

OPEN COURT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 8th of March, 1996

Original Application No. 790 of 1987

District : Allahabad

CORAM:-

Hon'ble Mr. Justice B.C. Saksena, V.C.

Hon'ble Mr. S. Das Gupta, A.M.

Prem Lal Bahl S/o Late Sri Ram Lal Bahl,
Working as Asst. Tracts Foreman(Running),
Northern Railway, Allahabad.

(By Sri RK Niqam, Advocate)

.....Applicant
Versus

Divisional Railway Manager

Northern Railway, Allahabad.

(By Sri DC Saxena, Advocate)

• • • • • Respondents

O R D E R (O r a l)

By Hon'ble Mr. Justice B.C. Saksena, V.C.

The brief facts giving rise to the O.A. are that the applicant was initially appointed as Apprentice Fireman and he rose to the post of Driver Grade 'A'. Subsequently, on his own request, he was promoted to the post of ATFO (R) on adhoc basis. Subsequently, he appeared for selection and was duly selected in the year 1977. The applicant's allegation is that this ~~enormous~~^{anomalous} situation has arisen resulting in loss in his emoluments on the post of Driver as he belongs to the running staff while ATFO(R) are statutory post. The applicant's case is that he would suffer monetary loss also in his post-retirement benefits since 55% of the running allowance is also added to the emoluments for the purpose of calculating pension. The applicant's allegation is that he made representation seeking his repatriation to the post

Driver Grade 'A'. In the circumstances, he has filed his OA and has sought the following reliefs:-

(i) that the respondents be commanded to immediately repatriate the applicant to his original cadre of Driver Grade 'A'.

2. ~~that~~ A counter affidavit has been filed on behalf of the respondents in which it has been indicated that the applicant volunteered himself and on his own request he was initially promoted as ATFO (R) on adhoc basis. Subsequently, he submitted his candidature for the said post and was selected and has worked in regular capacity as ATFO (R) since 1977.

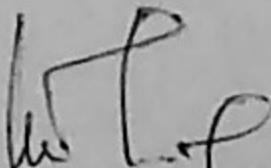
3. The counter affidavit is silent as to the denial of the representation alleged to have been made by the applicant. However, it has also been pleaded in the written statement that the OA is barred by limitation. The applicant in his rejoinder affidavit has not disputed the averments of his having requested for promotion to the post of ATFO(R). He has taken the plea that the said request to officiate as ATFO(R) did not contain a declaration that ~~that~~ he is permanently surrendering his right of promotion towards driver's cadre.

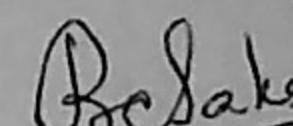
4. The applicant's case is that he retains his lien on the post of Driver Grade 'A' and as such his request for repatriation should have been acceded. In 1977, confirmation was contemplated to be made ~~over the~~ post ^{in every} ~~by~~ on completion of statutory probation but since 1988 this situation has changed. The ~~special form~~ ^{Requirement of Confirmation for} of every post has been given up and now one time ~~for~~ ^{on} ~~by~~ in service is only provided for. The lien is defined in FR 9 to mean the ~~title~~ of Govt. servants to hold substantively either immediately or on termination of period of absence ~~or~~ permanent post including a tenure post ^{on} ~~by~~ which he has been appointed substantively. Thus, the applicant after his selection to the post of ATFO (R) and having been selected would lose ^{title} ~~li~~ 182

his lien on the post of Driver Grade 'A'. The parties have not placed on record the order of promotion of the applicant on the post of ATFO(R), but since from the pleadings, it is clear that a selection has taken place, we can safely infer that the selection was held to fill up substantive post. Thus, the applicant on his appointment after selection as ATFO (R) would have been substantively appointed on the said post and his lien on the post of Driver Grade 'A' ceased.

5. The applicant having, on his own request being ~~been~~ ^{and} promoted to the post of ATFO(R) initially on adhoc basis and subsequently having on his own volition appeared at the selection for the said post, he cannot be permitted to seek repatriation.

6. We further find that for all purposes the cause of action can be said to ~~be~~ ^{have} accrued to the applicant in 1977, since when he is working as ATFO (R) and the applicant has been ^{allegedly} suffering the alleged monetary loss. The OA having been filed in 1987 and the representation made in the year 1986, in our opinion does not arrest limitation from running. The OA lacks merit and is also highly belated. It is accordingly dismissed. The parties shall bear their own costs.


Member (A)


Vice Chairman

Dube/