

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1787/94

NEW DELHI THIS THE 19th DAY OF JANUARY, 1995

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri A.K. Singhal,
Asstt. Signal & Telecommunication Engineer(Adhoc)
Railway Electrification,
AMBALA CANTT. ...Applicant

(By Advocate : Shri R.K. Kamal)

VERSUS

UNION OF INDIA, THROUGH

1. The Secretary,
Railway Board,
Railway Bhavan, Rafi Marg,
NEW DELHI-110001.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi-1
3. The General Manager,
Central Organisation,
Railway Electrification,
Allahabad (U.P.) ...Respondents

(By Advocate : Shri RL Dhanwan)

JUDGEMENT (ORAL)

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

The Central Organisation for Railway Electrification, Allahabad (In short -CORE) selected six persons for the post of Apprentice Signal Inspector in the Grade of Rs.700-900 now revised to Rs.2000-3200 and by the letter dated 15.5.1986 earmarked the applicant along with one another for Northern Railway. At that time the applicant along with other was undergoing

(b)

training in that organisation. A letter was written to Shri R.K. Nair, CSTE, Northern Railway, Headquarters Office, Baroda House, New Delhi by Shri JN Sikka, CSTE/RE/Allahabad. In the same Memo dated 15.5.86 request to arrange for providing paper lien to Shri AK Singal and another was made so that on completion of electrification works, or even earlier as the case may be they can be repatriated to the Railways in the interest of administration.

2. The grievance of the applicant is that though he has been promoted on ad hoc basis to Group B post ^{but} in the regular selection for the post by the Northern Railways, he was not allowed to appear which is arbitrary and violative of his fundamental rights. The applicant filed this application on 7th September, 1994 having made earlier representation in August 1994 for the grant of the relief that a direction be issued to the respondents to maintain lien of the applicant on Northern Railway and also incorporate his name in the Seniority List, and with a further direction that for the 'Regular Promotion to Group 'B' Post' a supplementary selection be held. And that post is Assistant Signal and Tele-communication Engineer and that is on the cadre of Northern Railway.

3. The respondents on notice contested this application stating that the applicant had his paper lien on Central Railway and as such he could not take the selection notified by the Northern Railway for the said Group 'B' post. It is further argued that in view of the provisions

(X)

of Rule 243 IRC Vol.I lien once granted cannot be transferred to another Railway though there is a provision of suspension of lien in the interest of administration.

4. The applicant has not filed any rejoinder. The learned counsel for the respondents has also read out Annexures R-1 to R-4, highlighting the fact in the representation of the applicant (Annexure R-2) wherein he has understood that he has been granted lien in the Central Railway by the General Manager, Central Railway.

5. We heard Shri R.K. Kamal for the applicant at length. The contention of the learned counsel for the applicant is that in spite of the admission in the representation aforesaid the fundamental rights which gives the vested right cannot be taken away in spite of any admission made out of certain understanding of certain factual positions. In fact, this precedent cannot be taken for granted because admission waives proof, it is not that a person is being deprived of his fundamental rights, if at all it can be said to a Constitutional right, it is an assertion of a claim which is understood as a fundamental right and if that claim has not been preferred in time or the authorities have passed an order in a manner disallowing the said claim before it was preferred, the applicant cannot at a subsequent time resile from the factual position which he has accepted. In this connection, the letter of appointment of the applicant after completion

of his training on 3.8.1987 clearly goes to show that he has been posted at Bhopal and that his paper lien has been granted on Central Railway., this is of 1987. Regular selection for Group 'A' Post in Northern Railway was held some times in 1994 when the process of selection was notified the applicant knowing that he belongs to Central Railway, his lien is maintained on the papers of Northern Railway and is not allowed to appear in that selection meant for those who have their lien on the Northern Railway. The learned counsel for the applicant fervently and emphatically pressed the provisions of Rule 103(28) of IREC Vol I which defines lien and that the lien of a person shall be determined on the basis of his appointment to a substantive post. When a person is in training he may be in service but his appointment is yet to come after completion of the training. When the training stood completed by the order of 3.8.87, a REC which earlier earmarked Northern Railway posted him to Bhopal, describing him in the said letter that his lien is on Central Railway. Thus, on the basis of this definition also on the date of appointment on a substantive post the applicant was posted in Bhopal and was specifically and clearly informed that his lien is on Central Railway. The learned counsel for the applicant stressed that this order of appointment of the applicant by IREC is not by a Competent Authority on assigning paper lien on the Railways. If this contention is

accepted then the letter of May 15, 1986 where the same authority earmarks lien in favour of the applicant to Northern Railway, is also not to be treated as an order passed by a Competent Authority. But the factual position is not like that. The applicant himself filed the document as Annexure A-4 issued by CORE dated 26.5.1986 which lays down that the recruitment of six Apprentice Signal Inspectors in the scale of Rs.700-900 is against the shortfall to the extent of 20 per cent and that the selected person's name in that Memo have to be earmarked for allotment of paper lien on the direction of the Board by the General Manager of Northern Eastern and Central Railways. Thus, it goes to show that General Manager, Central Railway is the authority which can on the direction of CORE assigned paper lien to the selected apprentice Signal Inspectors. In fact, the learned counsel has referred to certain averments made in the counter in this respect particularly at Page-15 at the bottom that initially Northern Railway agreed to maintain paper lien of Northern Railway but subsequently, his lien on Central Railway was fixed. This position has not been challenged at any point of time during all these

7 years and the applicant has either under a mis-notion or knowingly accepted his paper lien of Central Railway and that being the case he can get a benefit of selection ^{the} processed by Northern Railway, cannot aspire to get inducted in the seniority list by change of lien to Northern Railway from Central Railway. This is specifically evident from the representation of the applicant where he has stated that his lien to be transferred from the Central Railway to Northern Railway and he obviously ^{to get an order,} has given his self-appraisal of achievements of merit as well as performance. He has also at the same time requested for maintaining of his seniority. The respondents by the order dated October, 1994 considered the representation of the applicant which was forwarded on 1.8.94 and rejected the same taking the help of P.S No 8738 Dt. ^{8.3.84} a copy of which ^{is} at Annexure R-3 annexed with the counter. It goes to show that when there is appointment by way of direct recruitment the lien once granted cannot be changed. In view of this, the contention of the learned counsel for the applicant that the applicant ignored the order of 3rd August, 1987 having been issued by the competent authority cannot be accepted.

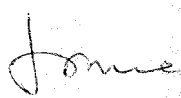
6. We do find that one Shri Sunil Joshi initially earmarked assignment of paper lien in the Central Railway, he has been for whatsoever reasons given paper lien in Northern Railway. Sunil Joshi has not been made party in this case. We cannot consider any matter relating to such a person who is not before us. We cannot also pass any observation which may effect the assignment of lien to Sunil Joshi in Northern Railway. The applicant felt that Shri Sunil Joshi has manoeuvred the assignment of lien in Northern Railway superseded his claim and that the applicant has been assigned Central Railway only because Sunil Joshi had to be accommodated in Northern Railway, then Sunil Joshi should have been made a necessary and proper party. We cannot adjudicate on that issue ^{in his absence} and the contention of the learned counsel in that respect does not help the case of the applicant for change of lien.

7. In view of the above facts & circumstances of the case, we find that the present application is devoid of merit and is dismissed.

8. Interim order granted earlier is vacated.

9. There is no order as to costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)