

**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the 24 day of Feb 2006.

**Hon'ble Mr. D.R. Tiwari, Member (A)**  
**Hon'ble Mr. K.B.S. Rajan, Member (J)**

**Original Application No. 790 of 1999.**

Hari Narayan Dwivedi, S/o Late Mukhram Dwivedi,  
R/o Quarter No. 631-C, Bauliya, Railway Colony,  
N.E. Railway Gorakhpur at present working as Cinema  
Operator/Projectionist, working under Chief Public Relations  
Officer's , N.E. Railway,  
GORAKHPUR.

.....Applicant

By Adv: Sri S. Kumar

V E R S U S

1. Union of India through General Manager,  
N.E. Railways, Gorakhpur.
2. Chief Public Relations Officer,  
N.E. Railways, Gorakhpur.
3. Chief Personnel Officer/Administration/  
General Manager (Personnel) N.E. Railway,  
Gorakhpur.
4. Assistant Personnel Officer Headquarters,  
N.E. Railway, Gorakhpur.
5. District Electrical Engineer (Colony),  
N.E. Railway, Gorakhpur.
6. Sri R.P. Singh, Public Relation Officer (AV),  
N.E. Railway Gorakhpur.

.....Respondents

By Adv: Sri A. Sthalekar



## A L O N G W I T H

Original Application No. 810 of 1996.

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5. Chief Personnel Officer (Administration)  
N.E. Railway,  
Gorakhpur.
6. Assistant Personnel Officer Headquarters,  
N.E. Railway, Gorakhpur.
7. Chief Signal and Tele Communication Engineer,  
N.E. Railway,  
Gorakhpur.

.....Respondents

By Adv: Sri Lalji Sinha





**ORDER****By K.B.S. Rajan, Member-J**Original Application No. 790 of 1999

The applicant is aggrieved by order dated 06.07.1999 whereby the applicant was reverted from the post of Cinema Operator in the pay scale of Rs. 1200-1800 (RPS Rs. 4000-6000) to the post of Khalasi Helper in scale of Rs. 800-1150. The applicant has challenged this order and also prayed for his lien as fixed in the Public Relations Department vide order dated 13.11.1992.

2. Briefly stated, the applicant joined the Railways and at the material point of time he was working as Khalasi Helper under Divisional Electrical Engineer, Gorakhpur. At that time a post called Projectionist existed under the control of CSTE, the same was shifted to Chief Public Relation Office with re-designation as Cinema Operator. The pay scale attached to this post was Rs. 1200-1800 and since it was declared as an ex-cadre post, the pay scale was reduced due to non availability of optees to the grade of Rs. 950-1500 and applications were called for from those in the pay scale of Rs. 800-1150 and the lone applicant to this post (who is applicant herein) was appointed to the said post. Later on, vide order dated 13.11.2002, the applicant's lien was transferred to the Public Relations Department. At that time the pay scale attached to the post of Cinema Operator stood already restored to Rs. 1200-1800. However, subsequently by order dated 06.07.1999 the respondents have reverted the applicant to the post of Khalasi

Helper in the grade of Rs. 800-1150, which the applicant has now challenged through this OA.

3. Respondents have contested the OA. According to them alongwith the post of Cinema Operator one post of Khalasi Helper was also transferred and placed at the disposal of the Chief Public Relation Office. According to them order dated 13.11.1992 whereby the applicant was given promotion as Cinema Operator cannot be construed as en-cadared as claimed by him. They have also contended that annexure A-9, letter relating to lien was fraudulently procured by the applicant as no such letter was ever issued. In fact, the Railways had launched investigation in this regard, the result of which was that a number of irregularities were found to have been committed in the promotion of the applicant. And for administrative reasons the exhibition was cinema was stopped consequent to which the applicant was sent back to his parent cadre as Khalasi Helper. It was also stated that the applicant's posting as Cinema Operator was only ad-hoc. When the applicant had moved OA 810 of 1996, by an interim order dated 24.05.1999 this Tribunal had directed that the respondents should allot the applicant any other work but with the same salary during the pendency of the OA and accordingly the applicant was posted under DEE Colony, Gorakhpur where he joined. This order is stated to have been complied with.

4. The applicant has made certain allegations against an officer; however, this need not be gone into this OA.



5. The applicant has filed rejoinder reiterating his stand.
6. Arguments were heard and documents perused. Written submissions were called and on his part the applicant's counsel has filed written submissions.
7. The above case is linked with OA 810 of 1996. In this OA the applicant has assailed the order dated 19.07.1996 passed by the Assistant Personnel Officer and another order of the same date passed by the Chief Public Relation Officer, whereby the post of Cinema Operator was rendered surplus and transferred to Signal Department N.E.R. Gorakhpur. In the said OA also the applicant contended that his lien was transferred to CPRO and this contention was refuted by the respondents stating that order dated 13.11.1992 was never issued.
8. In view of the above these two OAs are dealt with together and this common order is passed. The question for consideration is whether the applicant has established any of his vested right to continue to hold his lien in CPRO and whether he is entitled to continue in the pay scale of Rs. 1200-1800 by virtue of his having been appointed to the post of Cinema Operator which post he held for a substantial period. In addition, the applicant has been till now, continuing in the higher pay scale through an interim order.
9. Admittedly, the applicant was the lone candidate to the post of Cinema Operator. He was duly selected to the said post

and he continued to hold the post for a fairly long time. When the department chooses to shift the post of Cinema Operator under the control of CSTE, the applicant agitated. His claim in OA 810 of 1996 was that the respondents should draw AVC of the applicant alongwith AVC of Photographers in Public Relation Office and he should be considered for promotion alongwith others in CPRO with consequential benefits. In other words he wanted himself to be a part and parcel of the CPRO department. His claim is based on his lien vide order dated 13.11.1992. The claim of the applicant in OA 790 of 1999 is the same but by way of challenging order dated 06.07.1999 whereby he was reverted from the post of Cinema Operator and posted as Khalasi Helper.

10. Though the respondents have stated that order dated 13.11.1992 was forged and investigation conducted. No documents whatsoever has been produced in this Court in regard to the investigation stated to have been conducted in respect of the order dated 13.11.1992. By mere averment, the stand of the respondents cannot be taken to be true especially when the contention of the respondents is refuted by the applicant. Hence, we are disinclined to accept the contention of the Respondents. If the lien of the applicant is kept in CPRO, there is no question of termination of the same even without notice to the applicant. In this regard, the following decision of the Apex Court in the case of **Jagdish Lal v. State of Haryana, (1997) 6 SCC 538, is relevant:-**

*".....under Fundamental Rule 14-A(a) a government servant's lien on a post may, in no circumstances, be terminated, even with his consent, if the result will be to leave him without*



*a lien or a suspended lien upon a permanent post....."*

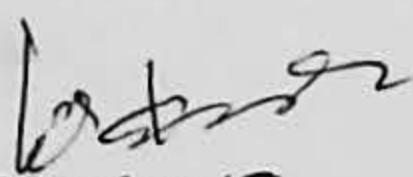
11. Apart from the above, the applicant had continued in that post for a substantial period of more than seven years and has been continuing in the same pay scale right from 1992. It cannot, therefore, be that he has not crystallized any right in regard to his being placed in the scale of Rs. 1200-1800. The respondents have admitted the fact that the applicant was declared passed in the trade test held on 01.06.1992 and was placed in the pay scale of Rs. 1200-1800. This being an admitted position, coupled with the fact that the applicant has been continuously enjoying the pay scale of Rs. 1200-1800, we are inclined to hold that the applicant is entitled to continue in the pay scale of Rs. 1200-1800 (Rs 4000-6000) on the post of Cinema Operator and he should be treated at par with the Cinema operator of CPOR, notwithstanding the fact that the post of Cinema Operator. Should for any rational administrative reasons, this is not possible, then the respondents should consider the case of the applicant for the very same ex cadre post of Cinema operator, which has now gone to CSTE and in that case the applicant should be made entitled to the benefit of ACP under the normal rules. If the applicant is serving elsewhere his seniority in the pay scale of Rs. 1200-1800 in the cadre, would reckon from the date he joined the said scale. (Though this is not a specific prayer in the OA, it is in the interest of justice as we deem fit, we hold accordingly). In the end the OAs are disposed of with the

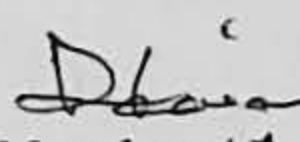
following terms:-



- a. It is declared that the applicant is entitled to continue in the post bearing the pay scale of Rs. 1200-1800 (Rs. 4000-6000).
- b. He shall be accommodated as a Cinema Operator under CSTE or under CPRO as the administrative exigencies would permit.
- c. In case he is adjusted in CPRO, he would be associated with other Cinema Operators with the seniority reckoning from the date of appointment in the grade of Ra 1200 - 1800. Instead, if he is accommodated against the post of Cinema Operator under CSTE, he shall be treated as being adjusted against an ex cadre post. As stated earlier, the benefit of ACP would be admissible to the applicant wherever he is posted, in accordance with Rules.

No cost.

  
Member (A)

  
Member (A)

/pc/