Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 730 of 1996

alongwith

Original Application No. 639 of 1996

Original Application No. 640 of 1996

Original Application No. 641 of 1996

Original Application No. 1337 of 1996

Allahabad this the 10th day of November, 2000

Hon'ble Mr.S.K.I. Naqvi, Member (J)

O.A. No. 730 of 1996

1. Shri Hub Lal Saroj, Son of Shri Nachkau, resident of Village Ghonai Post Aunta, District Allahabad.

2. Shri Lallan Singh, Son of Udai Singh, R/o Village Chirla Maujapta, Post Ganja, Distt. Allahabad.

3. Sri Sarju Prasad Yadav, Son of Ram Swarup Yadav, R/o Basmahua, Post Sahso, District Allahabad.

Applicants

By Advocates Shri J.N. Tiwari
Shri S.S. Sharma

Versus

1. Union of India through General Manager, Northern Railway, Head Quarter, Baroda House, New Delhi.

2. Deputy Chief Engineer, Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad.

3. Senior Engineer, Concrete Sleeper Plant, Subedarganj, Allahabad.

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4. Divisional Railway Manager, Northern Railway, Allahabad.

Respondents

By Advocate Shri A.K. Gaur

O.A.No. 639 of 1996

1. Phool Chand Son of Sri Kalpur
2. S.N. Chaube Son of Sri R.K. Chaube
3. Ram Asray Son of Sri Ram Lotan.
4. Krishna Kumar Son of Sri Ganga Prasad,
5. Subhash Pal Son of Sri B.C. Pal.

All Master Craftsmen in Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad.

Applicants

By Advocates Shri J.N. Tiwari
Shri S.S. Sharma

Versus

1. Union of India through General Manager, Northern Railway Head Quarter, Baroda House, New Delhi.
2. Deputy Chief Engineer, Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad.
3. Senior Engineer, Concrete Sleeper Plant, Subedarganj, Allahabad.
4. Divisional Railway Manager, Northern Railway, Allahabad.

Respondents

By Advocate Shri A.K. Gaur

O.A.No. 640 of 1996

1. Uggan Prasad Son of Hari Lal
2. Munna Lal Son of Jaggu Ram

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3. Tarak Kumar Haldar Son of G.C. Haldar.

All presently working as Chargeman under Senior Executive Engineer Track Temping Line Shiva Ji Bridge, Northern Railway, New Delhi.

Applicants

By Advocates Shri J.N. Tiwari
Shri S.S. Sharma

Versus

1. Union of India through General Manager, Northern Railway Head Quarter, Baroda House, New Delhi.
2. Deputy Chief Engineer, Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad.
3. Senior Engineer, Concrete Sleeper Plant, Subedarganj, Allahabad.
4. Senior Executive Engineer, Track Temping Line, Shiva Bridge, New Delhi.
5. Divisional Railway Manager, Northern Railway, Allahabad.

Respondents

By Advocate Shri A.K. Gaur

O.A.No. 641 of 1996

1. Brij Nandan Thakur Son of Pokhan Thakur
2. Sheo Ram Son of Ram Adhar.

Both skilled Grade II in Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad.

Applicants

By Advocates Shri J.N. Tiwari
Shri S.S. Sharma

Versus

1. Union of India through General Manager, Northern Railway Head Quarter, Baroda House, New Delhi.

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2. Deputy Chief Engineer, Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad.

3. Senior Engineer, Concrete Sleeper Plant, Subedarganj, Allahabad.

4. Divisional Railway Manager, Northern Railway, Allahabad.

Respondents

By Advocate Shri A.K. Gaur

O.A. No. 1337 of 1996

Nagesh Prasad, S/o Late Manbodhan Lal R/o Rly.Qr.No. 520-B, Lalit Nagar, Allahabad.

Applicants

By Advocate Shri A.N. Ambasta

Versus

1. Union of India through General Manager, Northern Railway Head Quarter,, Baroda House, New Delhi.

2. Deputy Chief Engineer, Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad.

3. Senior Engineer, Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad.

4. Divisional Railway Manager, Northern Railway, Allahabad.

Respondents

By Advocate Shri A.K. Gaur.

O R D E R

By Hon'ble Mr.S.K.I. Naqvi, Member (J)

Shri Hub Lal Saroj and 13 others have been transferred to their parent division

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vide order no.277/96, dated 22.5.1996. All these 14 effected persons have challenged this order and filed different O.As, numbered as O.A.No.730/1996, O.A.No.639/1996, O.A.No.640/1996, O.A.No.641/1996 and O.A.No.1337/1996. Since the controversy involved in all these matters is the same, therefore, these cases are being decided through common one order. The leading case being O.A.No.730/1996 and copy of the order be placed in all the connected matters.

2. The applicants have come up seeking relief to the effect that the impugned order no. 277/96, dated 22.5.1996 be quashed and the respondents be directed not to interfere in their functioning in Concrete Sleeper Plant(for short C.S.P.) Subedarganj, Allahabad.

3. As per applicants case, they were initially appointed in Northern Railway, Allahabad. They were transferred to C.S.P., Subedarganj in the year 1979 and since then they are continuously working in C.S.P. It has also been mentioned that in due course of time and after having qualified the trade test/suitability test, they were given promotions. It has also been mentioned that the applicants were transferred from their parent division to C.S.P. on account of requirement of work and from time to time demand was made by C.S.P., notifying their requirement of staff. It was on the basis of such demand made by C.S.P., the applicants submitted their applications and after consideration they were brought on transfer to C.S.P. and thereafter their lien at their

original place of appointment was cancelled and lien ~~absorbed~~ accrued in C.S.P.itself and, therefore, they are not liable to be repatriated or transferred back to their parent divisions. The impugned order has been assailed mainly on the ground that there is no justification to transfer the applicant by means of impugned order as they are holding permanent and substantive post and absorbed at C.S.P. and have been working for 15 to 16 years and a lien to them has been created at C.S.P., Subedarganj and,therefore, the impugned order is violative of Rules 238, 239 and 240 of Indian Railway Establishment Code, Vol.I. It has also been pleaded that the impugned order is against the scheme formulated vide circular letter dated 29.8.1995. The applicants have also assailed this transfer order on the ground that the applicants, inspite of being senior have been transferred, whereas the juniors have been retained. Therefore, the order is illegal, arbitrary, discriminatory and violative to Article 14 and 16 of the Constitution. The applicants have also a grievance that this transfer amounts to their reversion, because in the transferee establishment, they will be taken at lower scale under next below rule.

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4. The respondents have contested the case. As per respondents case, it was in the year 1977 that C.S.P., Subedarganj was established and intake of the staff in the plant was made by direct recruitment of casual labours, who were screened and panelled against sanctioned-~~sta~~post and also by transfer of some experienced staff from the division/unit holding lien there and the intake of the applicant was done by taking the staff against ex-cadre post. In the year 1985, there was sanction of large number of higher grade temporary post. Against this temporary post, accelerated local promotions were given to the employees in the Organisation and likewise the petitioners were also given accelerated local temporary promotion in the Organisation alongwith other staff after taking necessary suitability test as is evident from annexure A-2 to A-8 of the O.A., wherein there is clear mention that the promotions were purely temporary and on ad hoc basis and the promotion will not confer upon promotees any right to claim similar seniority. It has also been pleaded that as per item no.240(b) of Indian Railway Establishment Code Volume I, the petitioners were retaining their lien at Allahabad Division as they were screened and panelled against permanent post of Allahabad division and they were working in C.S.P., Subedarganj on a temporary post. The pleadings from the side of the respondents further go to mention that due to closure of Post Tension Unit of the Plant the surplus staff was to be transferred in the

manner as formulated in the letter dated 29.8.1995, which have been upheld in O.A.No.14 of 1996 filed by some other employees of the C.S.P. and accordingly the petitioners were also transferred to their parent division i.e. Allahabad Division alongwith other lien holding staff as per impugned order no. 277/96, dated 22.5.1996. It has also been pleaded that since the case of transfer of the applicant was taken up in the light of Scheme formulated under letter dated 29.8.1995, there is no question of considering the comparative seniority of the applicant with those who were direct recruits. In short, the respondents have pleaded that since the applicants were transferred to C.S.P. on deputation and their lien remained with Allahabad division, they cannot successfully challenged the impugned order through which they have been transferred back to their parent department.

5. Heard, the learned counsel for the parties and perused the record, as well as the written arguments submitted from either side.

6. In these cases, the real controversy is as to whether the applicants were transferred to C.S.P. , Subedarganj on deputation keeping their lien with Allahabad division or they were absorbed in C.S.P. without having any lien at Allahabad division.

7. During the course of arguments, learned counsel for the applicants took me through the

following decisions by Hon'ble Apex Court on the point of deputation and lien;

(i) 1997 SCC Vol.8 372, State of Punjab Vs. Indra Singh.

(ii) 1997 SCC(L&S) 1550, Jagdish Lal & Ors. Vs. State of Haryana & Others.

(iii) 1999 SCC(L&S) 902, Umapati Chaudhary Vs. State of Bihar and another.

(Iv) 1992 SCC(L&S) 440, Triveni Shanker Saxena Vs. State of U.P. & Others.

(v) (1994) 26 A.T.C.448 (SC) S. Nagraj & Others Vs. State of Karnatka & Others

(vi) 1999 SCC Vol.6 Page 667 Common Cause Vs. U.O.I. & Others.

(vii) 1989 SCC(L&S) 644Ram Lal Khurana Vs. State of Punjab & Others.

(viii) 1989 SCC(L&S) 273 , Haribans Misra & Ors. Vs. Railway Board & Ors.

and also referred Railway Board Circular dated 17.2.1989 on deputation and definition of lien in para-239 of the Code.

8. Shri A.K. Gaur, learned counsel for the respondents relied on following cases;

(a) 1996 S.C.C.(L&S) 498 , Balkrishna Pandey Vs. State of Bihar & Others.

(b) 1996 S.C.C.(L&S) 500, Chief Conservator of Forests and another Vs. Jagannath Maruti Kondhare and Others.

(c) (1997) 8 S.C.C. 372 , State of Punjab & Others Vs. Inder Singh and Others.

(d) (1997) 8 S.C.C. 386 State of Maharashtra Vs. Rajendra Jawanmal Gandhi.

(e) 1996 S.C.C.(L&S) 1093 Satya Narain Pareek State of Rajasthan and another.

(f) 1996 S.C.C.(L&S) 1094 Mills Douglas Michael and Others Vs. Union of India and Others.

9. On having gone through the referred case law, by either side, it is found that there is no controversy on the point that deputation means service outside the cadre on ad hoc basis, which shall be with the consent of persons so deputed and that lien cannot be terminated even with the consent of Govt. servant who cannot hold lien on more than one post and also that a person can be said to have acquired a lien on a post only when he has been confirmed and made permanent on that post and not earlier. In Harbansh Mishra Vs. Railway Board(supra) on the point of lien it has been ~~hedl~~ held that lien can be on a post and not on a place Only person appointed on permanent basis and not on ad hoc basis, can hold lien.

10. In State of Punjab and Others Vs. Inder Singh(supra), a law has been handed down that the deputationist cannot resist on the ground that he has continued on deputation for a long time during which he earned promotions on ex-cadre posts, and on repatriation, he will have to work in his parent

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cadre on a lower post. He cannot claim permanent absorption on deputation post.

11. In Satya Narain Pareek Vs. State of Rajasthan and another(supra), their Lordships at Apex Court have held that lien of a permanent employee during deputation to a tenure post in another department survives in the parent department. ~~and~~ The stand, that he could not be repatriated, is not acceptable.

12. Keeping in view the facts of these matters, and the referred case law, the matter was investigated and it is found that when C.S.P. Subedarganj was established, there was a requisition for requirement of staff vide letter dated 09.1.1980 through which the A.B.E. Bridge Workshop , Lucknow was requested to advertise applications, and be sent to Senior Engineer, C.S.P., Subedarganj for scrutiny and acceptance for the categories of posts as mentioned in the letter. Accordingly the posts were notified, ~~and~~ the applicants offered their services through applications, and they were transferred to C.S.P. Organisation accordingly. The applicants joined there and served till the impugned order. The applicants have a case that it does not amount to any deputation and they cannot be repatriated because they were not having any lien in Allahabad Division but the facts as have come out from the pleadings are ~~the~~ somewhat different. In para-10 of O.A.No. 730 of 1996,it has been specifically ~~been~~mentioned ~~that~~by the applicant that "~~on~~it was on the basis

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of demand made by the C.S.P. applications were submitted by different persons including the petitioners and after consideration, the applicants were brought on transfer to C.S.P. Thereafter, their lien at their orgiginal place of appointment was cancelled and the lien absorbed in C.S.P. itself." It goes to indicate that the applicants themselves accept that lien accrued to them in Allahabad division for which they could mention that lien was cancelled, but there is nothing to indicate that there is any specific order to cancel their lien. It is admitted position that a Goverment servant cannot hold lien at two places, therefore, no question of their having got any lien at C.S.P.

13. Lien is a right to hold a post on substantive appointment to any permanent post. It is a clear case from the side of the respondents that the applicants were screened and empanelled in Allahabad division against permanent post. This contention gets support from the service record of the applicants, which was produced from the side of the respondents, ~~and~~ another stand to this contention is that as per requirement under which the applicants were transferred, the basic condition was "by transfer of some experienced staff from other division/unit holding lien there." Incase applicants ~~do~~ were not holding lien at Allahabad division, they could not come within the zone of consideration. It

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is also a factor to be considered that when the applicants joined in C.S.P., they were neither screened ~~not~~ nor empanelled, only because they had already been screened and empanelled in their parent department at Allahabad division and, therefore, the case of the applicants cannot be covered ~~as~~ under direct recruitment.

14. So far as the position of deputation is concerned, it is not in dispute that in response to Notification for transfer to C.S.P., the applicants offered their services through application and, therefore, nothing more is required to take it as their consent. The transfer order through which the applicants have been transferred to C.S.P., indicates the consent of landing establishment and the permission of C.S.P. Organisation, to let them join there and work, is indicative of consent of the borrowing organisation.

15. It has been pressed on behalf of the applicant that they were allowed ~~permission~~ promotions from time to time in C.S.P. Organisation, which goes to ~~infer~~ indicate that they were absorbed in that Organisation creating a lien in the service therein and, therefore, they cannot be repatriated after such a long period of 15/16 years. Keeping in view this contention, ~~a~~ a perusal of promotion orders, issued from time to time in respect of the individual applicants, goes to show that these promotions were subject to expressed conditions that the same were on purely

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temporary, local, ad-hoc and Stop Gap arrangement and confined only to C.S.P. Organisation, which ~~will~~ did not confer upon the promotees any right to claim seniority. With this fact in view, it cannot be accepted that these promotions indicate that the applicants were absorbed and promotion was given at their turn in accordance with seniority.

16. For the above, it is found that the applicants were transferred to C.S.P., Subedarganj while they were holding substantive permanent post in their parent establishment and the lien of the applicants persists there and, therefore, they can be repatriated by transfer to their parent establishment and under the circumstances, the relief sought for, cannot be granted to the applicants.

17. In view of the foregoing, the O.A.No. 730/1996, 639/1996, 640/1996, 641/1996 and O.A.No. 1337/1996, are dismissed. No order as to costs.

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