

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 927/1987. DATE OF DECISION: 28-11-1991.

Shri Anam Swaroop Jaggi Applicant.

V/s.

General Manager (P) N.E. Railway,
Gorakhpur and Others Respondents.

CORAM: Hon'ble Mr. T.S. Oberoi, Member (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri Abhay Singh, counsel for the Applicant.
Shri P.S. Mehandru, counsel for the Respondents.

P.C. JAIN, MEMBER (A): JUDGMENT

The applicant, while posted as I.O.W. in the grade of Rs.550-750, was permanently absorbed in the Rail India Technical & Economic Services (RITES) with effect from 1-2-83, and, as such, retired from the service of the Railways from that date. After retirement as above, he filed this O.A. sometime in June, 1987 assailing the impugned order dated 31.1.1986 (Annexure 'A') and praying for the following reliefs: -

- "i) To set aside the order of General Manager (P) N.E. Railway Gorakhpur Dated 31.1.1986 and to declare the settlement made by Executive Engineer, N.E. Railway, Survey Gorakhpur as incomplete.
- ii) Direct GM(P)/NE Rly., Gorakhpur to assign the applicant all proforma fixation of lien, seniority promotion under NEXT BELOW RULE till date of severance of my connection with the Railways.
- iii) To grant such other relief as this Hon'ble Tribunal may deem fit in the circumstances of the case and also the cost."

2. The respondents have opposed the application by filing a return, to which the applicant has filed a rejoinder. We have carefully perused the material on record and also heard the learned counsel for the parties.

3. The relevant facts, stated briefly, are that the applicant joined the NF Railway sometime in 1959 and on his own request was transferred to North-Eastern Railway in 1970.

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His transfer was on two conditions: -

- (1) that he would be getting bottom seniority in the N.E. Railway, as agreed to by him, and
- (2) that his lien shall continue to be maintained in the N.F. Railway.

The transfer to N.E. Railway was treated as temporary. It was confirmed by the learned counsel for the applicant at the bar that the applicant was not confirmed on any post in the N.E. Railway.

4. The first point urged before us on the basis of the pleadings of the applicant was that by termination of his lien in the N.F. Railway, there was violation of F.R. 14-A inasmuch as he was not granted any lien in the N.E. Railway. This contention is misconceived. As already stated above, on temporary transfer to N.E. Railway, the lien of the applicant was to continue to be maintained by the N.F. Railway. This was a condition of his temporary transfer. N.F. Railway terminated his lien vide letter dated 29th May/2nd June, 1986 (Annexure 'B'), i.e., after the permanent absorption of the applicant in the RITES, a Public Sector Undertaking. As such, he cannot be said to have been left without a lien or a suspended lien so long as he continued to be in the service of the Railways. Accordingly, the contention of the applicant that there has been violation of F.R. 14-A is not substantiated.

5. The real grievance of the applicant appears to be in regard to his desire of being permanently absorbed in the N.E. Railway after his transfer from the N.F. Railway in 1970. N.F. Railway had conveyed their no objection to such a permanent absorption, vide their letter dated 16.2.79, as is clear from the N.F. Railway letter dated 29th May/2nd June, 1986 (Annexure 'B'). Communication of no objection as above does not automatically result in his permanent absorption in the N.E. Railway. As already stated, learned counsel for the

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applicant stated at the bar that the applicant was not confirmed on any post in the N.E. Railway. Even otherwise, his claim for permanent absorption in the N.E. Railway and consequential benefits in regard thereto, can be said to have arisen first in 1970 when he came on transfer to the N.E. Railway or later in 1979 when no objection is said to have been communicated by the N.F. Railway. This cannot be raised now as it is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Any matter in which cause of action had arisen three years prior to the date on which the Tribunal came into existence, is outside the jurisdiction of the Tribunal (V.K. Mehra Vs. The Secretary, Ministry of Information and Broadcasting, New Delhi - ATR 1986 (1) CAT 203; Suhkumar Dey Vs. Union of India - (1987) 3 ATC 427 (CAT)(CAL.).

6. The same legal position is applicable to the second relief prayed for by the applicant in regard to seniority and promotion under Next Below Rule till the date of severance of connections with the Railways. It is on record that the applicant went on deputation to RITES with effect from 3.2.1979 and without coming back to the N.E. Railway, he was permanently absorbed there with effect from 1.2.1983. Thus, his claim for any seniority or promotion during the period from 1959 to 1978 is also barred by limitation. Moreover, in his application, he has not mentioned the post/posts to which he was entitled to promotion and for which he was not considered; nor has he mentioned any year or dates in regard thereto. With his rejoinder, he has filed copy of his letter dated 13.11.79, by which he requested the Chief Engineer (P), North Eastern Railway, for suitably interpolating his seniority. Similarly, in his telegram dated 23.12.80 and letter dated 16.2.81 on the same subject, he complained about his lien not being transferred to N.E. Railway and he being not considered in the selection for the post of I.O.W. Grade I and A.E.N.. post in the N.E. Railway. If no reply was received to these

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communications and if he felt aggrieved, he should have approached the competent court of law within the limitation prescribed. These prayers are, at this stage, hopelessly time barred.

7. The respondents, in their reply, have raised a preliminary objection about the territorial jurisdiction of the Principal Bench of this Tribunal at New Delhi and that the Union of India has not been made a party and, as such, the O.A. is bad on the ground of nonjoinder of necessary party. They have also raised the plea of limitation. As regards the objection about the territorial jurisdiction of the Principal Bench, it should suffice to say that the applicant was posted in the RITES at New Delhi (as per the particulars mentioned at page 1 of the O.A.) and, as such, the Principal Bench has the territorial jurisdiction in the matter. However, the objection about non-arraying of the Union of India as a respondent is a valid objection. In his rejoinder, the applicant has stated that both General Manager (P), N.E. Railway, Gorakhpur and General Manager (P), N.F. Railway, Maligaon are representing Union of India. Applicant has no objection to the Union of India being the respondent, if the Tribunal so desires. In view of this, we do not consider it, in the interest of justice, to dismiss the O.A. on this ground alone.

8. In view of the foregoing discussion, we find that the O.A. is devoid of any merit and is accordingly dismissed leaving the parties to bear their own costs.

(P.C. JAIN)
(P.C. JAIN)
Member(A)

(T.S. OBEROI)
(T.S. OBEROI)
Member (J)