

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

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O.A. No. 3081 of 1992

New Delhi, dated the 28th January, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Tilak Raj Bhardwaj,
S/o Shri Gura Mal,
Guard 'A', N.Rly.
R/o 37, Ek Jot Apartments,
Road No.44, Pitampura,
Delhi-34.

... APPLICANT

(By Advocate: Shri S.K.Sawhney)

VERSUS

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divl. Railway Manager,
D.R.M. Office,
Northern Railway,
New Delhi.

(None appeared)

... RESPONDENTS

ORDER (Oral)

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant prays for the reliefs
contained in Para 8 of the O.A.

2. Shri Sawhney has appeared for the
applicant and was heard. None appeared for
the respondents, even on the second call,
although this case was listed at Sl.No.8 of
the regular hearing list in to-day's cause
list.

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3. As this is a 1992 case, we are disposing it of after hearing Shri Sawhney and perusing the materials on record.

4. Respondents do not deny that the applicant after being appointed as Guard Grade 'C' was subsequently promoted as Guard Grade 'B' (Rs.330-560 RPS) w.e.f. 1.6.81, vide order dated 25.6.82 (Ann. A-3).

5. While working as Guard Gr. B, he applied for the post of Section Controller (Rs.470-75 RPS) and thereafter upon clearing the selection, he was put to officiate as Section Controller w.e.f. 3.10.82, and was also promoted as Dy. Chief Controller (Rs.2000-3200) w.e.f. 1.1.84 vide Respondents' seniority list dated 14.12.87 (Ann. A-7). While working in that capacity he developed some disease and was advised by Ddoctors to avoid duty which involved prolonged sitting at one place, and he was accordingly reverted to the cadre of Guard as per his request.

6. Applicant's contention is that as he held his lien on the post of Guard 'B', ~~and~~ he was entitled to his original seniority as Guard Grade B upon his reversion to the cadre of Guard. Respondents contend (Para 4.8 of their reply) that the applicant did not hold lien in the cadre of Guard.

7. Shri Sawhney has invited our attention to the provisional seniority list

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of Section Controllers dated 22.8.84 (Annexure A-4) wherein applicant's name figures at Sl. No.71, and he is shown as holding the substantive post of Guard. Shri Sawhney has also invited our attention to Rule 239 IREM Vol.I which reads as under:

"Unless in any case it be otherwise provided in these Rules a railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien provisionally acquired on any other post."

8. As in accordance with the respondents' own provisional seniority list of 22.8.84 applicant was shown as holding the substantive post of Guard, and nothing has been shown to us to lead us to believe that the said seniority list was subsequently modified/revised, we have no alternative but to hold that applicant held lien on the post of Guard Grade B when he was appointed to officiate as Section Controller, and would therefore be entitled to assignment of his original seniority as Guard on his reversion.

9. In this connection we also note that respondents have relied on Rule 313 (E) of I.R.E.S. revised Edition 1989 which provides that in the case of staff, who are not required to undergo periodical medical examination, but who on their own accord request for change of category on the grounds of health and are recommended change of occupation by the Medical Authority, their

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change will be treated as transfer on own request. It is in this context that respondents contend that applicant has to be placed at bottom seniority as Guard. However, as nothing has been shown to us to lead us to hold that applicant's lien as Guard was severed, and further more in the background of respondents' own seniority list (though provisional), referred to above, we hold that applicant retained his lien as Guard and is therefore entitled to his original seniority as Guard on his reversion.

10. In this connection, we are informed that applicant has since retired and had been promoted before his superannuation.

11. In the facts and circumstances of the case, we allow the O.A. to the extent that respondents are directed to assign applicant his original seniority in the category of Guard w.e.f. the date of his reversion as Guard with consequential benefits, including consideration for promotion to the higher posts from the date when his immediate juniors were promoted, together with pay fixation and arrears upto the date of retirement and revision of retiral benefits, in accordance with rules/instructions. The aforesaid directions should be complied with by the respondents as expeditiously as possible, and preferably within three months from the date of receipt of a copy of this order. *No costs.*

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12. After the judgment was dictated in open court Shri Rajeev Bansal proxy counsel for Shri B.K. Aggarwal for respondents appeared.

Lakshmi Swaminathan

(Mrs. LAKSHMI SWAMINATHAN)
Member (J)

/GK/

S.R. Adige

(S.R. ADIGE)
Vice Chairman (A)