

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 30th day of August 2000.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Dayal, A.M.

Original Application No. 956 of 1993.

Raj Kumar Gaur,
son of Sri P.R. Gaur,
Resident of 629/B, 1st Avenue
Railway Traffic Colony,
Civil Lines,
Allahabad.

... Applicant.

Counsel for the applicant: Sri Hari Shankar Srivastava, Adv.

Versus

1. The Union of India through Secretary,
Ministry of Defence (DP & S)
New Delhi.
2. The Chairman, Ordnance Factory Board,
10-A Auckland Road, Calcutta-700001.
3. The General Manager,
Ordnance Equipment Factory, Kanpur.

... Respondents.

Counsel for the respondents: Kumari Sadhna Srivastava, Adv.

Order (Reserved)

(By Hon'ble Mr. S. Dayal, Member (A.)

This application has been filed for a direction to the official respondents to confirm the applicant in the grade of Assistant Works Manager immediately after completion of his Probation period. A direction is also sought to the official

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respondents to retain the lien of the applicant in their department and maintain his seniority to enable him to come back to the department if needed and get consequential benefits. A direction is further sought to official respondents to amend order No. 2138 dated 4.10.91 to the effect that the applicant would be considered as released from the then appointment of Assistant Works Manager to enable him to take up his new assignment in the Department of Irrigation under Government of U.P. to consider his lien as admissible in the department.

2. The brief facts of the case are that the applicant was appointed on 2.4.88 as Assistant Works Manager in the pay scale of Rs.2200-4000 after he succeeded in the Combined Engineering Examination held by the Union Public Service Commission in 1986. The applicant around 1986 had also appeared in U.P.P.S.C. Selection for the post of Assistant Engineer (Mechanical) in the Department of Irrigation in the pay scale of Rs.2200-4000 and was asked to take over charge within forty five days of appointment order dated 5.6.91. He sought six months time to join and he was allowed time till 17.10.91. The applicant applied for his release to the official respondents on 6.7.91 while retaining his lien. The applicant was informed that his lien could not be maintained since he was not confirmed in any grade and he was asked to give an undertaking that he was

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still willing to be released which he did. The applicant claims that he had not tendered his resignation. He was released from the post of Assistant Works Manager on 7.10.91 after rendering nearly three and a half years of service. The applicant claims that he started writing for retention of lien to the official respondents from 7.11.91 onwards. His request was rejected by the General Manager Ordnance Equipment Factory by letter dated 25.7.92.

3. The arguments of Sri H.S. Srivastava for the applicant and Kumari Sadhna Srivastava for the respondents have been heard. We have also considered the pleadings on record.

4. The only plank of learned counsel for the applicant's argument is that retention of lien is a right and it accrues to the applicant as soon as his period of probation is completed satisfactorily in two years time. The applicant claims that he had completed his probation satisfactorily and his probation was not extended. He had passed his departmental examinations also. This claim is, however disputed by the respondents who have mentioned in their impugned letter dated 4.10.91 in response to letter dated 22.8.91 of the Ordnance Factory Board. His name was struck off from the strength of the Factory from that date. It was stipulated that the applicant was under bond to the department and this bond would be transferred to Department of Irrigation on the officergiving the undertaking that

he would serve the Department of Irrigation for the remaining period of the bond (Annexure A6-A). The learned counsel for the respondents has also relied provisions of O.M.No. 21011/2/80-Estt(C) dated 19.5.83 of Department of Personnel & A.R. which contains the following provision regarding confirmation after probation (page 20 of C.A. para 5) which reads as under :-

" The date from which confirmation should be given effect to is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation, as the case may be. The decision to confirm the probationer or to extend the period of probation as the case may be, should be communicated to the probationer normally within 6 to 8 weeks. Confirmation of the probationer after completion of the period of probation is not automatic but is to be followed by formal orders. As long as no specific orders of confirmation or satisfactory completion of probation are issued to a probationer, such probationer shall be deemed to have continued on probation."

Learned counsel for the respondents has also placed reliance on order of Bangalore Bench of C.A.T. in O.A. 234 of 1992 dated 31.3.93 in which it has been held that if an Assistant Works Manager in Indian Ordnance Factory Service voluntarily left his job and got relieved even after satisfactory completion of period of probation after knowing that his lien would not be retained, he destroys his lien. The facts are similar in the case before us. It is clear from the second and third relief sought by the applicant that having given away his claim over lien, he wants to wrest it back by amendment of order dated 4.10.91. This is not permissible as estoppel would operate against the applicant.

5. The applicant has sought the benefit of Department of Personnel and Training O.M. No. 18011/1/86 dated 28.3.88 but the O.M. makes no change except doing away with successive confirmations. It holds that the officer is to be confirmed only once in the entry grade and that an officer who has successfully completed his probation has to be considered for confirmation. Thus it does not make

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confirmation deemed on completion of period of probation satisfactorily. Period of six to eight weeks mentioned in O.M. dated 19.5.83 does not appear to mandatory as no adverse consequences have been provided in the O.M. in case the confirmation is ordered after expiry of the said period. The requirement is only directory.

6. It is true that the aforesaid O.M. dated 19.5.83 of the Department of Personnel & Training states that decision confirming an officer after successful completion of probation or after extended period of probation should be communicated normally within six to eight weeks but it makes it clear that "Confirmation of Probation after completion of period of promotion is not automatic but is to be followed by formal orders." It is, therefore, likely that period of six to eight weeks refers to the period in which confirmation should take effect after decision to confirm has been made. In any case this argument is not available to the applicant who has voluntarily given away his lien. We cannot accept the proposition that in such circumstances the voluntariness should be considered to be forced.

7. The Apex Court in Triveni Shanker Saxena Vs. State of U.P. 1992(1) S.L.R. S.C. page 359 has laid down as follows:-

"Para 23

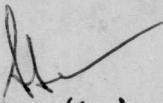
A learned Single Judge of Allahabad High Court in M.P. Tewari Vs. Union of India 1974 A.L.J. 427 following the dictum laid down in the above Paresh Chandra's case and distinguishing the decision of this Court in P.L. Dhingra Vs. Union of India A.I.R. 1958 S.C. 36 has observed that "a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier," with which view we are in agreement."

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Thus lien starts when a person is confirmed and made permanent on that post and not earlier. Before a person is confirmed, there are certain procedural formalities which have to be undertaken. No official can claim deemed permanency on completion of period of probation as is being done in this case.

8. For the facts and circumstances stated above we find no merit in the application and the same is dismissed.

9. There shall be no order as to costs.


Member (A.)
Vice Chairman

No fees.