

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



O.A. No.350/01633/2016.

Date of order : This the 25th Day of March, 2021.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member



Sri Himadri Shekhar Patra,
Son of Subrata Kumar Patra,
Aged about 36 years, working as
Deputy Manager (Bar Mill) IISCI Steel Plant
Under Steel Authority of India Ltd., residing at
34, Kumud Ranjan Mallick Path,
City Centre, Durgapur-713216.

.....Applicant

- Versus -

1. Union of India
Through the General Manager (P)
North Western Railway, Jaipur (Rajasthan)
Pin Code-302004.
2. The Chief Works Manager (E),
Ajmer, North Western Railway,
Rajasthan, Pin - 305001.
3. The Director (Estt.)
Railway Board, Ministry of Railways,
New Delhi - 110001.
4. The Executive Director (Projects)
Steel Authority of India Ltd.,
IISCO Steel Plant, Burnpur,
Burdwan, Pin - 713325.

.....Respondents

Advocate for the Applicant : Mr A.Chakraborty.

Advocate for the Respondents : Mr S. Banerjee & Mr L.K.Pal

ORDER**Ms Bidisha Banerjee, Member(J)**

1. Heard Ld. Counsel for both sides.
2. This application has been preferred to seek the following reliefs :

- "8.1 An order do issue directing the respondents cannot be sustain in the eye of law as on the ground that the Railway Authority failed to take decision in respect of the request of the applicant to join back in the Railway before completion of lien period and as such same may be quashed.
- 8.2 An order do issue direct to the respondent on the request of the applicant to join back in the Railway, repatriate him in railways and allow him to join in the Railway and granting him consequential benefits along with seniority.
- 8.3 As the applicant came on lien from Railways to SAIL-ISP to release him on his resignation.

3. Brief facts leading to the application are as under.

The applicant is at present working as Deputy Manager (Bar Mill) IISCO Steel Plant under Steel Authority of India Ltd. He was initially in Indian Railways and confirmed as IRSME in June 2004 and posted in NWR (North Western Railway) as ADME. Subsequently, he was transferred to Ajmer Division. The applicant applied for the post of Junior Manager (Projects) under Steel Authority of India Ltd. As per advertisement one NOC was to be produced at the time of interview. He obtained the NOC granted w.e.f. 29.11.2007 vide GM (P)s order No.625 E/GAZ/I/NOC dated 23.11.2007. He was offered the post of Junior Manager (Projects) under Steel Authority of India Ltd. The applicant made a representation on 09.01.2009 before the General Manager (P) stating *inter alia* that he was selected for appointment to the post of Junior Manager (Projects) under Steel Authority of India Ltd. He obtained NOC on 29.11.2007. He was offered the post of Junior Manager (Projects) at IISCO Steel Plant Burnpur. Consequent upon his selection he had to report to IISCO on or before 31.09.2009.



release the applicant on technical ground on lien basis to join in Steel Authority of India Ltd. He was informed vide Gazettee Memorandum No.2/2009 dated 21.01.2009 (Annexure A/2) that competent authority has accepted his technical resignation with immediate effect as he has been selected in Steel Authority of India Ltd. He was given offer of appointment for the post of Junior Manager (Projects). He was also relieved from his charge. His lien was to be maintained in North Western Railways for 2 years.



That in terms of Rule 1404 of the Indian Railway Establishment Manual his lien may be retained in the parent department for a period of 2 years and on expiry of the period of two years he may either resign from Railway service or revert to his parent cadre.

Further, in exceptional cases authorities were permitted to retain the lien in the parent department/office for one more year.

And in terms of Rule 1405 of IREM a permanent Railway servant appointed in another Central Govt. department/office has to resign from his parent department unless he reverts to that department within a period of 2 years or 3 years in exceptional cases. Such resignations shall not be deemed to be resignation within the meaning of Rule 2433-b-RII (old) (CSR-418). As a consequence, continuity of service benefits should be allowed to such employees in the matter of leave also i.e. the Railway employees will be allowed to carry forward the leave earned by him not only on the Railways but that earned during the temporary service or probation in the civil department.

That the applicant was informed by Chief Works Manager (E), Ajmer that his lien shall be maintained in the North Western Railway for two years from 22.01.2009. The applicant made a representation on 16.08.2010 before the Secretary, Railway Board praying for extension of lien for one year. On receiving no response to his letter dated 16.08.2010 he sent reminder on



08.10.2010, followed by his request on 27.10.2010 to the Secretary(E) and Member Mechanical, Railway Board, GM(P) and CME, North Western Railway for issuance of an order for his coming back to Indian Railways. As no reply was given, the applicant against on 16.11.2010 requested issuance of an order so that he may join the Indian Railways as the lien period of 2 years was coming to an end. Lastly, before expiry of lien on 06.01.2011 he requested to the Chairman, Railway Board, GM (P), NWR to extend lien for another 6 months as notice period to SAIL, ISP became too short for release. He received no reply. Meanwhile long thereafter the applicant received a letter dated 09.04.2015 (Annexure A/5) wherein the letter No.E(o)III-2011/AE/17 dated 06.04.2016 issued by Director (Estt), Railway Board addressed to CEO, ISP was enclosed, it stated that his representation was examined in the Ministry and that the factual position is that on being selected for the post of Junior Manager (Projects), SAIL, Shri Patra submitted his technical resignation from North Western Railway on 09.01.2009 with the request to retain his lien with the Railway for a period of 2 years as it was seen that Shri Patra has since been confirmed by SAIL with effect from 28.01.2010, his lien with the Railway automatically ceased to exist from that date. In view of such, his request to join back on Railway could be agreed to.

The applicant would place that it is evident from the letter dated 21.01.2009 that competent authority accepted resignation tendered by the applicant and that his lien shall be maintained for 2 years in the Railways. Under the Rule the applicant could approach the Railways to go back within 2 years from 22.01.2009. The statement made by the Director (Estt), Railway Board that since the applicant was confirmed his lien in the Railways automatically ceased to exist from that date cannot sustain in the eye of law.

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An office order dated 18.05.2011 (Annexure A/6) was issued by Executive Director (Projects), SAIL, ISP, Burnpur, that further to offer of appointment and consequent upon his completion of probationary period Shri Himadri Shekhar Patra is hereby confirmed in the services of the company in the pay scale of Rs.20600-3%-46500/- (E-I) with effect from 28.01.2010.



Further that on 18.05.2011 the DGM (Personnel)-OD, SAIL, ISP, Burnpur issued an office order stating *inter alia* that the applicant is confirmed in the service of the company, but before completion of lien period the applicant made several representations praying for coming back to Railway to resume duty. It was the duty of the Railway authority to deal with those representations and to pass order in respect of his joining in the Railway. The Railway authority failed to take a decision within time.

That the Hon'ble Apex Court in the case of **Union of India & Ors. vs. Shanti Ranjan Sarkar** had been pleased to hold that delay in filing the O.A should not have been a bar against granting of an equitable relief. Union of India as a benevolent litigant could not be permitted to take advantage of his own wrong.

4. The Ld. Counsel for the applicant would vociferously plead that it was at Railways fault for not considering his prayer on time, which should not go to applicant's disadvantage.

5. Per contra, Ld. Counsel for the respondents would vehemently oppose the application as the applicant could not get himself released from Railways before his confirmation in SAIL.

6. The records were perused. We noted as under :

(i) The Order dated 22.03.2016 reads as under :

"No.E(O)III-2011/AE/17

New Delhi, Dated 22.03.2016.

To

The Chairman & Managing Director,

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STEEL AUTHORITY OF INDIA LTD,
18th Floor, Scope Minar Core-I,
Laxmi Nagar District Centre,
New Delhi-110092.

(Attn : Shri Pawan Kumar, AGM/P-Rectt.)

Sub : Request for withdrawal of resignation of Shri H.S.Patra, ex-IRSME.

Ref : SAIL's letter No.Per/Rec./C-1005 dated 18.04.12.



A representation was received in this Ministry from Shri H.S.Patra, ex-IRSME, presently working in IISCO (SAIL) for grant of permission to join back on Railways. This has been examined in this Ministry and the factual position is that on being selected for the post of Junior Manager (Projects), SAIL, Shri Patra submitted his technical resignation from North Western Railway on 09.01.2009 with the request to retain his lien with the Railways for a period of two years. It is seen that Shri Patra has since been confirmed by SAIL w.e.f. 28.01.2010. Therefore, his lien with the Railways automatically ceases to exist from that date. In view of this, the request of Shri Patra to join back on Railways cannot be agreed to.

3. Shri H.S. Patra may be advised of the above position. He may also be advised not to correspond directly with the Ministry of Railways.

(A.K.Sen)
Director (Estt.)
Railway Board
011-23384427 (DCT)
43455 (RLYS)"

(ii) Rule 1404 of IREM stipulates the following :

1404. Retention of lien on selection on the basis of the forwarding of application :—

(i) If a permanent railway employee is selected on the basis of his application for posts in other Central Government Department/Offices, his lien may be retained in the parent department for a period of 2 years. If the employee concerned is not permanently absorbed within a period of 2 years from the date of his appointment in the new post, he should immediately on expiry of the period of 2 years either resign from Railway service or revert to his parent cadre. An undertaking to abide by this condition may be taken from him at the time of forwarding of his application to other departments/offices.

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(iv) When a permanent railway servant has joined a department/office where he is not confirmed within a period of 2 years due to some reasons, he may, in exceptional cases, be permitted to retain the lien in the parent department/ office for one more year. While granting such permission, a fresh undertaking similar to the one indicated above may be taken from the railway employee.

(v) Timely action should be taken to ensure extension/ reversion/ resignation of railway employees to their parent cadres on completion of the prescribed period of 2/3 years.

(iii) Rule 1405 envisages as under :

"1405. Continuity of service on technical resignation :— A permanent railway servant appointed in another Central Government Department/Office has to resign from his parent department unless he reverts to that department within a period of 2 years or 3 years in exceptional cases. Such resignations shall not be deemed to be resignation within the meaning of Rule 41(2) of Railway Services (Pension) Rules, 1993 for the purpose of pension. As a consequence, continuity of service benefits should be allowed to such employees in the matter of leave also i.e. the railway employee will be allowed to carry forward the leave earned by him, not only on the Railway but that earned during the temporary service or probation in the Civil Department."



7. A conjoint reading of the rules would make us infer as follows :

- (i) A lien in erstwhile department can be maintained upto 3 years.
- (ii) One has to revert back within that period to the parent department or resign from the erstwhile post.
- (iii) A lien in parent department ceases with confirmation in the new department.

8. We discern as under :

The applicant joined SAIL for obtaining sufficient technical knowledge in Project Management.

(i) Applicant's lien had to be maintained in Railways in terms of Rule 1404 by Railways upto 2 years in normal course i.e. from 09.01.2009 i.e. 08.01.2011,

(ii) He requested for extension of lien till 21.01.2011 vide letter dated 16.08.2010 (Annexure A-4), which was well within time. It was followed by his repeated prayers which were not considered.

(iii) He requested for reverting back to Railways from SAIL, on 16.11.2010, as his prayer for extension was not considered.

(iv) Long thereafter, on 18.05.2011 SAIL issued order of his confirmation retrospectively w.e.f. 28.01.2010. The Railways could have allowed him to revert before 08.01.2011 or even by 18.05.2011 as lien could be extended till the third year in terms of Rule 1405 supra.

(v) His prayer was rejected in 2016, whereafter the applicant approached this Tribunal. Thus inaction and non action on the part of Railway authorities is palpable.

9. Be that as it may, in view of the fact that at this distant date the Railways cannot be directed to rectify their error, we dispose of the O.A with liberty to the applicant to make a prayer, if so advised to join a suitable Railway post and we direct the Railways to consider his prayer sympathetically and expeditiously if in future the applicant wishes to leave SAIL to join a suitable post in Railways.



10. O.A accordingly stands disposed of. No costs.


(DR NANDITA CHATTERJEE)
MEMBER (A)


(BIDISHA BANERJEE)
MEMBER (J)

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