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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 3007/91

DECIDED ON : 11.11.1992

Dinesh Kumar

... Applicant

Vs.

Union of India & Others

... Respondents

CORAM :

THE HON'BLE MR. P. C. JAIN, MEMBER (A)

THE HON'BLE MR. S. R. SAGAR, MEMBER (J)

Shri B. S. Mainee, Counsel for Applicant

Shri B. K. Aggarwal, Counsel for Respondents

JUDGMENT (ORAL)

Hon'ble Shri P. C. Jain, Member (A) -

The applicant in this case was appointed as a Goods Guard in the Moradabad Division of the Northern Railway on 23.2.1980. On his transfer to the Allahabad Division at his own request w.e.f. 31.3.1981, he was assigned the bottom seniority as per the relevant rules, as the seniority of Goods Guard is maintained on a Divisional-basis. So far there is no dispute between the parties. With effect from 9.3.1989, the applicant was transferred on administrative grounds to the Delhi Division. On transfer on administrative grounds he was not liable to lose the seniority which had been assigned to him on his transfer to Allahabad Division in 1981. However, the applicant has contended that after his transfer to the Delhi Division he was given seniority w.e.f. 23.2.1980 by interpolating his name at sl. No. 97-A in the seniority list of Goods Guard of Delhi Division issued on 12.10.1987. This fact also is not disputed by the

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respondents in their reply. Later on, by letter dated 5.12.1991 (Annexure A-6) the applicant was required to show cause as to why the mistake committed in assigning him seniority from 23.2.1980 and interpolating his name at sl. No. 97-A be not corrected to 31.3.1981 and 133-A. It may be stated here that this letter dated 5.12.1991 is not addressed to the applicant nor it is endorsed to him. By this letter the representation, if any, made by him within thirty days was to be considered and if no such representation was received within the aforesaid time, the proposal to correct as above his seniority position was to be taken as final. By letter dated -/12/91 (Annexure A-1) which is said to have been issued on ~~5~~¹².12.1991 a provisional seniority list of Goods Guards of the Delhi Division was issued in which the name of the applicant was shown at sl. No. 9-A on the basis of his appointment as Goods Guard on 31.3.1981, i.e., the date of his taking over charge of the post in the Allahabad Division. It is in this background that the applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 impugning the aforesaid provisional seniority list dated 12.12.1991 and praying for quashing of the same. As an interim measure, the applicant has prayed for restraining the respondents from implementing the impugned seniority list and reverting him from the post of Passenger Guard to the post of Goods Guard. It may be mentioned here that after having gone through the prescribed selection for promotion to the post of Passenger Guard, the applicant was so promoted w.e.f. 12.7.1991. By an order passed on 18.12.1991, the status quo as on that date in respect of the applicant was directed to be maintained. This order has continued since then.

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed by the applicant. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of this O.A. at the admission stage itself. We have accordingly perused the material on record and also heard the learned counsel for the parties.

3. The main contention of the learned counsel for the applicant urged before us is that once the applicant was transferred from Allahabad Division to the Delhi Division, he was entitled to regain the seniority which he had lost on his transfer from Moradabad Division to the Allahabad Division. In other words, the contention is that on his transfer to the Delhi Division the applicant's seniority should be counted from 23.2.1980 and not from 31.3.1981. The applicant has not challenged the order of the respondents to transfer him on administrative grounds and/or in the public interest from one Division/seniority unit to another Division/seniority unit. If the power of transfer is available to the respondents, then what the applicant is entitled to is that his seniority at the place of his posting or in the Division to which he is posted at the time of his transfer from that place/Division to another place/Division is not changed to his disadvantage. By the transfer of the applicant from Allahabad Division to Delhi Division, the seniority assigned to him in Allahabad Division has neither been adversely changed nor it is proposed to be so changed. Further, we have not been shown any provisions or orders or instructions under which the applicant may

be held entitled for regaining his seniority, on the facts and in the circumstances of this case, which he had lost as per the relevant rules on his transfer at his own request from Moradabad Division to Allahabad Division. Learned counsel for the applicant stressed that the respondents themselves had given him the seniority w.e.f. 23.2.1980 in the seniority list of Delhi Division when they interpolated his name at sl. No. 97-A in the seniority list issued on 12.10.1987. The respondents in their reply have, however, stated that this was done by mistake and, therefore, a show cause notice was issued on 5.12.1991 as at Annexure A-6. Neither party has been able to tell us the date of the order by which the name of the applicant was interpolated at sl. No. 97-A in the 1987 seniority list. Obviously it must have been done after 9.3.1989 and before show cause notice dated 5.12.1991 was issued. More likely, it might have been done before the applicant was called for the selection for the post of Passenger Guard which was initiated vide letter dated 28.8.1990 (Annexure A-3). Be that as it may, the date on which the name of the applicant was ordered to be interpolated as aforesaid is not directly relevant to the issue before us. It is well settled that an authority which has issued an order is also competent to modify that order. If the correction sought to be made is only a clerical mistake, no show cause notice is required to be issued. However, if the mistake sought to be corrected adversely affects the vested civil right of a Government employee, as appears to be the case here, the correction of mistake could not be resorted to without following the principles of natural justice by giving an opportunity to the person

likely to be affected by the order to be passed to show cause against the proposed action. This is what the respondents have tried to do in this case by issuing letter dated 5.12.1991 as at Annexure A-6. It also cannot be said in this case that there is any unreasonable delay in initiating the action by the respondents in seeking to correct the mistake which ^{admittedly} is said to have been committed, presumably for lack of knowledge of the fact of the applicant having been transferred from Moradabad Division to Allahabad Division at his own request resulting in loss of seniority.

4. Learned counsel for the applicant stressed two points in connection with the contention discussed above. Firstly, it is contended that the show cause notice dated 5.12.1991 was never served on the applicant and, therefore, he had no opportunity to make any representation in connection therewith. Even if it is accepted that the letter dated 5.12.1991 was not formally served on the applicant, yet the fact remains that he obtained a copy thereof from the Station Superintendent and has also filed it along with his O.A. which was filed by him on 16.12.1991. Thus, the knowledge of the letter dated 5.12.1991 cannot be denied by the applicant, and if so, he in all fairness to himself and to his employer, should have taken steps to make his representation within thirty days as mentioned in the letter itself. In the absence of the applicant today, learned counsel for the applicant is not in a position to state whether the applicant did make a representation, and if so, when, with reference to letter dated 5.12.1991.

5. The other aspect which has been stressed by the learned counsel for the applicant is that having decided to give thirty days' time to the applicant to represent against the proposed change in his seniority position, the respondents were not competent to include his name in the provisional seniority list issued on 12.12.1991 in which his position at sl. No. 9-A has been shown on the basis of the seniority as proposed to be revised vide letter dated 5.12.1992. He stated that this amounts to the respondents having already taken a decision for revising the seniority of the applicant. It is difficult to say that the inclusion of the name of the applicant in the provisional seniority list with reference to the proposed revised seniority amounts to a decision. We say so for two reasons. Firstly, the seniority list circulated on 12.12.1991 is only provisional seniority list and objections, if any, had been invited within one month from the date of receipt of the letter. Secondly, the show cause notice is dated 5.12.1991 and the provisional seniority list is dated 12.12.1991, but it appears that this letter at Annexure A-1 which does not appear to be of the date as such but which is signed on 12.12.1991, was actually typed on 4.12.1991 and put up to the officer signing it on 5.12.1991. This means that both the actions are independent of each other and the provisional seniority list does not reflect the final decision about the revised seniority of the applicant.

6. What emerges from the above discussion is that the applicant is entitled to an opportunity to show cause before his seniority on the basis of which his name was interpolated
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at sl. No. 97-A in the seniority list circulated on 12.10.87 is changed, but in fact partly for default on the part of the applicant and partly for default or lack of coordination on the part of the respondents, this opportunity has not in fact been availed of. The learned counsel for the applicant submitted that as far as he is aware the applicant had submitted his objections to his position in the provisional seniority list dated 12.12.1991. Neither party is in a position to tell us whether the aforesaid provisional seniority list has since been finalised or not.

7. Now we may refer to another aspect of the matter which seems to have ^{in C} directly come into picture. It is the applicant's selection and appointment to the post of Passenger Guard w.e.f. 12.7.1991. Though it is not clearly stated that if the applicant is given his seniority in the Delhi Division on the basis of his seniority in the Allahabad Division, he probably would not have been eligible for selection to the post of Passenger Guard; it is on the basis of his seniority on 23.2.1980 that the applicant appears to have been within the zone of consideration for selection to the aforesaid post. Thus, until a final decision on the question of his seniority is taken, his position with respect to the post of Passenger Guard also needs to be protected.

8. In the light of the foregoing discussion, this O.A. is disposed of in terms of the following directions :-

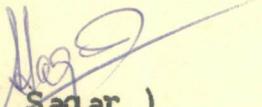
- (1) The applicant shall make within thirty days from today his representation, if any, to the show cause notice dated 5.12.1991 (Annexure A-6) to the competent authority. That representation shall be considered.

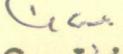
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and disposed of expeditiously by passing a speaking order.

- (2) The impugned provisional seniority list dated 12.12.1991 (Annexure A-1), in so far as it relates to the inter-se position of the applicant, shall not be finalised until his representation as in (1) above is disposed of.
- (3) The applicant shall not be reverted on account of the disputed seniority as aforesaid from the post of Passenger Guard until action as in (1) above is taken.

On the facts and in the circumstances of the case, we leave the parties to bear their own costs.


(S. R. Sagar)
Member (J)


(P. C. Jain)
Member (A)