

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.45/2001

This the 23rd day of October, 2001.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULIP SINGH, MEMBER (J)

Dinesh Kataria S/O Girdhari Lal Kataria,
Senior Enngineer (Construction),
Jammu, Under Deputy Chief Engineer (Const.),
Northern Railway,
Jammu.

... Applicant

(By Shri B.S.Mainee, Advocate)

-versus-

1. Union of India through
Secretary, Railway Board,
Ministry of Railways,
Rail Bhawan, Raisina Road,
New Delhi.
2. General Manager, Northern Railway,
Baroda House, New Delhi.
3. Chief Administrative Officer (Constn.),
Northern Railway, Kashmiri Gate,
Delhi.

... Respondents

(By Shri B.K.Aggarwal, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant has assailed order dated 8.10.1990 (Annexure A-1) whereby his resignation from the Indian Railway Service of Engineers (IRSE) has been accepted effective from 13.4.1989. He has also assailed memorandum dated 18.1.2000 (Annexure A-2) whereby his representations dated 21.4.1998 and 13.10.1998 regarding his inter se seniority have been turned down, his claim not being covered under the extant rules. The applicant is aggrieved that in terms of the impugned orders his request to withdraw his resignation before it was accepted by the competent authority was rejected and

subsequently when he was allowed to re-join his duties, his seniority was kept at the bottom and his representation for assigning proper seniority was rejected.

2. Brief facts of the case are that the applicant was selected vide Railway Board's letter dated 13.1.1989. He joined the IRSE as a probationer on the basis of selection made by the UPSC in 1987. Due to personal circumstances, he put in his papers on 12.4.1989. However, he sought to re-join vide Annexure A-3 dated 21.5.1990. Vide Annexure A-4 dated 31.5.1990, the respondents informed him that his application for resignation would be considered after he refunded the amount incurred by the railway administration on his training from 6.3.1989 to 13.4.1989. These expenses were quantified at Rs.3426/-. The applicant sent a demand draft of the said amount to the respondents vide letter dated 5.9.1990 (Annexure A-7) whereafter respondents passed orders dated 8.10.1990 (Annexure A-1) accepting his resignation w.e.f. 13.4.1989. By another letter dated 8.10.1990 (Annexure A-1A), applicant's request to re-join the IRSE was also rejected. The applicant was allowed to re-join on 12.3.1993. He was assigned seniority at the bottom vide Annexure A-2 dated 18.1.2000. The applicant has sought quashing and setting aside of Annexures A-1 and A-1A and assignment of seniority along with the officers of 1987 batch, with all consequential benefits of further promotions etc.

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3. In their counter, the respondents have stated that after submission of resignation by the applicant on 12.4.1989 seeking relief from 14.4.1989 he was asked to refund the cost of training as per rules. He deposited the amount on 5.9.1990 (Annexure A-7). His resignation which was to be effective from 14.4.1989 was duly accepted by the competent authority but the letter to that effect could be issued only on 8.10.1990 because the applicant had delayed depositing the cost of training which was required to be refunded by him in terms of the bond executed by him at the time of joining service. The applicant submitted an application on 21.5.1990 requesting for withdrawal of his resignation. According to the respondents, the extant rules did not permit acceptance of his request dated 21.5.1990 as more than a year had already elapsed since his resignation became effective and the applicant had not been with the Indian Railways from 14.4.1989. The respondents have taken exception to applicant's filing the present OA after more than ten years of acceptance of his resignation and after eight years of offer of re-appointment.

4. We have heard the learned counsel of both sides and considered the material on record. The applicant has filed a rejoinder also.

5. The first issue in the present matter to be addressed is that of limitation. The order of acceptance of resignation sought to be quashed was passed on 8.10.1990 and the bottom seniority was offered to be

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assigned vide letter dated 12.3.1993 (Annexure A-16). According to the respondents, no sufficient grounds have been explored by the applicant for condonation of delay in filing the present OA seeking reliefs relating to quashing of order dated 8.10.1990 and assignment of bottom seniority vide letter dated 12.3.1993. The learned counsel of the applicant relied on **Narendranath Satpathy v. Union of India & Ors.**, 1988 (1) SLJ (CAT 510, wherein it was held that an employee has a right to withdraw resignation till accepted. The learned counsel of the respondents contended that the applicant's resignation could not have been accepted till he had refunded the cost of training in terms of the bond executed by him. The applicant had made application requesting for withdrawal of his resignation on 21.5.1990, but he deposited the amount required to be refunded by him only on 5.9.1990. According to the respondents, in this background, acceptance of his resignation with retrospective effect on 8.10.1990 is quite in order. In any case, ultimately considering his application (Annexure A-15) dated 11.12.1991 in which he had submitted, "I am prepared to re-join the services even on bottom seniority, as per extant rules", the applicant was allowed to re-join duties w.e.f. 12.3.1993 as per Annexure A-16.

6. Whereas the order accepting his resignation w.e.f. 13.4.1989 (Annexure A-1) was passed on 8.10.1990, the applicant has impugned the same through the present OA filed on 2.1.2001. This inordinate delay has not been properly explained by the applicant. The respondents

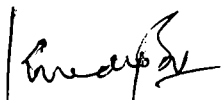
have given good grounds for acceptance of his resignation after ^bdelay attributing the reasons for such delay to the applicant himself who had not refunded the cost of his training as per his bond. We do not find any infirmity in the order accepting his resignation on 8.10.1990 effective from 13.4.1989.

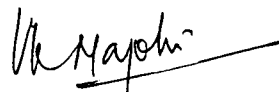
7. As regards the applicant's demand for allocation of seniority along with his batchmates of 1987, again the respondents have taken the plea of limitation and also that bottom seniority has been allocated to the applicant in terms of the government instructions. The learned counsel of the respondents also stated that the applicant had himself accepted the condition of allocation of bottom seniority when he was allowed to re-join his duties. Therefore, the doctrine of promissory estoppel is applicable to the detriment of the applicant.

8. According to the respondents, applicant's seniority on revival of offer of appointment has to be governed vide instructions contained in DOP & AR OM dated 6.6.1978 (Annexure R-2). The applicant was re-appointed in consultation with the UPSC regulating his seniority at the bottom in terms of Annexure R-2. The applicant had also agreed to allocation of bottom seniority vide his application dated 11.12.1991 (Annexure A-15). We find that the applicant has not enclosed his application dated 21.4.1998 which was considered and order dated 18.1.2000 was communicated to him rejecting his request for original seniority as not being covered under the extant

rules. It cannot be ascertained as to what the applicant had prayed for in his application dated 21.4.1998. The respondents, in our view, have considered the applicant's wish to re-join services on bottom seniority as per the extant rules. Allocation of bottom seniority to the applicant in terms of extant rules is quite in order.

9. In the facts and circumstances of the case, the OA is dismissed. No costs.


(Kuldip Singh)
Member (A)


(V.K. Majotra)
Member (A)
23.10.2001

/as/