

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No.1397/95

Hon'ble Shri R.K. Ahooja, Member(A)
Hon'ble Shri Syed Khalid Idris Naqvi, Member(J)

New Delhi, this the 31st day of August, 1999

Sudhir Kumar
S/o Shri Vishwanath
Motor Mechanic-cum-Driver Gr.II
E.M.U. Car Shed
Northern Railway, Ghaziabad
R/o Railway Qr. No.2/12
Car Shed Railway Colony
Lal Kuan, Ghaziabad

(By Advocate: Shri G.D. Bhandari)

Versus

1. Union of India through
The General Manager
Northern Railway
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi
3. The Sr. Divisional Electrical Engineer
E.M.U. Car Shed
Northern Railway, Ghaziabad (U.P.)
4. Shri Shrinivas
Motor Mechanic-cum-Driver
EMU Car Shed,
Northern Railway, Ghaziabad

(By Advocate: Shri P.M. Ahlawat)

ORDER (ORAL)

[By Hon'ble Shri R.K. Ahooja, Member(A)]

The applicant was initially appointed as a permanent Khalasi in 1979 and on passing the requisite trade test he was posted as a Vehicle Driver under SS (Power), Ambala. Later he was transferred to Divisional Office, New Delhi before being further transferred to EMU Car Shed, Ghaziabad. The applicant has since been working in the EMU Car Shed. His grievance is that eversince he was transferred to the EMU Car Shed from 1987 he has not been considered for subsequent promotions although his

2

junior, Respondent No.4, was appointed to Gr.III in 1990 was allowed to take the trade test and was thereafter promoted to Grade II with effect from 22.6.1993. He has now come before the Tribunal seeking a direction to the respondents to assign him proper seniority from the date he has been appointed to Grade III or from the date of joining the cadre of Motor Mechanic-cum-Driver Gr.III in EMU Car Shed with all consequential benefits.

2. The respondents in their reply have stated that the applicant had acquired a lien as Driver Gr.III in the Delhi Division. The Delhi Division and EMU Car Shed maintain separate seniority lists. Therefore the applicant could not be considered for promotion in the EMU Car Shed cadre. After the applicant made a representation for promotion as Driver Gr.II, the respondents transferred his lien to EMU Car Shed and he was promoted to Gr.II of the cadre by order dated 22.7.94. They state that the petitioner was the seniormost on the date when his lien was transferred on 25.3.94 amongst all Gr.III Drivers. However, on the date of the transfer of lien of the applicant i.e. Respondent No.4 had already been promoted as Driver Gr.II w.e.f. 22.6.1993. Thus Respondent No.4 is senior to the applicant in the cadre of Drivers Gr.II.

3. We have heard the counsel. Shri Bhandari for the applicant has vehemently argued that the transfer of the applicant to EMU was not at his own request or by way of mutual transfer. The transfer from the Delhi Division to EMU Car Shed was purely on administrative ground. He submitted that in terms of Rule 239 of the Indian Railway Establishment Code Volume I, lien is created on substantive appointment to a post. Therefore, once the applicant was

Dr

transferred on a substantive post to EMU Car Shed his lien automatically stood transferred from Delhi Division to EMU Car Shed. On the other hand, Shri Ahlawat, learned counsel for the respondents argued that the applicant cannot have liens simultaneously at two places and be thus eligible for promotion in either of the two seniority units. Consequently, the respondents did not transfer his lien from Delhi Division to EMU Car Shed till his representation for promotion to Gr.II was received. He also cited the decision of this Tribunal in Venkitveswaran Vs. Union of India in GM, Indian Railway ATJ 1993(5) 55 in which it was held that on the transfer of the Railway servant in the exigencies of service from one cadre division to another cadre division, the lien of the Railway servant does not get automatically transferred to the new post in the other cadre. He also cited the case of K.S. Majali & Ors Vs. Union of India and Ors. ATJ 1994(1) 445 where in case of a Telecom Department it was held that lien is retained in the parent post unless the employee is absorbed in the main cadre to which he is transferred. According to Shri Ahlawat, the applicant could not be treated as holding a lien in EMU till the issue of orders of transfer in 1995.

4. We have considered the matter carefully. The admitted fact is that applicant's services were transferred from Delhi Division to the EMU Car Unit as far back as in 1987. It is also clear that his transfer was on administrative ground. We also notice that in the order dated 21.3.94 issued vide Annexure A-15/ stated as under:-

"Lien of Shri Sudhir Kumar Driver Gr.III, who is working in car shed since 13.8.87 i.e. for more than three years as condition stipulated is to be borne on EMU Car Shed cadre against Motor Mechanic cum staff car driver Gr.III with immediate effect. His seniority to be assigned on the basis of length of service in Gr.III." (emphasis supplied)

5. The above order categorically states that the seniority of the applicant in Grade-III will be on the length of service in that grade. On that basis the seniority of the applicant necessarily has to be from 1987 in the category of Driver Gr.III in the EMU Car Shed Unit. However, the applicant can claim further promotion to Gr.II only after the issue of the ~~appointment~~ order dated 21.3.94 in regard to transfer of lien. Thereafter on the basis that he was the seniormost Gr.III Driver, he was promoted to Gr.II by order at Annexure A-6 dated 27.3.90.

6. In regard to fixation of inter-se seniority vis-a-vis Respondent No.4, the stand of the respondents is that the applicant could not claim equality with Respondent No.4 because in 1993 he did not have a lien in the Car Unit and at that time Respondent No.4 was the seniormost Driver. The learned counsel for applicant, however, submitted that his claim is not against Respondent No.4 and that what he seeks is that his seniority in Grade III be correctly fixed with all consequential benefits. We feel that the relief sought for by the applicant has been conceded by the respondents themselves when they say that his seniority will be fixed on the basis of 'his length of service'. The problem which is going to arise is, however, with regard to consequential benefits. One way to give the consequential benefit would be that the applicant should have promotion in Grade II from the same date as Respondent No.4. It is stated by Shri Bhandari that the applicant does not seek arrears of pay if his promotion was to be given in Gr.II alongwith Respondent No.4. We are of the view that in order to avoid any further litigation in the matter, the applicant should be granted proforma promotion in Grade.II

from the same date as Respondent No.4 for the purpose of only seniority and qualifying service for promotion to next grade. This is because the applicant has come to EMU Car Shed and has worked there continuously since 1987. Such a long stay cannot be treated as a temporary arrangement in which the lien continued to be with the Delhi Division. By 1993 the applicant should have taken a decision in regard either to the transfer of his lien to EMU Car Shed or for his return to Delhi Division. Therefore, we consider that the applicant should atleast have been promoted from the same date as Repondent No.4 who was promoted to Gr.III in 1990.

7. In the result, the O.A. is disposed of with the direction that the applicant will be given seniority in Gr.III with effect from the date of transfer to EMU Car Unit with all consequential benefits which so far as Driver Gr.II is concerned will mean proforma promotion from the same date as Respondent No.4. He will, however, not be entitled to any financial benefit on that account.

9. No order as to costs.

See next ~
(Syed Khalid Idris Naqvi)
Member (J)

R.K. Ahuja
(R.K. Ahuja)
Member (A)

sc*