

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1113
T.A. No.

1987

DATE OF DECISION 6-10-1989

Shri M.B.Das

Applicant (s)

Shri K.L.Bhandula

Advocate for the Applicant (s)

Versus
Union of India & others

Respondent (s)

Shri M.L.Verma,

Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, Vice Chairman

The Hon'ble Mrs. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This application under Section 19 of the Administrative Tribunals Act, 1985 seeks a direction to the respondents to repatriate the applicant to his parent office and also to promote him as Assistant Engineer by giving him the benefit of Next Below Rule.

2. The applicant was a Junior Engineer in the Farakka Barrage Project of the Ministry of Water Resources of the Government of India when he was sent on deputation to the Salal Hydro-Electric Project in the year 1976. The Salal Hydro-Electric Project is a body which functions under the National Hydro-Electric Power Corporation. The original period of applicant's deputation with the Salal Hydro-Electric Project was upto 31.12.1981; according to the applicant it was extended from time to time till 1.10.1987, according to the opposite parties, it was not extended beyond 31.12.1981.

3. The applicant's case is that he had been asking for repatriation to the Farakka Barrage Project but he was not being so repatriated and, therefore, he had filed this application on 7.8.1987 to have the reliefs indicated above. It is urged that in the meantime, persons junior to the

applicant in the Farakka Barrage Project have been promoted as Assistant Engineers and, therefore, the applicant was also entitled to be so promoted under the Next Below Rule. That is why the applicant seeks that on repatriation to the Farakka Barrage Project he may be promoted as an Assistant Engineer.

4. The opposite parties' case is that not only the applicant's period of deputation was ^{not} extended but the applicant's lien came to an end on the expiry of three years. It is further said that the Farakka Barrage Project or even the Ministry of Water Resources cannot extend the deputation period of the applicant beyond three years, and that the applicant himself had applied to be absorbed in the Salal Hydro-Electric Project. It is further said that even if the Salal Hydro-Electric Project, being the borrowing department, have extended the applicant's period of deputation beyond three years it was so without the consent of the Farakka Barrage Project and that the Farakka Barrage Project has no vacancies available to admit the applicant to it.

5. We have heard the learned counsel for the parties and have been taken through the records. The contention of the opposite parties' that the applicant's lien came to an end on the expiry of three years is not substantiated either on facts or in law. An employee who has a lien is entitled to hold a permanent post and the Fundamental Rule 14 A makes ^{it} absolutely clear that unless an employee has acquired a lien on a permanent post elsewhere, his ~~lien~~ cannot be terminated under any circumstances even with his consent. Nothing has been brought to our notice on behalf of the opposite parties to show that any circumstance arose underwhich the applicant's lien with the Farakka Barrage Project came to an end at any time.

6. In respect of the controversy over extension of the applicant's deputation with the Salal Hydro-Electric Project, the noticeable feature is that there is no material to show that the extension was ever refused. It may be ^{that} the Farakka Barrage Project did not by themselves issue/ a positive order of

extension, but there can be no doubt that the Salal Hydro-Electric Project were approaching the Farakka Barrage Project to repatriate the applicant pending specific orders and the Farakka Barrage Project were extending his deputation from time to time, the last extension being upto 1.10.1987 as set out in Annexure-III. In view of the failure of the Farakka Barrage Project to refuse extension it may be safely held that there was an implied ratification by them of the extension granted by Salal Hydro-Electric Project. Indeed, the Farakka Barrage Project faced difficulty to absorb certain Overseers (Junior Engineers) including the applicant because the former had no vacancies and were over-staffed. That brings no benefit to Farakka Barrage Project nor causes any impediment in the title of the applicant to repatriate to the Farakka Barrage Project. So to say, it is the headache of the Farakka Barrage Project and the Salal Hydro-Electric Project, inter-se, to provide for repatriation/absorption of the applicant as they may be able to find their way to do. The applicant cannot be left without a job because the two bodies are finding themselves in difficulties for their own reasons. We are, therefore, of the opinion that despite their problems the applicant is entitled to be repatriated to the Farakka Barrage Project. It also goes without saying that on the applicant's repatriation, the respondents must consider the application of the Next Below Rule or other applicable rules to determine the true status of the applicant and to give him the appropriate appointment/promotion.

7. The application is allowed. The opposite parties 1,2 & 3 shall arrange to recall the applicant on repatriation from the Salal Hydro-Electric Project, shall consider his case for an appropriate status in the light of the Next Below Rule or other applicable rules, and shall give him such appointment/promotion as he may be entitled to. The opposite parties shall comply with these directions within three months from receipt of a copy of this order.

The parties will bear their own costs.

U. Savara
(USHA SAVARA) 6.10.89
MEMBER

Shankar
6.10.89
(KAMLESHWAR NATH)
VICE CHAIRMAN