Government servant with consequent loss of promotional prospects, higher pay and emoluments is a matter of serious consequence to him. When the appellant by his representations draw the attention of the departmental authorities to the injustice done to him, it was their duty to have rectified the mistake and re-fixed the seniority of the appellant. It was precisely to meet a situation of this kind that the Railway Board's Circular dated October 16, 1964 was issued. It provides that if a person has been promoted but not on the date on which he should have been promoted due to some administrative error then the employee should be assigned correct seniority *vis-a-vis* his juniors

already promoted irrespective of the date of promotion. It further provides that the pay of such employee in higher grade on promotion will be fixed proforma at the stage which he would have reached if he had been promoted at the proper time. There was no reason for the Railway Administration to have deprived the appellant of the benefit of the aforesaid circular, particularly in view of the decision of Anil Kumar Sen, J. in *Lal Mohan Paul's* case, *supra*.

The result therefore is that the appeal must succeed and is allowed with costs throughout. The order passed by the Division Bench of the Calcutta High Court making a modification in the judgment of the learned Single Judge is set aside and the judgment and order of the learned Single Judge allowing the writ petition filed by the appellant is restored.

M.L.A.

Appeal allowed.