

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 177 of 2001

Jabalpur, this the 9th day of March, 2004.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G. Shanthappa, Judicial Member

Ganesh Kumar Magraiya,
S/o Shri R.P. Magraiya,
aged about 35 years,
Technician Grade-I,
Rail Spring Karkhana,
Sithouli, Ara Mill, Near Kori
Samaj Office, Birla Nagar,
Gwalior, Distt. Gwalior.

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Railway,
Railway Board,
New Delhi.
2. General Manager,
Central Railway,
Mumbai C.S.T.
Mumbai(M.S.)
3. Chief Personnel Officer(Mechanical)
Headquarters Office Personnel Branch,
Mumbai, C.S.T. Mumbai(M.S)
4. Chief Workshop Manager,
Rail Spring karkhana,
Sithouli, Gwalior. Distt
Gwalior(M.P.)
5. Shri Ramcharan Kailasiya,
Technical Grade-I, C/o
Chief Workshop Manager,
Rail Spring Karkhana,
Sithouli, Gwalior(M.P.)

RESPONDENTS

(By Advocate - Shri M.N. Banerjee for official respondents
None for private respondents)

O R D E R

By M.P.Singh, Vice Chairman -

By this Original Application the applicant
has claimed the following main reliefs -

"(ii) set aside the order dated 22.1.2001
Annexure-A/1.

(iii) command the respondents to consider the case
of the applicant for promotion to the post of
Technician Grade-I from the date private

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respondent has been promoted i.e. 24.9.1997 with all consequential benefits;

- (iv) direct the respondents to provide all consequential benefits to the applicant as if the order dated 22.1.2001 is never passed".

2. The brief facts of the case are that the applicant was initially appointed as Technician Grade-III in the pay scale of Rs.950-1500 on 12.9.1989 in Railways. He was promoted as Technician Grade-II w.e.f. 1.3.1993 in the pay scale of Rs.1200-1800. The applicant submitted his candidature for selection for the post of Assistant Driver. He was selected for the post of Assistant Driver and was sent for medical examination. He was sent for training in Zonal Training Centre, Bhusawal and thereafter he was posted as Assistant Driver w.e.f. 15.11.1996 in Jhansi. He preferred a representation dated 14.11.1997, (Annexure-A-3) thereby the applicant sought his reversion/repatriation to his substantive post which he was holding i.e. Technician Grade-II. His representation was accepted by the respondents and he was sent back to his original post in Rail Spring Karkhana (for short 'RSK') Sithouli, Gwalior District as Technician/Artisan Grade-II. The applicant when came back to his substantive post of Technician Grade-II he was given promotion from Technician Grade-II to Technician Grade-I from the pay scale of Rs.4000-6000 to Rs.4500-7000 vide order dated 3.2.1999 (Annexure-A-5).

2.1 While the applicant was selected as Assistant Driver and was at Jhansi from 23.4.1996 to 1.1.1998, his junior Shri Ramcharan Kailasiya, Technician Grade-II was promoted as Technician Grade-I with effect from 24.9.1997, whereas the applicant was promoted only on 3.2.1999 on his repatriation. Accordingly, the applicant preferred a representation that he be promoted from the date his junior has been promoted i.e. with effect from 24.9.1997. When his representation was forwarded to the controlling authority, the said representation was replied

vide order dated 22.1.2001 (Annexure-A-1) thereby it was directed that the applicant be given bottom seniority from retrospective effect when he came back to his original post. However, the order dated 22.1.2001 has not been given effect to till date. According to the applicant, the department has committed an error of fact and law in overlooking the fact that the applicant's lien was maintained and could not have been terminated on his original post of Technician Grade-II. Since the applicant was repatriated/reverted back to his original post, the question of loss of seniority does not arise. More so, when the department while reverting the applicant has imposed only one condition that the applicant shall be liable to pay the amount so spent on him by the department on training at ZTC, Bhusawal. Accordingly, imposing any other condition unilaterally is against the principles of promissory estoppel and is bad in law. According to the applicant, Para 312 of the Indian Railway Establishment Manual (for short 'IREM'), Vol. I is not applicable in the facts and circumstances of this case. Aggrieved by this, the applicant has filed this Original Application, claiming the aforesaid reliefs.

3. The respondents in their reply have stated that the applicant was selected against 25% of GDCE. As such the claim of the applicant that his lien was maintained in RSK Sithouli is not correct. Since the RSK is a new establishment and the cadre of RSK was open upto 31st May, 1996 and the applicant was relieved from RSK Sithouli on 23.4.1996 to ZTC, Bhusawal for training of Assistant Driver as such he had no claim for lien in open cadre of RSK Sithouli. The applicant was selected as Assistant Driver and underwent training at ZTC, Bhusawal for the post of Assistant Driver and was posted under the DRM, Jhansi. As such he has no claim for his lien being maintained in RSK Sithouli. The post^{ing} of the applicant as Technician Grade-II (Rs. 4000-6000) in RSK Sithouli on 27.1.1998 was erroneous and his promotion

as Technician Grade-I in RSK Sithouli was also erroneous as the applicant should have been taken back in RSK Sithouli only as Technician Grade-III in grade Rs.3050-4590 and not as Technician Grade-II as per Para 312 of the IREM, as the transfer of the applicant back to RSK Sithouli was at his own request. According to the respondents, the applicant was given training of Assistant Driver at ZTC, Bhusawal and as per rules he had to refund the cost of training which has been recovered from the applicant. The order dated 1.1.1998 specifies that the request of the applicant had been accepted by the competent authority only on the condition of his deposing the cost of training. As per provisions of Para 312 of IREM, all own request transfers are to be made on the bottom seniority and in the recruitment grade only. Therefore, the claim of the applicant that he should be posted as Technician Grade-II is not correct. Once the applicant was selected as Assistant Driver and relieved for training, he has no claim for his seniority in the cadre of Technician Grade-II. As such the contention of the applicant that Shri Ram Charan Kailas is junior to him is not correct. In view of the aforesaid facts, the respondents have contended that the OA be dismissed with costs.

4. Heard the learned counsel for both the parties and perused the records carefully. During the course of arguments learned counsel for the applicant has submitted that the applicant was holding the post of Technician Grade-II when he was selected for the post of Assistant Driver. He was given training and thereafter posted as Assistant Driver at Jhansi. The applicant had not completed two years after being selected for the post of Assistant Driver and, therefore, in view of the fact that he was not confirmed in the post of Assistant Driver he was having his lien in his erstwhile department in the post of Technician Grade-II. In support of his claim he has drawn our attention to office order dated 15.11.1996 issued by the DRM, Jhansi (Annexure-RJ/2) filed along

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with the rejoinder. According to the said letter one Tej Ram Chhedilal was appointed in 25% quota of LDCE as Diesel Assistant. The said Tej Ram was confirmed as Assistant Driver with effect from 15.11.1998 as has been shown at serial no.475 of the seniority list issued vide order dated 15.11.2000 (Annexure-RJ/1). He has, therefore, submitted that normally a person is confirmed in the selected grade only after a period of two years from the date of completion of training. Since the applicant has not completed two years from the date he was relieved from the post of Technician Grade-II, to the date he was reverted to the original post of Technician Grade-II, he was, therefore, retaining his lien. The contention of respondents that once the applicant has been selected to the post of Assistant Driver on the basis of the GDCE under 25% , he does not have his lien in that post is not correct. The learned counsel has also submitted that when the applicant was reverted back to the post of Technician Grade-II the only condition laid down was that he has to refund the amount of Rs.3,024/- which has been spent on his training as Assistant Driver, vide order dated 1.1.1998 (Annexure-A-6). This amount has already been recovered from the salary of the applicant. Therefore, the respondents at this point of time cannot come with the plea that the applicant does not have any lien to the post of Technician Grade-II and he has been transferred to that post at his own request and should be granted bottom seniority and that too not in the Technician Grade-II but in Technician Grade-III.

4.1 The learned counsel of the applicant has also submitted that provisions of Para 312 of IREM are not applicable in this case as the applicant has not been transferred at his own request and also in the same grade. The applicant has only asked for repatriation to his original post of Technician Grade-II and the order passed by the respondents dated 1.1.1998 also states that the


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competent authority has agreed to repatriate the applicant to his original post.

4.2 On the other hand the learned counsel for the respondents has submitted that in this case the applicant has been transferred at his own request, therefore, the provisions of Para 312 IREM are applicable and the applicant has to be granted bottom seniority and in the recruitment grade only. Moreover, no order transferring the applicant to his parent department and placing him at bottom seniority has been issued by the respondents. The letter dated 22.1.2001 (Annexure-A-1) placed by the applicant is only an internal correspondence between two offices of the Railways. The applicant should not have obtained a copy of this order by unfair means and challenge the same before this Tribunal. The applicant should have waited for issuance of an official order reverting him to his next lower grade and granting him bottom seniority in that grade and thereafter he should have preferred a representation. It was only thereafter if his representation was rejected by the respondents he should have approached this Tribunal. Therefore, the applicant has not exhausted all departmental remedies. He has, therefore, submitted that the Tribunal may direct the applicant to first exhaust the departmental remedies.

4.3 The learned counsel for the respondents has also submitted that since the applicant was selected under 25% GDCE quota and after undergoing the requisite training for Assistant Driver he was posted at Jhansi, he has severed all his connections from his earlier posting. It was only after receipt of his representation to transfer him to his original post that his request was accepted and he was transferred. Therefore, the provisions of Para 312 of IREM are applicable and his seniority has to be fixed in accordance with the provisions of this rule. There is no illegality committed by the respondents in this regard.

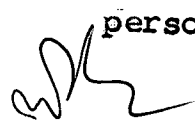
5. We have given careful consideration to the arguments



advanced by both the learned counsel for the parties. In this case, it is not in dispute that the applicant was working in the grade of Technician Grade-II before he was selected and after undergoing training at Zonal Training Centre at Bhusawal was appointed as Assistant Driver at Jhansi. It is also not in dispute that the applicant was not confirmed in the grade of Assistant Driver as he did not complete two years as Assistant Driver. He was repatriated from the post of Assistant Driver to his original post of Technician Grade-II at his own request. Moreover, vide order dated 1.1.1998 (Annexure-A-6) the respondents have repatriated the applicant to his original post i.e. Technician Grade-II. The only condition laid down for his repatriation vide the said order is with regard to refund of Rs. 3024/- which was spent on the applicant while undergoing training of Assistant Driver at ZTC, Bhusawal. Para 312 of the IREM provides as under:

"312, TRANSFER ON REQUEST.- The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary 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 or temporary service of the transferred railway servants.
NOTE:- (i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.
(ii) The expression 'relevant grade' applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment".

From a perusal of aforesaid rule, it is very clear that a person is placed at bottom seniority i.e. below that of



existing confirmed, temporary and officiating railway servants in the relevant grade of the new establishment. In this case, the admitted position is that the applicant has been appointed on the basis of his selection as Assistant Driver at Jhansi and before he has been confirmed in the grade of Assistant Driver he had asked for his repatriation and his request has been acceded to and he has been repatriated to that department. Para 312 of IREM is not applicable in this case as this provides only for one way transfer and does not provide for two-way transfer or repatriation (emphasis supplied). In the present case it is not a case of transfer but it is a case of repatriation. Therefore, the provision of Para 312 *ibid* are not applicable. The case of the applicant is on the line that when a person goes on deputation or transfer on deputation, he maintains seniority and lien with reference to his parent department and unless his lien is severed, he enjoys all the benefits with reference to his seniority in the parent department.


5.1 The contention of the respondents that once the applicant was selected and posted as Assistant Driver under the Divisional Railway Manager, Jhansi and, therefore, has no claim for his lien being maintained at RSK Sithouli is not supported by any documentary proof. The further contention of the respondents² that since the RSK is a new establishment and the cadre of RSK was opened upto 31st May, 1996 and the applicant was relieved from RSK Sithouli on 23.4.96 for training of Asst. Driver, he had no claim for lien in open cadre of RSK,

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We are ~~not~~ convinced with such an argument on the part of the respondents as the rule position is that even if an employee gives in writing that his lien should be terminated, it cannot be done unless he is confirmed in the new establishment as he cannot be left ~~with~~ without a lien in the service.

6. In view of the above discussion, we are of the considered view that the case of the applicant was one of repatriation and not of own request transfer and the respondents have rightly passed the order of repatriation to his original post. Therefore, the provisions of Para 312 of the IREM Part-I are not applicable in the instant case.

7. In the result, the O.A. is allowed. The impugned order dated 22.1.2001 is quashed and set aside. The respondents are directed to restore the seniority of the applicant in the grade of Technician Grade-II at the time of his repatriation and grant him all consequential benefits including consideration for promotion to the post of Technician Grade-I from the date his junior was promoted. In the facts and circumstances of the case, the parties are directed to bear their own costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

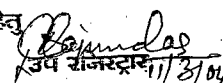
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पृष्ठान्कन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्पित:-

- (1) सचिव, उच्च न्यायालय वर हस्तक्षेप, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल
- (4) वंशपाल, के.प्र.अ., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु


उप निदेश 11/3/04

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