

17/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 244/87.
T.A. No.

198

DATE OF DECISION 8.6.1988

Shri Ravinder Kumar

Petitioner

In person

Advocate for the Petitioner(s)

Versus

General Manager, Northern Rly.

Respondent

Shri D.N. Moolri

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?

9/6/88
(BIRBAL NATH)
MEMBER

J.D. Jain
(J.D. JAIN)
VICE CHAIRMAN.

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DATE OF DECISION: 8.6.1988

REGN. No. O.A. 244/87.

Shri Ravinder Kumar ... Applicant

Vs.

General Manager,
Northern Railway.

...

Respondent.

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: In person.

For the respondent: Shri O.N. Moolri, counsel.

J U D G M E N T.
(delivered by Hon'ble Mr. Birbal Nath, AM)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed in February, 1987 by Shri Ravinder Kumar, I.D.W. Grade III in the Northern Railways, who has prayed that the respondent-Railways be directed to post him and permit him to join duty in Delhi Area. He has further contended that his lien was fixed in Delhi Division on 23.4.1986 where he joined in September, 1986 but this lien was revised by the General Manager (P) and the same was changed to Ferozepur Division in an irregular and unjustified manner. The applicant has

specifically prayed for the following two reliefs:-

(i) immediate stay be granted against these orders

and he may be posted as IOU under DRM, N.Rly.,

New Delhi, and

(ii) immediate period from 10/86 till date be treated as

'waiting for orders/duty' and he may be empanelled

as IOU above his juniors in grade 425-700 (RS).

2. The Tribunal had, vide its order dated 20th July, 1987, issued an interim direction to the applicant to join duty under G.M.(P), Delhi, till further orders.

3. The relevant facts leading to the controversy are that the applicant was selected as Sub Overseer Mistry in 1965. He worked on Kathua Jammu Rail Project in 1969 (Annexure R-20). He was declared surplus and was given the job of Coaching Clerk. He requested the General Manager (Personnel) to post him as S.O.M. on the same section of the Railways as some vacancy was available there, vide his request dated 4.1.1969 (Annex. R-21). He was declared surplus and he worked as Coaching Clerk under D.S. Delhi. On 13.10.1970, he requested for being posted back as S.O.M. in Ferozepur Division where there was a vacancy (Annexure R-22). In pursuance of this request of the applicant, the Railways, vide their letter dated 21.11.1970, posted him to Ferozepur Division. Relevant portion of the order issued vide Annexure R-23 is extracted below since, according to the respondents, the lien of the applicant was fixed in terms of the order dated 21.11.1970:

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"2. Shri Ravinder Kumar Walia merit No. 32 of 1965 batch of SOMs panel having been rendered surplus was absorbed as Coaching Clerk in Gr. Rs. 110-200 (AS) on Delhi Division. He may be transferred to Ferozepur division and is posted as SOM in Gr. Rs. 150-240(AS) against an existing vacancy of SOM on that Divn...."

On 5.7.1971, he was ^{again} rendered surplus and his posting elsewhere was sought by the Divisional Superintendent, Ferozepur. This letter reads as under:-

"The above named employee is spared from afternoon date and directed to report to your office for posting elsewhere.

He has given in writing that he may be spared for posting elsewhere. The period from 18.6.71 to date (5.7.71) during which he remained in this office for waiting orders may be treated as on duty. It is certified that Shri Mohinder Jit Paul, SOM who is junior to Ravinder Kumar Walia is likely to be spared from this Division shortly on expiry of his present work-charged post."

He was again posted to Ferozepur Division vide order dated 15.7.1971. Relevant portion relating to the posting of the applicant reads as under:-

"(1) Shri R.K. Walia, merit No. 32 of SOM's panel of 1965 may be posted as SOM grade Rs. 150-240 (AS) on FZR Division, vice Shri Sant Lal who has refused for posting as SOM. He remained in this office waiting for orders from 12.7.71 to 15.7.71" (Annex. R-25)

However, he was again returned to Delhi by the Ferozepur Division vide order dated 20.7.1971 which reads as under:-

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"5. Shri R.K. Wallia, SOM who was directed to this Office for posting on this Division is again redirected back to Hd. Qrs. Office New Delhi for absorption elsewhere being the next juniormost SOM on this Division." (Annex. R-26)

Thereafter, the applicant was posted under the Chief Engineer, Constructions, Kashmeri Gate, Delhi, vide order issued on 4.8.1981 which reads as under:-

"Shri R.K. Walia, S.O.M. grade Rs. 150-240 who reported to this office on 31.7.71 FN, is posted in the same capacity under CE (Const) Kashmere Gate, Delhi.

The period from 18.6.71 to 3.8.71 may please be treated as under:-

1. 18.6.71 to 5.7.71	FZR.
2. 6.7.71 to 11.7.71	Joining time.
3. 12.7.71 to 15.7.71	Waiting for order in HQ.
4. 16.7.71 to 20.7.71	-do- FZR
5. 21.7.71 to 30.7.71	Treated as sick leave.
6. 31.7.71 to 3.8.71	Waiting for order in HQ."

(Annex. R-27).

In 1974, the applicant sought a posting to Ferozepur, particularly at Jullandhar on bottom seniority and vide order dated 21.6.1974 (Annex. R-31), the applicant was posted to Jullandhar. The said order reads as under:-

"Shri R.K. Walia, SOM (on Construction) under SEN(C) (TYR) Tilak Bridge, New Delhi, who has been transferred to FZR Division on request on acceptance of bottom seniority (as his lien was not retained over this Division) is posted at JRC vide Shri Mohan Lall, S.O.M.

On relief Shri Mohan Lall SOM/JRC who has also requested for his transfer to Construction, is now transferred under C. (Const.)/ Delhi as on deputation to work under SE(C)/TYR Tilak Bridge, New Delhi vide Sh. R.K. Walia..."

It has to be noted here that the applicant had admitted in 1983 that his lien was in Ferozepur Division vide his application dated 13.6.1983. This application (Annex. R-32) reads as under:-

"I beg to report myself on duty F.N. date 13th after being relieved from XEN/RE/MTJ I may add that my lien is in FZR Division.

I request your kind honour to kindly post me in Delhi Area or IOW Shahdra Grade 425-700. I have passed selection of IOW gd. III on FZR Division."

4. From the foregoing narration of the events, it will be clear that the applicant was posted to Ferozepur Division in December, 1970 and it is the case of the respondents that when they issued the order of posting, there was a vacancy and his lien was fixed in Ferozepur Division. They further base their case on

the admission of the applicant made vide his letter dated

13.6.1983 that his lien was in Ferozepur Division (R.32-Annex.)

A perusal of the documents produced by the respondents further

goes to show that they had considered the applicant to be a
dated 10.6.1983

Ferozepur hand. Annexure R-34 is a note from the file

produced by the respondents to show how the applicant's case

was dealt with in this regard, which reads as under:-

"I find that Shri R.K. Walia, IOW-Gr. III who has been relieved by MTP is awaiting orders for posting. He is a hand of FZR Divn. and has requested for posting in OLI Divn.

Presently, there is acute shortage of Gr. III IOWs on the Estate side specially for looking after the State work pertaining to verification of Railway Quarters. In a recent note sent by G.M. to D.R.M./Delhi, it has been desired that immediate check should be made in respect of sub-letting of railway quarters in certain colonies in Delhi Division. This has been followed by a D.O. from Addl. C.V.O. to DRM/Delhi for initiating similar action since large scale sub-letting has been detected in some colonies. For undertaking this work at least 2-3 additional hands are required. Since Shri Walia is available immediately, it is suggested that he may be posted in the Estate Section under IOW/Estate for undertaking work as desired by G.M. & D.R.M.

Since Shri Walia is a hand of FZR Division, a reference will be made to Hd.Qrs. for arranging the transfer of Sh. Walia from FZR Divn. to this Divn.

Since there is dire need of additional hands for undertaking the urgent work as desired by GM and BRM, orders for posting Shri Walia in the Estate Branch may be issued and confirmation sought from Hd. Quarters Office....

Sh. R.K. Walia, IOW Gr. III has been relieved by MTP on the basis of DEN (Estate)'s orders on the application of the employee. Sh. R.K. Walia has since been waiting for a posting on Delhi Division.

Sh. R.K. Walia holds a lien on FZR Division. It is, however, not clear from the papers whether he is qualified for the post of IOW Gr. III, scale Rs. 425-700. However, in view of the position explained by DSE(Estate), Sh. R.K. Walia may be temporarily retained and posted as IOW Gr. III, scale Rs. 425-700 on Delhi Division pending confirmation that Sh. R.K. Walia is duly qualified for the post of IOW Gr. III, scale Rs. 425-700 and a certificate obtained from FZR Division that he would have officiated as IOW Gr. III, scale Rs. 425-700 had he not proceeded on deputation to MTP."

It is in consequence of this note that the applicant was

kept on Delhi Division on a temporary basis and it was notified that

he was liable to be repatriated to Ferozepur Division without assigning any reason. An order to this effect was issued Vide of 22.6.1983. Annexure R-36. The relevant portion of this order/reads as under:-

".....

It may be further noted that the posting of Sh: R.K. Walia, as IOU Gr.III 425-700 (RS) on Delhi Division is purely on temporary basis and he may be repatriated to Ferozepore Division at any time without assigning any reasons. This has the approval of ADRM-I."

On 28th July, 1983, D.R.M. Ferozepur wrote to the D.R.M.'s office, New Delhi, that the applicant held his lien in Ferozepur Division and he may be spared (Annexure R-39).

A serious note of the action by D.R.M.'s office was also taken by the General Manager (P), Baroda House (Annexure R-38). The respondents claim that the applicant has himself on more than one occasion admitted that his lien was in Ferozepur Division. As such, they assert that they were within their right to post the applicant away from Delhi and to send him to Ferozepur.

However, it is the case of the applicant that since he was posted to Ferozepur in 1970, he was not absorbed there as there was no vacancy and his lien was transferred to Delhi Division vide order dated 18.4.1986 and the relevant note recorded by S.P.D.(RP) on 18.4.1986 reads as follows:-

"His lien may be fixed on Delhi Division as the staff working in Construction Organisation cannot be transferred to any Division by the Constructions Organisation unless his lien is fixed on any Division.

DSD (IR) may kindly see before C.E. (Constructions) may be advised accordingly."

(page 15 of MP 556/87)

4. We have given careful thought to the arguments advanced at the bar and the mass of documents placed before us by the parties. It is the case of the respondents that the lien of the applicant was kept at Ferozepur Division once he was posted there against an existing vacancy vide their order dated 21.11.1970 (Annexure R-23). The relevant portion will bear repetition and is reproduced below:-

"2. Shri Ravinder Kumar Walia merit No. 32 of SOMs panel having been rendered surplus was absorbed as Coaching Clerk in Gr. Rs. 110-200 (AS) on Delhi Division. He may be transferred to Ferozepur division and is posted as SOM in Gr. Rs. 150-240 (AS) against an existing vacancy of SOM on that Divn...."

However, after a few months, he was again rendered surplus on 5.7.1971 and was returned by the Divisional Superintendent, Ferozepur, who wrote to Delhi Headquarters as follows:-

"The above named employee is spared from afternoon date and directed to report to your office for posting elsewhere.

He has given in writing that he may be spared for posting elsewhere. The period from 18.6.71 to date (5.7.71) during which he remained in this office for waiting orders may be treated as on duty. It is certified that Shri Mohinder Jit Paul, SOM who is junior to Ravinder Kumar Walia is likely to be spared from this Division shortly on expiry of his present work-charged post."

It will, thus, be seen that in about nine months time, the applicant had been rendered surplus though it is maintained that his lien existed in Ferozepur Division. Maintenance of lien implies that a vacancy is available for the incumbent throughout. If a lien exists at a particular place, the incumbent can never be rendered surplus. ^{as the place} The very fact that Ferozepur Division rendered the applicant surplus negatives the case of the respondents that the lien of the applicant had been maintained in Ferozepur Division.

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Rule 239 of Chapter 2 of the Indian Railway Establishment Code

(Vol. I) defines 'lien' as under:-

"239. Lien.- Unless in any case it be otherwise provided in these Rules a railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien provisionally acquired on any other post."

This definition is identical to the definition of 'lien' given in

F.R. 12-A. If the applicant had lien in Ferozepur Division, he could

never be rendered surplus there. Declaring him surplus against the

post on which he had lien is an absurdity of colossal proportion

unknown to administrative practice and rules and has to be taken

without any legal status. Lien means appointment against a permanent post in terms of rule 239 ibid. He could not be declared surplus when posted against a permanent post.

5. Thus, we hold that though the applicant was posted to

Ferozepur Division in October, 1970 and the applicant has himself admitted

that his lien was in Ferozepur Division, yet the very fact of his being

rendered surplus after a few months in that very Division proves that

such allotment of lien was illusory and non-existent. In view of this

fact, we hold that the lien of the applicant has not been established

in Ferozepur Division at all. Therefore, we quash Annexure R-17, i.e.

the order issued by the General Manager (P), Headquarters Office, Baroda

House, New Delhi, on 7.10.1986 directing the applicant to go back to

Ferozepur Division and that his lien was maintained there. Accordingly,

the applicant will be entitled to consequential reliefs following the

quashing of the order of the General Manager (P) (Annex. R-17). However,

it will be open to the respondents to fix the lien of the applicant in

accordance with law. Under the circumstances, there will be no order

as to costs.

(Birbal Nath)
Member.

(J.D. Jain)
Vice-Chairman.