

(A6)

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW.

O.A.No.14 of 1991.

P. C.SaxenaApplicant.

Versus

Union of India & othersRespondents.

Hon'ble Mr.Justice U.C.Srivastava,V.C.

Hon'ble Mr.K.Obayya,A.M.

(By Hon'ble Mr.Justice U.C.Srivastava,V.C.)

The applicant was appointed as Material Checking Clerk in the grade of 55-130 on 24.3.53. Subsequently, he was posted as Clerk in the grade 60-130 on 18.2.56 in the Office of Executive Engineer, Restoration. His services were regularised by the Railway Service Commission w.e.f. 4.10.56. One Pragyanakar Tripath was also selected by the Railway Service Commission and was appointed as such on 29.12.56 and was promoted as Assistant Superintendent in July,1982. According to the applicant, his regularisation was the result of his representation and on his representation, seniority list was corrected and his appointment was shown in the seniority list, the copy of which has been placed on record as Annexure-7. The case of the applicant is that said Pragyanakar Tripath was promoted as Assistant Superintendent in July,1982. As he was junior to him, the applicant under the relevant rules is entitled to stepping of salary as he cannot be made to receive lessor salary than his junior Pragyanakar Tripathi. It has been pointed out by the Railway Administration that the applicant resigned from service on 3.10.56 and was reappointed as a Clerk in the grade of 60-130 w.e.f. 4.10.56. Though no clear statement thereafter has been made and it appears that the respondents treated the applicant's appointment as a fresh appointment from 4.10.56 and the appointment of said Pragyanakar Tripathi was treated before 4.10.56 which incidently also occurs before the date of appointment of the said Pragyanakar Tripathi who was appointed on 29.12.56.

u

2. The contention on behalf of the applicant is that so called resignation stood nullified in the face of 2009 Vol.II of Establishment Code Fundamental Rule 14A which reads as under:-

" Railway Servant's lien on a post may in no circumstances be terminated even with his consent if the result will be to leave him without a lien or suspended lien upon a permanent post."

3. Learned counsel contended that of course it is because of so called resignation which was no resignation and he continued in service, that is why thereafter the applicant's seniority was corrected and his date of appointment was shown with effect from the year 1953. His date of appointment being 1953 and his continuity in service, he was obviously senior to the said person Pragyanakar Tripathi. Accordingly, the applicant is entitled to the relief which he has claimed for notwithstanding with the fact that during pendency of the application, he has retired from service and the respondents are directed to promote the applicant with effect from the date his junior Pragyanakar Tripathi was promoted and to give him consequential benefits and to correct the seniority list also as his junior has already been promoted and has been given the benefit of proforma fixation. Let it be done within a period of three months from the date of communication of this order. With these observations, the applicant stands disposed of. No order as to costs.


MEMBER (A)


VICE CHAIRMAN.

DATED: JANUARY 6, 1993

(ug)