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Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1722/99

New Delhi this the 16th day of February, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. M.P. Singh, Member (A)

Shri Ashok Kumar
S/o Shri Mangli Parshad,
R/o C/o Dalip Kumar, H.No. E-4/233,
Sultanpuri, Delhi.

...Applicant

(By Advocate: Shri S.K. Rungta)

Versus

1. Ministry of Railways, through
Chairman Railway Board, Rail Bhawan,
New Delhi.
2. Northern Railway, through
its General Manager,
Northern Railway Head Quarters,
Baroda House, New Delhi.
3. Senior Manager, Printing & Stationery,
Northern Railway Printing Press,
Shakurbasti, Punjabi Bagh,
Delhi.
4. Shri Dev Nath Srivastava,
S/o Shri Raj Narain,
working at the office of Senior Manager,
Printing and Stationery, Northern Railway,
Shakurbasti, Punjabi Bagh,
Delhi.


..Respondents

(By Advocate: Shri Rajeev Bansal)

ORDER (Oral)

By Reddy, J.-

The applicant was working as Skilled Book Binder Grade-III in the Printing Press while R-4 was working as Book Binder Grade-III in the lower grade. In 1979, R-4 was transferred to Construction Organisation as MCC/Clerk in the grade of 260-400, by an order dated 26.7.1979. His lien in his substantive post in the Printing Press was maintained. He has been working since then till 1994 when he has been repatriated to the parent department. Meanwhile he



has been promoted as Skilled Book Binder in 1983. It is the case of the applicant that though R-4 has been repatriated in 1994, he has not joined till 1999 as he was on unauthorised medical leave. In the seniority list of Skilled Book Binder Grade-III R-4 was shown as senior to the applicant. But in the revised seniority list of 1999, the name of R-4 was not shown at all. Hence, he was placed in the revised seniority list at Sr. No. 2 A.

2. The grievance of the applicant is that as R-4 has not been repatriated within a period of three years his, lien stood terminated in the parent department of Skilled Book Binder and his name was, therefore, taken out of the rolls of seniority. Hence the action of the respondents in placing the R-4 at Sr. No. 2A is illegal. It is also the grievance of the applicant that for promotion to the post of Highly Skilled Book Binder Grade-II only R-4 has been considered leaving out the applicant. The present OA is, therefore, filed on the above two grievances.

3. It is, however, the case of the respondents that R-4 has been transferred in 1979 against an Ex-cadre post of MCC/Clerks. Hence his lien continued till his repatriation. As his name was not shown, by mistake, in the seniority list of the post of Skilled Book Binders Grade-III, he has been placed in the revised seniority list of 1999 at Sr. No. 2A. Since there was only one post of the Highly skilled Book Binder Grade-II and the post has to be filled up by way of seniority. R-4 only was considered. Learned counsel, therefore, justifies the

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revised seniority list as well as the action of the respondents in not considering the applicant for promotion to the Highly Skilled Book Binder Grade-II.

4. Having considered the arguments of the learned counsel for the applicant and the respondents, we do not find any substance in the plea of the applicant.

5. The only question that is involved in this case is whether the R-4's lien would stand three years from the date of transfer. It is the contention of the learned counsel for applicant that the period of lien will be continued in the parent department only for a period of three years and not thereafter. In the present case the grievance of the applicant, basically is in respect to his seniority in the post of Skilled Book Binder Grade-III in the seniority list of 1999. He is shown at S.No. 3, whereas R-4 is at 2-A. If R-4's lien was terminated, the applicant is entitled to be considered for promotion to the post of Highly Skilled Book Binder Grade-II. Learned counsel, however, in support of his contention is not able to place any provision before us. Learned counsel for respondents, however, relies upon clauses (a) and (d) of Fundamental Rule-14-A, which read as under:-

" (a) Except as provided in Rule-13 and Clause (d) of this rule, a Government servant's lien on a post may in no circumstances be terminated, if the result will be to leave him without a lien upon a regular post.

(d) A Government servant's lien on a post shall stand terminated on his acquiring a lien on another post



(whether under the Central Government or State Government) outside the cadre on which he is borne".

6. A reading of the above two provisions makes it abundantly clear that the Government servant's lien on a post cannot be taken out, if the result would be to leave him without a lien upon a regular post. It follows that if a Government servant acquires lien on another post outside the cadre whether in State Government or Central Government, his lien would stand automatically terminated. The order of transfer of R-4 has, therefore, to be seen in this connection, which is filed by the respondents alongwith counter at Annexure R-1. It states that R-4 was transferred to the office of Chief Engineer (Construction) Kashmiri Gate, as MCC/Clerk. It is clearly stated in the order itself that the applicant's lien would be maintained in the Printing Press. There is no mention as to any particular period during which the lien would be maintained. Moreover, since the organisation is a construction organisation, by the nature of it, it is temporary. In the counter affidavit it has been clearly stated that the transfer was to a construction organisation against ex-cadre post and that his lien would be maintained in the substantive post in Printing press. Clause (d) is not attracted, as the transfer was to an ex-cadre post in a temporary organisation and as he has not acquired any lien in the post to which he was transferred. His lien in the parent department would, therefore, have to be maintained. The length of the period during which he was on transfer will have no effect on his lien. We are supported in our view by the decision in N. Krishna Iyer v. Union of India &

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Others, 1990 (12) ATC 883. In the said case it was held that termination of lien is a serious matter and before any such action is taken the person concerned has to be intimated and given a notice and that protracted posting on transfer outside the cadre would not automatically result in transfer of lien. In that case the employee was on transfer for a period of 16 years outside the cadre.

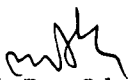
7. R-4 while he was working in the Construction organisation, his name was omitted to be shown in the earlier seniority list. The list has been revised in 1999 subsequent to his joining the parent department. Thereafter, upon representations made by the applicant the respondents issued a notice dated 15.5.99 inviting objections for interpolating the name of R-4 as Sr. No. 2A, on the ground that a mistake occurred in the seniority list. The notice is shown to have sent to the applicant. It is stated by the counsel for applicant that objections have been submitted by the applicant to the notice. Thereafter the revised seniority list has been finalised. Accordingly the name of R-4 has been shown as Sr. No. 2-A on considering the representations made by the applicant alongwith others. Hence, he was entitled to be shown at Srl. No.2-A.

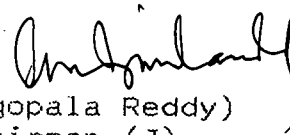
8. The contention of learned counsel for applicant that even before the expiry of 15 days from the date of notice, the decision was taken by the respondents in the interpolation of the applicant in the order dated 1.6.99. We do not find any substance in this argument. The only affected person by the

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seniority list is the applicant and it is necessary to consider the representation of the applicant before finalisation of the seniority list. In the circumstances, it is not necessary to wait for 15 days for a decision to be taken by the respondents.

9. In view of the aforesaid discussion, we do not find any infirmity in the impugned proceedings. OA fails and accordingly dismissed. No costs.


(M.P. Singh)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

cc.