

Annexure No 1

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 20th March, 1997.

O.A. No. 460/91

HON. MR. V.K. SETH, MEMBER(A)

HON. MR. D.C. VERMA, MEMBER(J)

Central Administrative Tribunal
Lucknow Bench
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Reg. No. 111

Shri R.S. Tewari, son of late Shri S.S. Tewari, aged about 57 years, Senior Section Controller, Northern Railway, Lucknow.

Applicant.

By Advocate Shri V.D. Shukla.

versus

1. Union of India through the General manager, Northern Railway, Head Qrs. Office, Baroda House, New Delhi.
2. The General Manager, Northern Railway, Head Qrs office, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Hazrarganj, Lucknow.

Respondents.

By Advocate Shri B.K. Shukla.

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A. the applicant has challenged the order dated 18.1.91 passed by the General Manager(P) Northern Railway. The applicant also prays for a direction to respondents 2 and 3 viz. the General manager, Northern Railway and the D.R.M. Northern Railway Lucknow to deem him to be repatriated to his parent cadre of guard with all the benefits of notional promotion, seniority and pay consequential retiral benefits at par with his next junior promoted to guard grade A specially considering the posts as on 31.7.1992 together with

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Guard grade 'A' in his parent cadre. The applicant claims that in the mean while, he was nominated to attend various courses between January, 1981 and march, 1982 which he did not attend as he was interested in going back to his parent cadre. He finally passed the P 16 course which was a pre-requisite for promotion as Section controller on 3.6.1986. In the mean while, his further representation of 18.4.1984 for his repatriation, also went unheeded. After some further correspondence in the matter, the impugned order dated 18.1.91 rejecting the claim of the applicant was issued by the respondents.

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4. The applicant has advanced several grounds in support of his claim, but the same have been contested by the respondents.
5. The stand of the respondents is that the applicant had opted for a post of Section Controller and had applied for the post of Section Controller in the year 1977. They aver that he was (erroneously promoted as Guard grade B on 31.3.1981) wrongly mentioned as 1981 and further that he was again erroneously promoted as Guard grade A on 14.3.1984. They further argue that erroneous promotion does not confer any legitimate or legal right, but admit that the applicant passed P 16 course on 3.6.1986, which he avoided earlier on one pretext or another. It is further contended that the applicant has availed promotion and advancement in the post of Section Controller and is now trying to take a back recourse. It is also asserted that in the notice dated 15.12.1977 it was mentioned that the option once exercised will be final. A further argument urged is that confirmation is done once in service and if a person works for two years he is confirmed to that post and that the mere fact that

has not confirmed, will not confer any intimate right for repatriation.

5. We have not been presented with any material in support of the line of argument advanced by the respondents. No doubt there is a mention to the effect that the option once exercised will be final in the letter of D.R.M. dated 21.6.89 addressed to the G.M. in regard to the case of the applicant, but the notice on 15.2.1977 could not be produced before us. In any case, from the discussions that will follow hereinafter, it will be evident that even if it were so, it would not be very material to the present case, as it would not alter its outcome. To start with, we do not find any specific denial of the receipt of the various representations submitted by the applicant for repatriation to the Guard's cadre. They have also failed to produce any document to show that the applicant had opted for the post of section Controller. The fact^{is} that as per respondents' own showing the applicant avoided attending the P. 16 course for several years inclines us to hold otherwise. We also find the version of the respondents that the applicant was^{erroneously} promoted as Guard Grade B and Guard grade A hard to believe as if it were so, corrigenda could have been issued subsequently, which was apparently not done. From the purely technical and legal angle as well, we find the stand of the respondents as without force and merit.

6. The applicant has enclosed as Annexure 29 the rules relating to general conditions of service and his counsel took us through the contents of rules 2007, 2008 and 2009 on the subject of lien. The relevant portions of these rules are reproduced below:

17.(1.1.13) Unless his lien is suspended under Rule 2008(FR14) or transferred under Rule 2010(FR 14 B), a railway servant holding substantively a permanent post retains a lien on that post:

- (a) while performing the duties of that post;
- (b) while on foreign service or holding a temporary post, or officiating in another post;
- (c) during joining time on transfer to another post; unless he is transferred to the new post from the date on which he is relieved of his duties in the old post
- (d) while on leave; and
- (e) while under suspension.

"2008.(FR 14) Suspension of Lien-(a) A competent authority shall suspend the lien of a railway servant on a permanent post which he holds substantively if he is appointed in a substantive capacity.

- (1) to a tenure post, or
- (2) Provisionally to a post on which another railway servant would hold a lien had his lien not been suspended under this rule.

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2009.(FR 14A)(a) A 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 a suspended lien upon a permanent post."

- (b) A railway servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post outside the cadre on which he is borne."

In the light of the above rules, it is apparent from the documents enclosed with the C.A. that the applicant had acquired lien in the Guard's cadre. Further, no orders had been issued by the respondents confirming the applicant in the Section Controller's cadre so as to grant him lien in that cadre. Nor were any orders issued by the respondents to that effect. The respondents also did not produce any material to support their contention of deemed confirmation in that cadre. In the circumstances, the applicant continued to have his lien in the guard's cadre where he was confirmed. That being so, non-acceptance of his request for repatriation and refusal of the same is legally unsustainable. Consequently, same is the case with the impugned order.

8. We are fortified in our view by the rulings cited by the learned counsel for the applicant. The applicant has cited the decision in the case of Khairati Lal Bhalla vs. Union of India reported in 1992 (22) ATC, 327, N. Krishna Iyer, vs. Union of India reported in 1990(12) A.T.C. 883 and T.R. Sharma vs. Prithvi Singh reported in AIR 1976, S.C. 367. It will suffice for our purpose to refer to only two of these. In the case of N. Krishna Iyer the matter related to transfer of a Stenographer outside the cadre. It was held that such transfer though for a long period(16 years in this case) held could not have the effect of terminating the lien in the original cadre. This case is pari materia with the present case inasmuch as the respondents' contention to the effect that the applicant enjoyed the benefits of Section Controller's cadre for a long time, and therefore, his claim had no basis is negated by the ratio of this case. In the second case of T.R. Sharma, the Hon'ble Supreme Court held

th "a duty is cast upon the competent authority...
.....and the concerned government servant cannot be
penalised because of the omission of the competent
authority to act....."

9. We may however, mention that the learned counsel for the applicant didnot offer anhy elaboration in respect of the claim of the applicant that he should be deemed to be promoted as Grade 'A' specially with effect from 31.7.1992. In our view the mere fact that some of his juniors were given such promotion does not automatically entitle him to the same and he can only claim for consideration for his promotion with effect from the date his juniors wre so promoted.

10. Viewed in the background of the conspectus of the case and foregoing discussions, we hereby order that:

- i) The impugned order dated 10.1.91 rejecting the request of the applicant for repatriation to the cadre of Guards is hereby quashed. The applicant shall be considered for his promotion to Guard grade 'A' from the date his juniors were so promoted.

- ii) In case he is considered fit for promotion to Guard 'A', he shall be notionally promoted to that grade from the date of promotion of his immediate junior, his pay notionally fixed at his retiral benefits calculated afresh on the basis and the arrears of retiral benefits shall be paid to him after adjusting payments already made.

The above orders shall be complied with within period of three months from the date communication of this judgment and order.

11. The O.A. stands disposed of as above with no order as to costs.

SAI
Member (7)

Lucknow; Dated:
Shakeel/

Legal Administration Officer

Lucknow Bench

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Signature
Judicial Section

C. A. T.
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