

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 508/91

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DATE OF DECISION 15.9.1992.

Shri S. B. Agarkar

Petitioner

Shri D.P. Thakur.

Advocate for the Petitioner(s)

Versus

D.R.M. & Another.

Respondent

Shri P.S. Lambat.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE S.K. DHAON, VICE CHAIRMAN.

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*

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VICE CHAIRMAN.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP AT NAGPUR.

O.A.508/91.

Sudhakar B. Agarkar,
Travelling Ticket Inspector,
Central Railway,
NAGPUR.

.. Applicant.

V/s.

1. The Divisional Railway Manager,
Central Railway,
Nagpur.

2. The General Manager,
Central Railway,
BOMBAY V.T.

.. Respondents.

Coram : Hon'ble Shri Justice S.K. Dhaon, Vice Chairman.
Hon'ble Shri M.Y. Priolkar, Member (A).

Appearances:

Shri D.P. Thakur,
Counsel for Applicant.

Shri P.S. Lambat,
Counsel for Respondents.

ORAL JUDGMENT :

Dated : 15.9.1992.

[PER : Hon'ble Shri S.K. Dhaon, Vice Chairman].

The applicant sought voluntary transfer from the Bombay Division to Nagpur Division, therefore, he was transferred ~~from~~ ^{on} 5.2.1976. The question which arises for consideration is ^{whether} the applicant should be treated as junior even to the temporary employees in the Nagpur Division.

2. Affidavits have been exchanged. Counsels for the parties have been heard. Rule 312 as contained in the Railway Establishment Manual which according to the applicant is relevant reads thus:-

"The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating service of the transferred railway servants".

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This particular rule came up for consideration before the Supreme Court in the case of Arunkumar Chatterjee V/s. South Eastern Railway & Others (AIR 1985 S.C. Page 482). Their Lordships ~~have~~^a made distinction between the words officiating and temporary and held that temporary hands were not included in the expression officiating. Before the Supreme Court reliance was also placed on behalf of the Railway upon a circular dtd. 31.12.1966 issued by the Railway Board. By this circular the Board clarified the term 'officiating' in Rule 312 so as to include temporary staff as well. It also provided that an employee transferred at his own request to a new establishment should be placed at the bottom of the seniority list in his relevant grade in that establishment. Their Lordships held that the Railway Board's interpretation in the circular dated 31.12.1966 of the term 'officiating' in Rule 312 of the Railway Establishment Manual, as including both officiating as well as temporary staff, was apparently wrong. According to its ordinary connotation, the word, 'officiating' is generally used when a servant having held one post permanently or substantively is appointed to a post in a higher rank, but not permanently or substantively while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation. Such officiating appointment may be made when there is a temporary vacancy in a higher post due to the death or retirement of the incumbent or otherwise. In contrast, the word 'temporary' usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary i.e. for the time being, with no right to the post.

3. Reliance is placed on behalf of the respondents by their learned Counsel upon a circular dated 24.12.1966 of

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the Railway Board. In this circular precisely the same stand has been taken as in the circular dated 31.12.1966, which has been considered by the Supreme Court. For the reason given by the Supreme Court, we hold that the circular dtd.24.12.1966 will be of no avail to the respondents as the Board wrongly directed that the expression 'officiating' would include the expression 'temporary'.

4. Our attention has been drawn to the latest copy of the Railway Establishment Manual which contains Rule 312. In this copy, between the words confirmed and officiating the expression temporary has been included. The note shows that the change was introduced on 21.1.1986. We are not sure as to whether the change was ^{brought} about by an amendment of the Rule or by a circular of the Board. Assuming a change was brought about in the Rules, the said change will have no application to facts of the instant case, as the applicant had been transferred on 5.2.1976 i.e. long before the amendment introduced on 21.1.1986.

5. In view of the above ~~discussion~~ discussion, we come to the conclusion that the respondents are not right in their stand that the applicant should be treated as junior even to the temporary hands working in the Nagpur Division. We, therefore, direct the respondents to refix the seniority of the applicant after excluding the temporary employees. However, we make it clear that the applicant shall be treated as junior to permanent and officiating hands.

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5. With these directions the application is disposed of finally.

6. There shall be no order as to costs.

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(M.Y. PRIOLKAR)
MEMBER (A).

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(S.K. DHAON)
VICE CHAIRMAN.

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