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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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O. A. No. 97/2002

New Delhi, this the 30th day of September, 2002

Hon'ble Shri Justice V. S. Aggarwal, Chairman
Hon'ble Shri M. P. Singh, Member (A)

Prashant Raj Dev
361, Kalayan Vas
Delhi-110091

.. Applicant

(Shri Lakhendra Singh, Advocate)

Versus

1. Deputy General Manager (A)
Mahanagar Telephone Nigam Limited
Khurshid Lal Bhavan
Janpath, New Delhi

2. DDG(Personnel)
Department of Telecom
Sanchar Bhavan, New Delhi

.. Respondents

(Shri V. K. Rao, Advocate)

ORDER (oral)

Shri Justice V. S. Aggarwal, Chairman

The applicant was working as Junior Telecom Officer (JTO, for short) in Mahanagar Telephone Nigam Limited (MTNL) (Respondent No.1). He was subsequently appointed in the cadre of JTO by the order of 9th May, 1998. During his employment with Respondent No.1, applicant applied for the post of Graduate Engineer in Air-India Limited, Bombay. He received the appointment letter from Air-India Limited, a public sector undertaking. After receiving the above said appointment letter, he applied for his relieving order. He joined Air-India Limited and while resigning, he had requested that his lien may be retained with Respondent No.1. Applicant's prayer is that he has retained his lien with Respondent No.1 and has not permanently been absorbed in Air-India Limited and therefore he seeks his repatriation to his parent department.

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2. Needless to state, in the reply filed by respondents prayer of the applicant has been contested. It has been pointed out that the applicant was a Government servant on the date when he joined Air-India Limited. A Government servant could not have retained his lien after joining a public sector undertaking. In this connection, reference has been made to some of the documents and we take liberty of making a reference to the same.

3. Order of 9th May, 1998 indicates that applicant was appointed substantively to the post of JTO and the operative part of the same reads as follows:

"The following officials working in the units noted against their names are appointed substantively in the cadre of JTO in the scale of Rs.6500-200-10500 with effect from the dates shown against each"

4. Thereafter, applicant has been selected by the Air-India Ltd., to the post of Graduate Engineer Trainee. He submitted a letter to Respondent No.1 which is important. The contents of the same read as under:

"Sub: Issue of relieving orders on account of my selection in AIR INDIA LTD for the post of Graduate Engineer Trainee

Respected Sir,

I have the honour to state that I applied through proper channel for the post of Graduate Engineer Trainee in AIR INDIA LIMITED and I have been selected for the same.

That in accordance with the letter No.E/17-13-2/ dated 6/2/1998 from AIR INDIA LIMITED, Photocopy enclosed, I am required to produce the release letter to be issued from you, before 20th March, 1998 at Mumbai.

I request you to kindly arrange to issue the release letter at the earliest to enable me to submit it by 20th March 1998 at Mumbai.

Since I have already been considered for confirmation in the cadre of JTO vide letter No.STA-1/2-3/confirmation/JTO/97/2 dated 19.11.97, I request you to kindly retain my lien for two years in the department.

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I shall be highly obliged for your kind positive action.

Thanking you,

Yours faithfully,

Sd/-
(PRASHANT RAJ DEV)
JTO (RRC)
JE-3902
O/O DE (RRC), Laxmi Ngr
Delhi-110092

5. Admittedly no order was passed terminating the lien of the applicant by Respondent No.1. Our attention has been drawn to the correspondence between Department of Telecommunication and the Chief General Manager, MTNL copy of which is dated 10.11.2000 pertaining to the repatriation of the applicant and the same reads as under:

"Please refer to your letter No. STA-I/JE-3902/82 dt. 17.10.2000 on the above subject. Shri Prashant Raj Dev, JTO was a temporary Govt. servant when he resigned from service to take up his appointment in Air-India i.e. on 26.3.98. The action of MTNL to confirm a temporary Govt. servant after he has resigned to take up a job in a PSU is incorrect. The ruling quoted by MTNL is not relevant in this case.

Air-India is a PSU to which Govt. servants can be appointed only on immediate absorption basis. There is no question of maintenance of lien and the same clearly stipulated in Govt. of India orders from time to time.

As such there is no merit in the case and the official may be informed accordingly.

Sd/-
(H. K. Gupta)
Dy. Director General (Est.)"

It is on account of this letter that it was argued on behalf of the respondents that as the applicant had resigned his lien may not be taken to be intact with Respondent No.2 and the question of his repatriation does not arise.

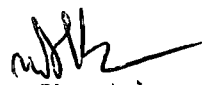
6. On careful consideration of the totality of facts that has emerged it is patent that in Respondent No.2's letter dated 10.11.2000 even the facts mentioned were not completely correct. The applicant was not a temporary


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Government servant and he has not submitted any formal resignation. We have already pointed out that the applicant had requested that his lien may be retained with Respondent No.1 for a period of two years and when he submitted his resignation there was no subsequent order terminating the lien of the applicant or immediately pointing out within the requisite time that he had resigned unconditionally without retaining lien after he joined the public sector undertaking. When the same has not been done and the applicant till date has not been absorbed permanently by Air-India Limited, we find no cogent ground to declare that applicant's lien has been terminated.

7. Resultantly, OA is allowed with the direction that applicant is allowed to revert back to his parent department after he is relieved by the borrowing department. Any consequential benefits flowing from repatriation will be given to him after he joins the parent department. No costs.


(M. P. Singh)
Member (A)


(V. S. Aggarwal)
Chairman

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