

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 4/5 day of April 2011

**Original Application No. 530 of 2003
(U/S 19, Administrative Tribunal Act, 1985)**

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)**

G.P. Chaturvedi aged about 53 years son of Shri Ram Sewak Chaturvedi working as passenger Guard under Divisional Railway Manager, Jhansi.

..... **Applicant**

By Adv. : **Shri R.G. Soni**

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Shri K.L. yadav Guard | through Divisional Railway
| Manager, North C
4. Shri R.P. Katare, Guard | Railway, Jhansi.

..... **Respondents**

By Adv. : **Shri D. Awasthi**

O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

1. The applicant joined the Railways on 17-07-1974 as
Commercial Clerk in the grade of 260-430. His name figured in the

1981 seniority list of junior clerk at S. No. 316, while that of respondent No. 3 at 320. Correspondingly, in the grade of senior clerk, the name of the applicant figured in at serial No. 462, while that of respondent No. 3 and 4 at S.No. 465 and 471 respectively.

2. Both the applicant, as well as the private respondent No. 3 were sent for the Goods Guards' course No. 223, in which the applicant ranked first and respondent No. 3, at 8th while respondent No. 4 attended the next course only. Despite the above position, the respondents were promoted as Goods Guards on 11-09-1985, while the applicant was promoted only on 14-08-1987 (promotion order issued on 24-03-1987). On 18-07-1991 at the PNM meeting, a decision was taken to assign correct seniority to the applicant as Goods guard from 11-09-1985. Accordingly, the seniority list of Goods Guard published on 11-11-1991, reflected the names of the applicant and the private respondents at Sl. No. 231, 232 and 233 respectively. This position was altered first and then restored on 11-05-1994. The next promotional avenue is Passenger Guard for which selection was held in 1996 but the applicant was not allowed to appear consequent to which he had preferred OA No. 220 of 1996 which was decided on 29-08-2001 holding that the reason for late joining of the applicant as Goods Guard was not known and as such, the applicant could prefer a representation, which should be considered by the

authorities, after hearing respondent No. 3 and 4. Accordingly, the applicant submitted a detailed representation dated 10-12-2001 and objections were called for from Respondents No. 3 and 4 on 10-01-2002 by the official respondents. It is understood that no such objections were made by them. Yet, the respondents had rejected the claim of the applicant vide order dated 02-05-2002 and hence this OA praying for quashing of the aforesaid order dated 02-05-2002 and for a further direction to the respondents No. 1 and 2 to assign seniority as Goods Guard from 11-09-1985 as per the decision taken on 11-05-1994 with all consequential benefits.

3. While notice was taken on behalf of official respondents much early, notice to the private respondents could be issued only on 21-01-2009 and no un-served copy was received back. Nor had the respondents entered appearance. Service to the respondents has been deemed complete and they have been set ex parte.

4. Official respondents have contested the O.A. According to them, the applicant was directed to join as Guard "C" as early as on 17-12-1985, 31-01-1986, followed by another order dated 24-03-1987 and he had chosen to join only after 5 months of the last order issued on 24-03-1987. Thus, for his delayed joining the administrative ^{error} could not be blamed. This delayed joining the post has telescopically

affected the seniority since seniority is fixed in accordance with provisions of para 302 read with 305 of the IREM, which read as under:-

302. Seniority in the initial recruitment grades - Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to that grade. The grant of higher pay than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of post partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due promotion in the case of promotees and the date of joining the working post after the due process in the case of direct recruits, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry in to a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se seniority of each group.

305. When, however, a candidate whose seniority is to be determined under paragraphs 303 and 304 above cannot join duty within a responsible {reasonable} time after the receipt of orders of appointment, the appointing authority may determine his seniority by placing him below all the candidates selected at the same examination/selection, who have joined within the period allowed for reporting to duty or even below candidates selected at subsequent examination/ selection before him.

5. It has further been stated that matter relating to the decision in PNM meeting and assignment of seniority above the private respondents etc, had all been the subject matter of earlier OA No. 220 /96 and the applicant has been trying to take undue mileage on the basis of the provision seniority list of 18-07-1991. In fact vide  office order dated 11-09-1993, the applicant's seniority was

rescheduled from 231 to 328 A, the logic behind this displacement being that the applicant failed to join the post on the initial scheduled date 17-12-1985.

6. The applicant had filed his rejoinder, denying the contentions of the respondents especially as to the attribution of delayed joining to the applicant. His contention is that as and when he was relieved by the Depot In charge, he joined as Goods Guard.

7. Written submissions were filed and the pleadings along with the written submission have been duly perused.

8. The basic issue is whether the applicant could be permitted to agitate his seniority position as of 1987 at this distance of time, which would amount to unsettling the settled thing and that whether his contention for seniority above respondent Nos. 3 and 4 has substance.

9. So far as the aspect of unsettling the settled aspect is concerned, it is to be made clear that the applicant has been agitating against the alleged wrong fixation of seniority since 1996 when he had approached the Tribunal in OA No. 220/1996. While disposing of the said OA this Tribunal took cognizance of the order dated 11-05-1994, which related to the revision of seniority of the applicant in the

post of Goods Guard and the benefit of restructuring. It was thereafter, that the Tribunal observed, "From perusal of the letter dated 18-07-1991 and 11-05-1994 it appears that there was some mistake at some level on account of which applicant was not given chance to serve as Goods Guard at the appropriate time for which he was entitled. This requires rectification"

10. The said order dated 11-05-1994 inter alia reads as under:-

- I. Shri Chaturvedi was Senior to Shri Katery as Commercial Clerk, he had claim over Shri Katery to be posted as Guard.
- II. Shri Chaturvedi passed guard's course in course No. 223 while Shri Katery passed I course No. 225.
- III. Shri Chaturvedi should have been posted w.e.f. 11-09-1985 in place of Shri Katery who was junior most as Comml. Clerk as on 11-09-1985 when posted as guard.
- IV. Shri G.P. Chaturvedi is promoted as Guard w.e.f. 11-09-1985 being senior passed the course earlier to Shri Katery. Shri Katery is treated as Guard w.e.f. 25-09-85 i.e. the office orders of Guard. Between 11-09-85 and 24-09-88, his promotion is treated as on ad hoc basis.
- V. Accordingly, the benefit of re-structuring may also be given to Shri Chaturvedi.

11. The above letter was issued with the sanction of the competent authority. It is this order that the applicant is heavily relying upon. However, the contention of the respondents is that the above order underwent a modification after receiving objections from

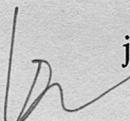
the concerned Goods Guards and the revised order reads as under, vide order dated 14-11-1994 (Annexure XII):

"Shri G.P. Chaturvedi was posted twice vide O/O dated 17-12-85 and O/O dt. 31-10-86 as Goods Guard but did not carry out his transfer orders. He carried out his transfer orders only on 14-08-1987. As per para 302 of IREM 1989 seniority has been assigned from 14-08-1987."

12. The above was agitated by the applicant vide his representation dated 07-02-1995 (Annexure A XIX). Nevertheless, the applicant had mentioned in para 4.15 "It is highly relevant to mention that the last corrigendum issued on 11-05-1994 has neither been modified, cancelled, nor withdrawn so far."

13. The above averment is thoroughly wrong. The applicant has not clearly come out with the reasons, which prevented him to join the post of Goods Guard earlier. It is not sufficient to state that he could join as and when he was relieved by the Depot in charge.

14. Para 302 r/w para 305 of the IREM is specific. Though the applicant could pass in the earlier course (223) with rank yet, seniority has to be fixed only on the basis of the date of joining, save where the administration is responsible for late joining. Here, no cogent reason had been given by the applicant in regard to his late joining. True, the respondents tried to accommodate the applicant



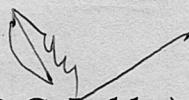
but after all, when the same would be at the cost of the seniority of other individuals, on their objections having been raised, the Respondents could not but reverse their decision. This was what precisely had happened. Of course, there appears no response to the representation dated 07-02-1995 (Annexure XIX). This of course submerged in the OA No. 220/96 when a comprehensive representation was directed to be made, vide Tribunal's order dated 29th August, 2001 and it is in response to the above that the rejection order (impugned herein has been passed).

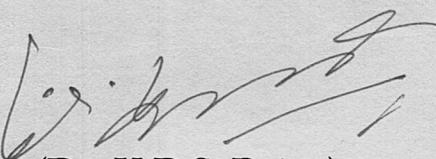
15. As the applicant could not explain the reason for his delayed joining (though he stated that had he got the order he would have joined, vide para 4.25 of the O.A.) he ought to have watched his interest keenly more so when he had full details of the seniority list.

16. The applicant is stated to have already retired from service.

17. We are not impressed with the merits of the case. Hence, the OA is dismissed.

18. No cost.


(D.C. Lakha)
Member-A


(Dr. K.B.S. Rajan)
Member-J

Sushil