

Central Administrative Tribunal  
Principal Bench  
.....

5

O.A. No. 191/1995

New Delhi, this the 27th day of July, 1995

Hon'ble Shri J.P. Sharma, Member (J)  
Hon'ble Shri B.K. Singh, Member (A)

Shri Y.S. Rathee  
s/o Late Shri Dhoop Singh Rathee  
R/o A-395, Kidwai Nagar,  
New Delhi- 110 023.  
(By Shri Mahabir Singh, Advocate)

..Applicant

Versus

1. Lt. Governor, Delhi  
through Secretary,  
Department of Home,  
Government of Delhi, Rajpur Road,  
Delhi.

2. The Commissioner of Police,  
Police Headquarters,  
I.P.E state,  
M.S.O. Building,  
New Delhi.

...Respondents

(By Shrimati Jyotsana Kaushik, Advocate)

3. The Director General,  
Employees State Insurance Corporation,  
Panchdeep Bhawan, Kotla Road,  
New Delhi.

...Respondent

(By Shri G.R. Nayyar, Advocate)

ORDER ( ORAL )

(delivered by Hon'ble Shri J.P. Sharma, Member (J))

The applicant joined Delhi Police as Sub Inspector on 30.6.1979. He joined on deputation as Inspector of Police in Central Bureau of Investigation (C.B.I.) and there he continued to serve. In the meantime, E.S.I. Corporation has advertised the post of Deputy Regional

(b)

Director in the scale of 2200-4000 and the applicant was recommended by U.P.S.C. and by the memo dated 8/11/1991, the offer of appointment was given to the applicant, a copy of which is annexed with the original application as Annexure-'C'. There is a condition in para 2 sub Para (viii) which says that no lien will be allowed to be retained in his/her parent office and also no carry-forward of leave is allowed. Pensionary benefits for past service will be regulated in accordance with the Government of India instructions on the subject as made applicable to the Corporation from time to time. In the said offer of appointment it was also mentioned that the applicant will be placed on probation for two years and as laid down that the confirmation on successful completion of two years probation would be governed by the Ministry of D.O.P.&T's O.M. dated 28.3.1988.

The applicant joined the post accepting the terms of appointment on 29/4/1992. However, before joining the post the impugned order dated 17.3.1992 was issued by the Deputy Commissioner of Police which is challenged in this application and is annexed as annexure-A. This order specifically lays down certain conditions and that order is quoted below:-

- \* The Commissioner of Police, Delhi is pleased to accord approval for the acceptance of technical resignation under Government of India's decision S.I.

7

No.1 below rule 26 of C.S.S. (Pensions) Rules 1972 and to release Sub-Inspr. Yad Singh Rath, No. D-1779 (who was on deputation to C.B.I. from Delhi Police as a Inspector w.e.f. 8.4.1985 (AN) and repatriated to Delhi Police with immediate effect by the CBI authorities vide their office order No. 1365/1991 and letter No. A-20014/803-85 D.I dated 26.12.1991), from Delhi Police consequent upon his selection by the ESIC, Panchdeep Bhawan, Motla Road, New Delhi for appointment to the post of Dy. Regional Director/Dy. Administrative Officer etc. in the pay scale of Rs. 2200-4000/-, as per their letter No. A-19(11)-31/91-Estt.I(A) dated 26.12.1991 and letter of even no. dated 12.2.1992, without reporting back to Delhi Police (Parent's Deptt.) on repatriation from C.B.I.

2. He will not have any lien in Delhi Police and will cease to be an employee of Delhi Police from the date he joins ESIC, as per terms & conditions contained in the ESIC's office memo No. A-12(15)-386 Estt.I(A) dated 8.11.1991.

3. He will clear all his account and deposit all Government articles/belonging in his possession, before he is relieved for joining new assignment.

4. Normal orders of his relief, will be issued by the C.B.I. authorities.

sd/-

(Virender Prakash)  
Deputy Commissioner of Police,  
H.Q. (II), Delhi

No. 5065-74/E.(IV)/PHQ dated New Delhi the 17.3.1992

The applicant has since been serving in the ESIC. However, for the reasons best known to the applicant, he made representation in Feb., 1992 for repatriation to Delhi Police from E.S.I. Corporation. This representation of the applicant was considered by the Deputy Commissioner of Police and by the memo dated 8.11.1993, the withdrawal of resignation tendered by the applicant was not accepted by the appointing authorities and so the repatriation to Delhi Police was not acceded to. The applicant thereafter

8

also made certain unsuccessful representations to the higher authorities even upto the level of State Minister for Home, but he could not get favourable response. Thereafter, he filed this application on 11.1.1995 and he has prayed for the grant of the reliefs that the order passed by the Deputy Commissioner of Police dated 17.3.1992 be quashed holding that the said order is void, ab-initio and in any case a direction be issued to the respondents to revive the lien of the applicant in Delhi Police and further repatriate the applicant in Delhi Police.

A notice was issued to the respondents and the reply has been filed on behalf of respondents No. 1 & 2 i.e. Lt. Governor and Commissioner of Police by Ms. Jyotsna Advocate and on behalf of respondent no. 3 i.e. E.S.I.C. by Shri G.S.Nayyer, Advocate. The official respondents No. 1 & 2 have stated in the reply that since on the advertised post, the E.S.I.C. has specifically mentioned that no lien will be allowed to be retained in the parent department so the impugned order was passed on that basis. Since the applicant has joined E.S.I.C. knowing the terms and conditions of the appointment so now he cannot resile from the same and under the provision of Rule 26(5) CCS(Pensions) Rules, 1972 the request of the withdrawal of the resignation cannot be accepted. A reference of rule 26(8) has also been made in the counter that when Govt. servant who has been selected for a post in central public autonomous body may be released only after obtaining and accepting resignation

9

from the government servant. This will not, however, entail forfeiture of the service for the purpose of retirement/terminal benefits. In view of the facts, it is stated that the applicant cannot be granted the relief prayed for.

The Director, General, ESIC i.e. respondent no. 3 in its reply stated and referred to the offer of appointment given to the applicant and the applicant knowingly with open mind accepted those terms of appointment and joined the Corporation w.e.f. 29.4.1992. Since he was placed on probation for a period of two years, his probation period stands completed on 28.4.1994. Since probation period was not extended further, there is deemed confirmation in his case. It is stated that the relief prayed for by the applicant, therefore, cannot be granted.

The applicant has also filed rejoinder to the reply filed by the respondents. The points asserted in the rejoinder are the reiteration of the points already referred in the original application. However, it is mentioned that provision of rule 26, C.C.S. (Pension) Rules, 1972 do not apply in the case of the applicant as he has not submitted any resignation to Delhi Police for joining the new assignment/post. It is further stated

li

10

that the provision contained in appendix 12 of CCS (Pension) Rules, 1972 also do not apply to the case of the applicant because those provisions apply only when the employee on his own volition joins the public sector undertakings or organization. It is said that the provision of R 13 & 14 (A) apply to the case of the applicant. The request of revival of the lien was rejected by the Ministry of Public Grievance by the order dated 26th October, 1994 on the basis of wrong facts. In the rejoinder, the applicant has also stated certain precedents which have been earlier accepted and the lien of certain such employees were retained in the Delhi Police.

We heard the learned counsel Shri Mahabir Singh for the applicant and Ms. Jyotsana Kaushik counsel for respondents No. 1 & 2 and Shri G.S. Nayyar counsel for respondent no. 3. Firstly, the estoppel is a principle applicable to a person when he has represented something to others and at a later stage or at any point of time when the other side has acted on his representation, such person cannot resile from the representation he has made earlier. Estoppel is a principle which stops a person from speaking otherwise what he has spoken earlier. In this case, the applicant is an educated and responsible officer of Delhi Police went on deputation to C.B.I. and when he has applied for an advertised post and joined in an autonomous organization of Union of India, he has to sacrifice the post which he is already holding as he



cannot discharge public functions of both the post together. It is not disputed that while joining new post, the lien of an employee is not terminated automatically. He continues to keep lien on his post till he becomes the permanent member in the organization where he has joined. It is another thing that rule 26(5) and 26(8) of C.C.S.(Pensions) Rules, 1972 bars the continuance of lien on the parent department. But F.R. 13 and 14 comes into play. The learned counsel for the applicant also relies, as projected in the rejoinder, that FR 14'A' applies to the case of the applicant. On going through the provision of F.R. 14'A' sub clause (d) which clearly lays down that lien of government servant who has permanently joined another post which is ex-cadre post, then the lien in the parent department shall automatically cease. There is a logic behind it. A person cannot be the member in two services at one time. He cannot claim to be a member of the service of Delhi Police at the same time he obtains permanency in E.S.I Corporation on the post of Deputy Regional Director.

The provision of sub clause (d) of FR 14'A' are quoted below:-

"A Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne."

12

The contention of the learned counsel for the applicant is that when he applied for repatriation/reversion to the parent department i.e. Delhi Police, he has not completed two years prescribed mandatory period in the offer of appointment and as such by that time he had not become the member of the service in E.S.I. Corporation. However, a judicial verdict is to be given when the applicant has assailed a particular order for redress of the grievance, now comes in 1995 in the month of January and probation period stands completed in April, 1994. In view of this, the F.R. 14(A)(d) comes into play and the applicant cannot assert that no order of confirmation was conveyed to him which was conveyed to him sometimes in April, 1995. The offer of appointment does not envisage the extension of probation period beyond two years. After two years either the E.S.I. Corporation has to retain the applicant on permanent basis or to discharge him as an unsatisfactory probationer. That is not transpired in the present case.

The judicial interference in administrative orders maybe called for in certain cases where lien is unscrupulously terminated but when the lien is terminated according to rules by which the applicant is



13

governed he cannot have any grievance at all. Firstly, we find, though not accepting the case of the applicant as such, the grievance of the applicant was much before he joins the E.S.I. Corporation in April, 1992 because the Deputy Commissioner of Police by the order dated 17.3.1992 in writing conveyed to the applicant that the lien stands terminated from the date he has been relieved from Delhi Police. The Deputy Commissioner of Police has referred the terms of appointment of the applicant in E.S.I.C. and on that basis his lien was ceased from the cadre post of Sub Inspector of Delhi Police. The learned counsel rightly pointed out that he had to make representation against this order. But the applicant had by that time already joined in April, 1992 in Corporation and the order of March, 1992 had become final by that time. Had Delhi Police not terminated the lien of the applicant, the Corporation would not have allowed him to join as it was one of the mandatory terms and condition of that offer of appointment. The applicant himself has accepted that offer of appointment and thereby he cannot have any grievance against this order of the Deputy Commissioner of Police dated 17.3.1992. On this account also the applicant cannot now challenge this order of 17.3.1992 though it may not be in the real spirit of R 14'A' as by that time, the applicant had not

14

become the member of the service in E.S.I. Corporation.


We do find that the offer of appointment protects the interest of the applicant for his past service and as such it is not acceptable to the applicant that his past service is being ignored but that service will be counted in due course as qualifying service and other terminal benefits, if he sincerely continues and superannuates on the post which he has joined in Corporation.


From another angle also it will lay down a law in such a manner that when the applicant has joined the new assignment in Central Govt. undertaking or a Corporation or autonomous body then subsequently at any point of time he can come forward and say that he maybe repatriated to his parent department and that shall not be fair, legal and also equitable in the interest of the service of both the organizations. Not only this, the Sub Inspectors working in Delhi Police must have got certain benefits by virtue of the applicant going on permanently basis to another organization in ex-cadre post, they are not parties before us. If the applicant is allowed to be repatriated in Delhi Police, it will also prejudice in the career and further promotion for Delhi Police employees. The applicant has made a berth in the Corporation and has got due benefit of his service in

15

in that Corporation. The applicant has, before joining that service, seen the career prospects in that organization better than in Delhi Police and now he cannot be allowed to change his mind subsequently that he can have better prospects now in Delhi Police. He cannot resile from his stand which he has represented in his earlier representation.

In view of the above and after going through the pleadings and hearing the learned counsel for the parties and in view of the conspectus facts and circumstances, we do not find that there is any merit in this case and the same is dismissed accordingly leaving the parties to bear their own costs.

  
( B.K. SINGH )  
MEMBER ( A )

  
( J.P. SHARMA )  
MEMBER ( J )

/nka/