

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00947/2018

Tuesday, this the 16th day of March, 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

D.S. Vinodkumar, aged 35 years,
S/o. A. Dharmayyan,
Goods Guard, O/o. Station Director,
Trivandrum Division,
Southern Railway,
Residing at Santhi Nivas,
Kottaikal PO,
Trivandrum.

... **Applicant**

(By Advocate M/s. Varkey & Martin)

v e r s u s

1. Union of India,
represented by the General Manager,
Southern Railway,
Park Town,
Chennai – 600 003.
2. The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum – 14.

... **Respondents**

(By Advocate Mr. C.B. Sreekumar)

This application having been heard on 3rd March, 2021, the Tribunal
on 16.03.2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant joined as Goods Guard in Trivandrum Division of

Southern Railway in 2014. While working in the same position at Trivandrum Depot, he submitted technical resignation in order to join the State Police Service as a Special Branch Assistant Grade-II. The 3rd respondent (Senior Divisional Personnel Officer, Trivandrum Division) issued orders that the technical resignation was accepted by the Competent Authority vide order produced at Annexure A1 dated 8.3.2017. It is also mentioned in the order that the applicant's lien would be maintained at that division (Trivandrum division) for a period of 2 years from the date of relieving with effect from 8.3.2017. After joining the State Police Service, the applicant decided that he was not suited for the job and so in November, 2017, he gave an application to re-join the Railway in his earlier post of Goods Guard. He requested the 3rd respondent to permit him to re-join vide Annexure A2 as he had the lien at Trivandrum Division for 2 years with effect from 8.3.2017. As no immediate action was taken by respondent No. 3 on this, he had to send reminders. He submits that after receiving an offer of appointment apparently as if he was being considered as a fresh recruit, he resigned from the Police Department to re-join the Railways. The Police Department order relieving him is produced at Annexure A3. This order was issued on 15.3.2018 and the applicant reported for re-joining at his parent cadre of Goods Guard to the 3rd respondent on the next date, on 16.3.2018 vide Annexure A4. However, he submits that he was not immediately assigned with any duties and remained idle, until an Order produced at Annexure A5 (impugned order), was issued in his case. This Order stated that the applicant is 're-appointed' in Trivandrum division as a Trainee Goods Guard in level-5 of the VIIth Pay Commission pay matrix in terms of RBE No. 21/2017 dated 17.8.2016. It was also mentioned in the same Order that

“he has to undergo refresher course once again”. These Orders also bore the subject – “Appointment as Trainee Goods Guard”.

2. After this, the applicant submits that he was sent to the Zonal Training Institute at Erode for the refresher course. However, he was recalled and sent back from there without being allowing to complete the said refresher course. This was stated to be on the ground that since his re-appointment was as Trainee Goods Guard, he has to undergo initial training rather than refresher course. He then gave a representation to the second respondent on 13.4.2018 produced at Annexure A6 requesting that his appointment should be re-classified as “re-joining as Goods Guard” instead of “re-appointment as Trainee Goods Guard”. He submitted in the representation that the procedure followed for re-joining has been incorrect.

3. He submits that the basis of his representation is the Statutory Rule 240 of Indian Railway Establishment Code as well as relevant Railway Board orders on the subject of technical resignation from the Railway. The applicant submits that under these Rules/circulars/orders he is entitled to have his lien on the post of Goods Guard maintained for a period of two years and also that in the event of re-joining in the Railways he is entitled for the seniority in the post of Goods Guard from the date of initial appointment as well as protection of the last pay drawn. On re-joining the duty respondents should not have sent him for training for fresh recruits but for the Refresher course. However, initially, the respondents rejected his representation at Annexure A6 by their letter dated 8.5.2018 (Annexure A7 impugned order). They stated that the procedures followed by them for re-

appointment in the Railways were in order and that he should undergo the prescribed initial training course for the Guards. He submitted another representation on 10.7.2018 (vide Annexure A9) to the Chief Personnel Officer, Southern Railway bringing out all the details and stating that, as on that date, i.e. 10.7.2018, he had not been sent for any training nor any positive reply was received from the Personnel Department. He has been kept spare without salary for five months and has not been able to join duty as Goods Guard.

4. The applicant submits that he was finally sent for initial training at Erode on August 13, 2018 despite his protest. After completion of the training and road learning he was posted along with three other direct recruits as Trainee Goods Guard at Ernakulam vide the order dated 17.10.2018 issued by the 3rd respondent produced at Annexure A10. Before the receipt of this order, he had also received a communication from the 2nd respondent addressed to the 3rd respondent (produced at Annexure A11) stating that the lien of the applicant has been maintained from the date of technical resignation i.e. 8.3.2017 and was valid for a period of two years (up to 8.3.2019). It was mentioned in the said letter by the 2nd respondent (Chief Personnel Officer, Southern Railway, Chennai) that as per paragraph 2.6 of DoP&T OM dated 17.8.2016 circulated under Board's letter No. E(NG)1-2016/AP/2, dated 7.3.2017 (circulated as RBC 35/2017) that "*on technical resignation seniority in the post held by the Government servant on substantive basis continues to be protected*". As such, the 2nd respondent Chief Personnel Officer, Southern Railway, directed the 3rd respondent, Sr. Divisional Personnel Officer, Southern Railway, to fix the seniority of the

applicant as per the lien, being a case of technical resignation. It was also directed that under these circumstances orders for re-appointment issued instead of re-joining of employee was not as per rules on the subject. It was further directed that necessary action be taken accordingly under advice to respondent No. 2. On 8.10.2018, a corrigendum (produced at Annexure A12) was issued by the 3rd respondent wherein it was clarified that the term mentioned in the Annexure A5 order for “re-appointment” of the applicant should be read as “re-joining” in terms of paragraph 2.6 of the aforementioned DoP&T OM. It was also mentioned that his seniority would be fixed accordingly. It was also advised in the same order that the applicant had to undergo initial training course for Goods Guard at ZRTI/TPJ.

5. The applicant submits that the corrigendum at Annexure A12 only pretends to comply with Annexure A11 directions of the Chief Personnel Officer of Southern Railway. The training that he underwent for Trainee Goods Guard was then conducted from 13.8.2018 to 21.9.2018 and after the training was completed he was posted as Goods Guard on a regular basis on pay of Rs. 29,200/- at level-5 of VIIth Central Pay Commission pay matrix and posted at Ernakulam station. This was communicated vide the third impugned order produced as Annexure A10, dated 17.10.2018. He was however, allowed to continue to perform duties of Goods Guard at Trivandrum depot notwithstanding this Annexure A10 posting order. Thereafter, he made another representation (vide Annexure A13) for a permanent posting at Trivandrum instead of Ernakulam in the light the various issues pointed out above and delay of 9 months before his re-joining. This representation was rejected by the fourth impugned order at Annexure

A14 stating that the competent authority has not agreed for his posting at Trivandrum by overlooking the request of other transfer registrants. Hence, he was advised to do the needful as per the office order produced at Annexure A10 posting him at Ernakulam. In addition it was mentioned that a corrigendum was issued for his appointment order, changing the term “re-appointment” as “re-joining”.

6. The applicant submits that the action taken by the 3rd respondent Senior Divisional Personnel Officer, Southern Railway, Trivandrum is vindictive and highly arbitrary. He submits that, as declared by the 2nd respondent Chief Personnel Officer, Southern Railway, Chennai, he is entitled to re-join the post of Goods Guard on 16.3.2018 itself and on re-joining the post on which he is having a lien he is entitled for full protection of his pay and seniority. The applicant submits that he is also entitled for consideration for promotion on par with his juniors who were granted non-functional promotion as Senior Goods Guard. He was also not required to undergo initial recruitment training and the refresher course should have sufficed as he was re-joining the service. He submits that he is also eligible for a posting at Trivandrum depot itself since it is not a case of direct recruitment and should be in preference to request transfer registrants. In addition, the pay fixed at Annexure A10 as if he has joined the post on direct recruitment is illegal. In short, he states that the arbitrary action of the 3rd respondent in not treating him as a re-joined employee and as a case of re-appointment has resulted in his grievances. Accordingly, he has sought the following reliefs:

“1) *Call for the records leading to the issuance of Annexure A5, A7,*

A10 to the extent it relates to the applicant and Annexure A14 and quash the same.

II) Declare that the applicant is entitled to rejoin the post of Goods Guard, where his lien is maintained with effect from 16.3.2018 with all consequential benefits and to direct the respondents accordingly.

III) Direct the respondents to disburse the salary to the applicant from 16.3.2018 to 4.10.2018 the period the applicant was kept out of duty on the basis of the declaration above.

IV) Direct the respondents to protect the seniority of the applicant as if he was appointed in railways in the year 2014 with all consequential benefits like protection of pay, seniority, consideration for promotion to the post of Senior Goods Guard on par with his juniors on the basis of the declaration above.

V) Pass such other orders or directions as deemed fit.”

7. In a reply statement filed by the 3rd respondent on behalf of all the respondents, it is stated that while working as Goods Guard under their administrative control, the applicant had submitted technical resignation to take up appointment as Special Branch Assistant Grade-II at Special Branch CID Headquarters, Kerala Police Department. Accepting his request for technical resignation he was relieved on 8.3.2017 so as to take up the appointment with Kerala Police on 9.3.2017. But as per records, the applicant joined the State Government only on 10.3.2017. As such the intervening period has to be treated as “Break in Service”. Hence, it is submitted that the applicant has no claim for his service put forth in Railways prior to 9.3.2017 and, as such, he cannot claim seniority and other consequential benefits after re-joining with the respondents herein. Further, he is not entitled to promotion on par with his erstwhile juniors. It is submitted that his service would be counted from 10.3.2017 as he is not entitled for any benefit for his past service in view of break in service. In this regard a show cause notice has been issued to the applicant seeking his explanation as to why the period of 9.3.2017 the date on which he was

neither in Railway service nor in the State Government service is not be treated as break in service. Further, vide Annexure A12 corrigendum Annexure A5 order issued as re-appointment has been modified as re-joining. Hence any prayer in this regard has become infructuous.

8. It is further submitted by the respondents that on receiving his request for re-joining in Railways an offer of appointment was sent for his acceptance and to process further. Instead of giving his acceptance for re-joining he got himself relieved from the State Government which led to some delay in taking back the applicant into the Railway service as per Annexure A5 order. Thereafter, some correspondences was made with the headquarters regarding to the issued office order either as re-appointment or re-joining, which culminated in Annexure A12 corrigendum issued on 8.12.2018. Meanwhile, he was sent for initial training course at Trichy before being inducted as Goods Guard which is a safety category post. As such the period between 16.3.2018 to 13.8.2018 was treated as “dies non” since during the said period he was not doing any work and not in roll of administration as he was not inducted in the post of Goods Guard for want of completion of refresher training course. As per Annexure A5 order the Principal at Zonal Training Centre had refused to impart refresher course training and insisted for initial training and sent the applicant to Divisional Headquarters. After getting clarification from the Headquarters, corrigendum was issued and applicant was sent for initial training on 9.8.2018. On completion i.e. on 21.9.2018 he was posted as Goods Guard as per Annexure A10. Though he was posted at Ernakulam he has not reported at Ernakulam and instead he is working in the office of Sr. DOM/TVC as

Crew Controller with attendant benefits attached to the post of stationary running post. It is submitted by the respondents that in view of issuance of Annexure A12 corrigendum Annexures A5 and A7 orders have become infructuous. Regarding Annexure A14 it is advised by the Sr. DOM/TVC that the applicant has been temporarily posted and is still working at Trivandrum. Hence, there is no question of arbitrariness and illegality and violation of constitutional provisions, it is submitted.

9. Respondents have also submitted that paragraph 2.6 of DoP&T OM dated 17.8.2016 (*supra*) stipulates that “*on technical resignation, seniority in the post held by the Government servant on substantive basis continues to be protected. However, in case of a Government servant deciding to rejoin in substantive post, the period spent in another department which he had joined after submitting his technical resignation will not count for minimum qualifying service for promotion in the higher post*”. The copy of the office memorandum has been produced at Annexure R1. As such, it is submitted that the applicant cannot seek parity with persons who were promoted while he was in State Government service. His eligibility will count from the date of re-joining Railway service.

10. In a rejoinder, the applicant has once again reiterated the Statutory Rule 240 of the Indian Railway Establishment Code, Volume-I as well as Railway Board orders issued on the subject of technical resignation, by which the seniority in the post held by the Government servant on substantive basis continues to be protected on technical resignation. In his case his lien in Railways is required to be maintained for a period of two

years from the date of his technical resignation i.e. it has to be maintained from 8.3.2017 (the date of technical resignation) to 8.3.2019, notwithstanding his joining the State Police Department. This position had been accepted by the 2nd respondent, Chief Personnel Officer, Southern Railway, vide Annexure A11 order. Hence, once he resigned from the Police Department on 15.3.2018 and reported on 16.3.2018 he was entitled to re-join in the Railway service from that date with due protection of his seniority and pay from that date. Unfortunately, the respondent No. 3 did not allow the applicant to rejoin the duties from 16.3.2018 and instead issued Annexure A5 order appointing him as a directly recruited fresh candidate. The entire problem has been created by treating him as a fresh recruit and it is for that reason he was recalled from attending the Refresher course. Treating him as a direct recruit, he was sent for initial recruitment training only on 13.8.2018 and, after training, he was posted along with other direct recruits by Annexure A10 order. Further, his salary was fixed by Annexure A10 and not by the clarification given at Annexure A11 (which was erroneously mentioned in the OA). The salary has been fixed along with other direct recruit as if he is a fresh entrant which is unsustainable.

11. The applicant submits that he should have been continued in service with all consequential benefits including the monthly salary from 16.3.2018 instead of 4.10.2018 in view of his lien in the Railways. He is entitled to have the period from 16.3.2018 to 4.10.2018 treated as the period spent on duty with all consequential benefits. Though the 2nd respondent issued Annexure A11 orders and 3rd respondent tried to rectify the mistake by changing the term “re-appointment” as “re-joining” the full remedial

measures have not been taken treating the period from 16.3.2018 to the date on which the applicant was allowed to join the duty as duty for all purposes including salary for the said period. He is also eligible for the full restoration of seniority and consideration for promotion as Senior Goods Guard on par with his juniors as he had served 2 years and 8 months as Goods Guard even before the technical resignation and the eligibility for promotion as Senior Goods Guard is 2 years period as qualifying service of Goods Guard.

12. Subsequent to filing this OA, the applicant submits that the respondents have issued another order on 20.8.2019 promoting him as Senior Goods Guard with effect from 13.8.2018, the date on which the applicant was allowed to re-join i.e. after a delay of six (sic) months after he reported for re-joining. A copy of the office order has been produced at Annexure A15. He again submits that his eligibility for promotion as Senior Goods Guard was from the date from which his immediate junior was promoted. The delay for considering the applicant for promotion as Senior Goods Guard is only on account of respondents not allowing the applicant to re-join with effect from 16.3.2018 and also treating him as a fresh direct recruit candidate. He should not be allowed to suffer adversely by way of loss of seniority and also by way of pay and allowances during the period he was kept out of service. In the above circumstances he is eligible to re-join the Railways where his lien was maintained with effect from 16.3.2018 with all consequential benefits.

13. The applicant submits that the contention taken that he joined the Kerala Police after being relieved on 8.3.2017 only on 10.3.2017, instead of

9.3.2017 and thus there was a break in service is a very strange and absurd one. The said contention is not supported by any rule and respondents must be put to strict proof of the same. His technical resignation was accepted on 8.3.2017 but he could join Police Department only on 10.3.2017 due to his illness. He was allowed to join on 10.3.2017 on production of the relieving letter issued on 8.3.2017 and the matter should end there. This cannot be considered as break in service by any stretch of imagination. The applicant submits that this contention is taken to only to justify the illegal action of the 3rd respondent in not allowing him to re-join duty when he reported on 16.3.2018. In any case, the subsequent issue of Annexure A15 giving promotion with effect from 13.8.2018 shows that there is no justification in taking such an unreasonable and unjust contention without any legal basis. Further, the respondents are not justified in treating the period from 16.3.2018 to 13.8.2018 as dies non. During this period he was prevented from performing the duty or undergoing refresher course only because his joining was treated as fresh appointment. Hence, he prays that the reply statement may be rejected and the OA may be allowed.

14. We have heard Mr. Martin G. Thottan, learned counsel appearing for the applicant and Mr. C.B. Sreekumar, counsel appearing for the respondents. We have perused the records and documents provided. At the outset we would make it clear that there are many contradictory statements made in the reply statement, along with clerical mistakes relating to references to Annexures, which shows that it has been filed in a casual and thoughtless manner. We would also hold that the one day gap in joining the Kerala Police on 10.3.2017 instead of the very next date of release should

not amount to a break in service with the result that his entire service prior to 10.3.2017 has therefore, no claim or standing. The respondents have not pointed out the particular IREC or Rule under which conclusion is arrived at. This position has not been indicated in the reply statement. The orders which were passed after the applicant re-joined the Railways or the letters given in reply to his representation do not indicate that this was the reason for which he was being treated as a fresh appointee and had to be sent for initial training. Being made only in the reply statement, this contention therefore, appears to be an afterthought which is being adduced only for the purposes of covering up the mistake committed in not properly dealing with the applicant's case as a matter of re-joining during the period of lien maintained after technical resignation. This case cannot be treated as one of fresh appointment and loss of seniority. Otherwise, the whole concept of technical resignation and maintaining the lien in the former service would lose its meaning. The principle behind such facilities given to employees is that they do not unnecessarily suffer when shifting from one job to another and later changing their mind to return to the previous one.

15. In addition it is perplexing as to how even after clarification from the respondent No. 2 the applicant continued to be, in effect, treated as a fresh appointee by the 3rd respondent and by the training institutes. Orders were passed that this was a case of re-joining. Would it not mean that this is not case of fresh appointment and that his seniority and pay etc. needed to be maintained, and there was no need for him to be sent for initial training? Re-joining a post after a period spent outside at the same level should have meant that, if at all, the applicant should have been sent for a refresher course. It

appears, therefore, that there has been some mishandling of the case between the respondent No. 3 and the Principal of the Zonal Training Institute, who just sent him back without any clear orders, as well as on the part of others down the line in their respective establishments. It is for the respondents Nos. 1 and 2 to look into these issues and take necessary steps. We find that a low level employee has been made to suffer due to unfortunate, arbitrary and some times even absurd decisions taken by officials who should have known better.

16. We also find that the period between the time the applicant re-joined the Railways i.e. 16.3.2018 to the time he was sent for training cannot be treated as dies non as if he did not exist for the Railways due to the fact that there was no break in service and his lien was being maintained after technical resignation. The period therefore, has to be regularized as if he has re-joined in the post of Goods Guard in the Railways on 16.3.2018. Appropriate steps may be taken to regularize the same. In fact, we notice that Annexure A15 order which promotes him at Senior Goods Guard with effect from 13.8.2018 is also a realisation on the part of respondents that his previous service was to be counted. We hold that his promotion to Senior Goods Guard should be with effect from the date he is eligible and taking into account as if he re-joined as Goods Guard on 16.3.2018. The instructions given on seniority and exclusion of service relating to the period spent in an another Department vide DoP&T OM dated 17.8.2016 would also apply. In other words, he should be treated as if he re-joined as Goods Guard with effect from 16.3.2018 and his promotion to Senior Goods Guard should accordingly be from the date on which he is eligible, taking into

account the instructions given by the DoP&T produced at Annexure R1, as well as, his interse seniority compared to his immediate junior. The respondents will also accordingly ensure that orders regarding his pay and consequent benefits are passed as per the Rules and as per his entitlements taking into account that his re-joining may count with effect from 16.3.2018.

17. We therefore, allow the OA in full and direct the respondents to take necessary action accordingly as indicated in the previous paragraphs, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(Dated this the 16th day of March, 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in Original Application No.180/00947/2018

1. **Annexure A1** – True copy of the office order No. T.03/2017/Gds dtd 8.3.2017.
 2. **Annexure A2** – True copy of the representation dated 3.11.2017 submitted by the applicant.
 3. **Annexure A3** – True copy of the service order No. 65/18/SB dated 15.3.2018 issued form the Police Department.
 4. **Annexure A4** – True copy of the letter dated 16.3.18 submitted by the applicant.
 5. **Annexure A5** – True copy of the office order No. T.08/2018/Guards dated 2.4.2018 issued by the third repsondent.
 6. **Annexure A6** – True copy of the representation dated 13.4.2018 submitted by the applicant.
 7. **Annexure A7** – True copy of the letter bearing No. 579/11/VR/OPTH-Vol.II dated 8.5.2018 issued by the third respondent.
 8. **Annexure A8** – True copy of the representation dated 13.4.2018 submitted by the applicant.
 9. **Annexure A9** – True copy of the representation dated 10.7.2018 submitted by the applicant.
 10. **Annexure A10** – True copy of the office order No. T.28/2018/Gds dated 17.10.2018 issued on behalf the third respondent.
 11. **Annexure A11** – True copy of the letter No. P(S)443/II/Guard Rep dated 12.9.18.
 12. **Annexure A12** – True copy of the letter No. V/P.579/II/VR(OPTG)-Vol.II dated 8.10.2018.
 13. **Annexure A13** – True copy of the representation dated 16.10.2018 submitted by the applicant.
 14. **Annexure A14** – True copy of the letter bearing No. V/P.579/II/VR(OPTG)-Vol-II dated 13.11.2018 issued on behalf of the third respondent.
 15. **Annexure A15** – True copy of the O.O.T.22/2019/Goods dated 20.8.2019.
 16. **Annexure R1** – True copy of the relevant portion of OM No. 28020/1/2010-Estt.(C) dated 17.8.2016.
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