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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. 232/2005,
M.A.2188/2005
IN
O.A. NO. 3167/2003**

New Delhi this the 5th day of December, 2005

**Hon'ble Shri V.K. Majotra, Vice Chairman (A).
Hon'ble Smt. Meera Chhibber, Member (J).**

Kishan Swaroop,
S/o Shri Hori Lal,
Guard (Goods), Railway Station,
Moradabad (UP).

... Applicant.

Versus

1. Union of India through
the General Manager,
Northern Railway, Baroda House,
New Delhi-110001.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad (UP).

... Respondents.

O R D E R (By Circulation)

Hon'ble Mrs. Meera Chhibber, Member (J).

This RA has been filed against the order dated 15.3.2005, on the ground that even though applicant had raised the contention regarding his seniority but the same has not been dealt with by the Tribunal in its order dated 15.3.2005. In the application seeking condonation of delay, it is submitted that the order dated 15.3.2005 was challenged before the Hon'ble High Court of Delhi on 31.5.2005. The said writ petition No. 11814/2005 was dismissed as withdrawn with liberty to the petitioner to file review application on the above said ground. The order was passed on 01.09.2005. There is delay of about 45 days in filing the review application but this is absolutely bonafide and not intentional, therefore, the delay may be condoned.

2. I have read the review application as well as application for condonation of delay. In the order dated 01.09.2005, Hon'ble High Court of Delhi has observed as follows:



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"...For the purpose of limitation, the petitioner shall be entitled to the benefit of the period during which he was pursuing his remedy in this Court".

In view of the above, delay in filing the review application is condoned. MA 2188/2005 is allowed.

3. As far as RA is concerned, it is stated by the applicant that the prayer of applicant regarding fixation of his seniority, as prayed by him in sub-clause (iii) of Para 8 has not been considered by the Tribunal which is an error apparent on the face of record. He has relied on Railway Board's letter dated 21.4.1989. He has further submitted that since he was redeployed on 7.10.2002 while process for redeployment was started from 01.02.2002, therefore, he is entitled to get full seniority in view of Master Circular No.22.

4. At the outset, it may be stated that even though prayer was made by the applicant in para 8 as follows:

"direct/command the Respondents to grant full seniority, already assigned to the applicant in the abolished post, merging the same in the redeployed post with all consequential benefits of promotion etc".

but at the time of arguments, the only point raised by counsel for the applicant was that on redeployment, he could not have been placed in the lower pay scale. Question of seniority was not even argued by the counsel for applicant, which is evident from the order sheet dated 10.2.2005, which, for ready reference, reads as under:

"Arguments heard.

While learned counsel of the applicant shall produce copy of respondents order regarding rejection of applicant's representation dated August 2003 (Annexure A-1), learned counsel of the respondents shall produce official records regarding willingness of the applicant to accept the lower post of Guard (Goods). This be done within a week's time. Reserved for orders".

It would also be relevant to note that counsel for respondents had taken a preliminary objection to the maintainability of the O.A. itself, on the ground that the O.A. is barred by limitation. Therefore, in the order dated 15.3.2005, the point of limitation was discussed at length. It was specifically stated in para 5 of the order dated 15.3.2005 that vide order dated 1.2.2002, the applicant was redeployed as Guard (Goods) in the scale of Rs.4500-7000 in terms of PS No. 12145 on acceptance of bottom seniority as

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per declaration given by him. Therefore, if applicant had any objection to such a declaration having been assigned to him, he ought to have challenged it then and there within the stipulated period. It was further recorded in the same para that period of limitation is one year from the date of cause of action as stipulated under Section 21 of the Administrative Tribunals Act, 1985. Therefore, the O.A. should have been filed by 31.1.2003. Admittedly, the present O.A. was filed on 30.12.2003, therefore, it was barred by limitation. No application for condonation of delay was filed by the applicant, therefore, in view of judgment passed by Hon'ble Supreme Court in the case of Ramesh Chand Sharma Vs. Udham Singh, reported in AISLJ 2000 (1) SC 89, it was held that the O.A. is liable to be dismissed on this ground alone. It is, therefore, wrong on the part of applicant to suggest that his contention was not dealt with. After all, the question of merit would come only after applicant crosses the hurdle of limitation.

5. It is reiterated that applicant was informed about placing him in the bottom of seniority as per his declaration vide letter dated 1.2.2002. The period of limitation under Section 21 of the Administrative Tribunals Act, 1985 is one year from the date of cause of action or in case any representation is given, which is not decided, then maximum period of limitation is 18 months from the date of cause of action. Even if period of 18 months is taken from 1.2.2002, at best he ought to have filed the O.A. by 31.7.2003 whereas admittedly this OA has been filed on 30.12.2003. Therefore, definitely this O.A. is barred by limitation. Applicant had also not filed any application for condonation of delay. Therefore, limitation could not even have been waived by the Tribunal in view of judgment given by Hon'ble Supreme Court in the case of Ramesh Chand Sharma Vs. Udham Singh, as referred to above. Therefore, OA was rightly dismissed being barred by limitation.

6. The only question that was raised before the Court is clear from the order sheet dated 10.2.2005 as well, which has been quoted above because learned counsel for the respondents was directed to produce official records regarding willingness of the applicant to accept the lower post of Guard (Goods). This order was passed because only ground taken by the counsel for the applicant before the Tribunal was that he had not given any willingness for accepting the lower post of Guard (Goods). It was in this



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context that it was pointed out in the order dated 15.3.2005 in para 6 that in his own representation, he had requested to redeploy him even as Guard (Goods) in case a post carrying the pay scale of Rs.5000-8000 was not available. He would be prepared to accept the lower post of Guard (Goods) in the lower pay scale of Rs.4500-7000 and will have no objection. All these facts clearly show that the contention regarding seniority was not even raised by the counsel for applicant and counsel for applicant had made a wrong statement before Hon'ble High Court of Delhi in the writ petition. At this juncture, it would be relevant to refer to the judgment of Hon'ble Supreme Court in the case of Daman Singh and Ors. Vs. State of Punjab and Ors. (AIR 1985 SC 973) where it was held as follows:

"The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered".

In view of above, RA could have been dismissed on this ground alone but since permission was given by the Hon'ble High Court to file review application, we would like to deal with the contention of seniority also.

7. It is stated by the applicant that he should have been given the benefit of seniority held by him in his parent unit before his redeployment but this very issue came up for consideration before Jodhpur Bench of the Tribunal in O.A. No. 165/98 and O.A.489/94, wherein some of the Railway employees from the unit where other persons were redeployed had challenged the procedure adopted by the Railways of allowing full seniority to surplus staff on their absorption to another cadre but this procedure was not upheld by the Jodhpur Bench of the Tribunal. On the contrary, above said O.As were allowed holding therein that surplus staff absorbed in other cadres/departments will not count the service rendered by them in their parent cadre/department for the purpose of seniority/promotion. It goes without saying that once this question was decided by the

co-ordinate Bench of Jodhpur, we could not have given any contrary directions on the point of seniority.

8. Both these O.As were decided by the Jodhpur Bench on 24.12.1999 and 5.1.2000, respectively whereas as per applicants own case in the RA, process for redeploying the applicant started on 1.2.2002 i.e. after the judgments given by the Jodhpur Bench, so naturally respondents were bound by the judgments given by Jodhpur Bench and could not have given the seniority to applicant as that would have amounted to contempt of the order passed by Jodhpur Bench. Even otherwise Hon'ble Supreme Court had the occasion to deal with the same issue in the case of V. K. Dubey and Ors. Vs. UOI & Ors. reported in 1997 (5) SCC 81. In this case, the Diesel Engine Drivers were rendered surplus due to gradual displacement of diesel engines. Those drivers were redeployed on electrical side after giving them training, the same question arose whether those drivers who were redeployed on electrical side could count their past service for seniority in electrical side. After discussing the contentions of both the sides, it was held:

“...that the diesel engine drivers and the staff working with them operate in one sector, namely, diesel locomotive sector, while electrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on electrical energy. As a consequence, they were shifted to a new cadre. Under these circumstances, they cannot have a lien on the posts on electrical side nor can they be entitled to seniority over the staff regularly working in the electrical locomotives department. Under those circumstances, this Court has held that they cannot have a seniority over them”.

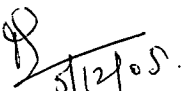
Similarly, in the case of Union of India & Ors. Vs. K. Savitri & Ors. reported in 1998 (4) SCC 358, Hon'ble Supreme Court had the occasion to deal with this very issue. The question for consideration before Hon'ble Supreme Court in above matter was,

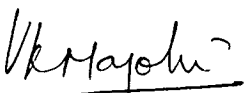
“Whether surplus employees having been rendered surplus in the parent department, on being redeployed under the provisions of CCS(Redeployment of Surplus Staff) Rules, 1990 can claim the benefit of counting of past service for the purpose of seniority or experience in the redeployed organization”.

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9. After referring to the instructions on the subject it was held conclusion is irresistible that the past service of the redeployed staff cannot be counted for seniority in the new organization. The Tribunal, therefore, committed serious error in directing that the past services would be counted for seniority of such employees. Therefore, this point has been settled by Hon'ble Supreme Court also in principle, which is binding on us under Article 141 of the Constitution. We otherwise also agree with the above view.

10. In view of the above, there is no merit in the RA. The same is accordingly dismissed. No order as to costs.


5/12/05.
(Mrs. Meera Chhibber)
Member (J)


(V.K. Majotra) 6/12/05
Vice Chairman (A)

'SRD'