

Central Administrative Tribunal, Lucknow Bench, Lko
Original Application No. 268/2004

this the 14th day of September, 2004

HON'BLE SMT. BHARTI RAY, MEMBER (J)

HON'BLE SHRI S.P. ARYA, MEMBER (A)

Smt. Kamlesh Singh aged about 38 years wife of
Sri Alok Singh r/o 287/17, Moti Nagar II,
Lucknow.

...Applicant

By Advocate: Sri A.Moin

Versus

1. Union of India through:
1. General Manager, North Eastern Railway,
Gorakhpur.
2. Divisional Railway Manager, North Eastern
Railway, Lucknow.
3. Financial Advisor and Chief Accounts
Officer (Administration) N.E. Railway, Gorakhpur.
4. Senior Divisional Financial Manager, N.E.
Railway, Lucknow.
5. Divisional Railway Manager (Karmik) N.E.
Railway, Lucknow.

...Respondents

By Advocate: Sri Prashant Kumar

ORDER

BY HON'BLE SHRI S.P. ARYA, MEMBER (A)

The applicant was engaged as a casual
typist in the office of DRM, NER, Lucknow
(Respondent 2) in 1987. She was out of job
since 8.3.1988. This Tribunal in O.A. No. 12/90
directed the respondents to consider the claim
of the applicant for temporary status and pay
scale by its order dated 19.3.1991. Thereafter
she was taken back as a substitute typist in
the office of Senior Divisional Finance Manager,
NER, Lucknow (Respondent 4). By order dated

29.7.92 of respondent No.2. She passed Appendix II Examination (IREM). It appears that she was also promoted to the post of Senior Typist and to the post of Head Typist. By order dated 20.6.97, certain officiating junior typists were also provisionally confirmed and the applicant found its place at S.No. 2. On 31.7.97, she was repatriated to her original post of substitute typist in the office of respondent 2. By order dated 28.10.2000, she after appearing in the typing and oral examination, was provisionally approved as regularised ~~as~~ typist in the pay scale of Rs. 3050-4590. By order dated 29.10.2003, which is a corrigendum to the earlier order, her services were regularised on the post of clerk in view of the Railway board letter No. E/NG/II/95/R.C./3/13 C.A.-III dated 01.12.03 dated 14.3.96. By office order No. 1959 of respondent No.2, the applicant was given Pad Sthapna (Appointment and posting) in the Engineering Branch on the post of clerk. It was also specified in the order that she would hold ~~the~~ ⁱⁿ lieu and seniority in the cadre of clerks in the Engineering Branch/Department. This order of 1.12.2003 was challenged by O.A. No. 214/2004. The Tribunal by order dated 27.5.2004 directed the respondents to consider the representation preferred against this impugned order in the light of the relevant rules, instructions and law on the subject within a period of 4 weeks from the date of receipt of copy of the order. Till then the impugned order was asked not to be given effect regarding the relieving of the applicant ~~for~~ the Engineering Branch. The representation has now been decided by order dated 28.6.2004. This

order rejects the representation of the applicant on the ground that she has been regularised and taken in general cadre of DRM/LJN. The applicant feel^{ing} aggrieved by this order, by this O.A. has sought for quashing of the orders dated 28.6.2004 (Annexure A-1) and 1.12.2003 (Annexure A-2) and also for issue of directions to the respondents to allow the applicant to continue in the accounts Department on her parent post with all consequential benefits.

2. We have heard the counsel for both the parties at length and perused the pleadings and the Departmental records submitted by the respondents.

3. For proper understanding of the issues involved in the O.A., it is necessary that certain definition which are given in the Railway Fundamental Rules are understood properly. ~~As per~~ Fundamental rule 3 sub rule 3 of the Railway Fundamental Rules defines 'Cadre' as the strength of a service or part of a service sanctioned as a separate unit. In sub rule 14 'Lien' means the title of a railway servant to hold substantively either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively. In sub rule 30 'Tenure Post' means a permanent post ~~which~~ an individual railway servant may not hold for more than a limited time. In sub rule 19 'Officiate' means a railway servan officiates in a post when he performs the duties of a post on which another person holds a lien, or when a competent

authority appoints him to officiate in a vacant post on which no other railway servant holds a lien. Rule 8 and 9 with regards to Lien are reproduced below:-

8. Lien (R.2006)(FR 12-A) Unless in any case it be otherwise provided in these rules, a railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.
9. (Rule 2007) (F.R.13) Unless his lien is suspended under Rule 2008 (FR 14) or transferred under rule 2010 (FR 14-B), a railway servant holding substantively a permanent post retains a lien on that post-
- (a) While performing the duties of that post;
 - (b) While on foreign service or holding a temporary post, or officiating in another post;
 - (c) during joining time on transfer to another post; unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;
 - (d) while on leave; and
 - (e) while under suspension.

4. We need not go into the details as to what happened before 28.10.2002, as claimed with regard to earlier orders passed regarding the provisional confirmation etc. are not being pressed by the counsel for applicant. It was on 23.10.2002 when competent authority provisionally approved regularisation of the substitute typists, applicant's services as typist, however, no appointment or posting

orders were made. A corrigendum on 29.10.2003/31.10.2003 was issued stipulating the regularisation of the services of the applicant on the post of clerk (3050-4590) pursuant to the Railway Board letter dated 14.3.96. It ~~was~~^{would}, thus, appear that services of the applicant were regularised on the post of clerk. The representation filed by the applicant was decided as following:-

"The applicant amongst others, was appointed as a substitute by DRM/LJN and posted against an existing vacancy of typist in Accounts office. The accounts cadre in a Division is distinct from the other cadres and hence it is not possible to absorb a substitute typist and provide avenues of career progression. This is so because the recruitment, prerequisites and examination for recruitment/promotion in accounts department vary widely from that of other cadres. It is for this reason that HQ (Accounts) reverted her after which she has been regularised and taken in general cadre by DRM/LJN. For the same reason, she cannot be absorbed and promoted in Accounts Cadre notwithstanding her qualifying in App 2 examination. The correct allocation of cadre to her has resulted in her transfer from Accounts Department to Engineering Deptt. as per DRM/P's order No. 1959 dated 1.12.2003. In the event there is no further action required to be taken by the Accounts Deptt. as she has been correctly assigned to the general cadre."

5. In pursuance of the above rejection, the applicant was relieved from the Accounts Division as typist, on 29.6.2004 afternoon and transfer memo-cum- Last Pay Certificate were issued.

6. From the above, it appears that the applicant continued to work as typist in the Accounts Division till she was relieved on 29.6.2004 even when the orders issued 1.12.2003 in continuation of order dated 28.10.2002 and 29.10.2003 for Pad Staphana (Appointment and Posting) in the Engineering Branch/Division against a vacant post and confer the lien in the Engineering Department on

the post of typist in the pay scale of Rs. 3050-4590.

7. The claim of the applicant is that she should continue in the Accounts Department and should have the lien in that Department. ~~Since on the~~
^{grounds that} at the time of regularisation, she was working in the Accounts division and therefore, she acquired the lien in the Accounts Department. The order dated 1.12.2003, according to the applicant, transferring her lien from Accounts Division to Engineering Division is illegal.

8. The legal position however, as stated in Rule 8 is that the Railway Servant must have a substantive appointment ~~on~~ a permanent post ^{for} acquiring a lien on that post. Here it is necessary to distinguish between the regularisation and substantive appointment. It is well settled in law that regularisation is not a mode of recruitment. Accordingly, on regularisation, the individual becomes entitle to regular scale of pay. Substantive appointment means an appointment under the relevant recruitment rules against a post in the cadre and on such a substantive appointment, a railway servant gets the lien i.e. a right to hold the post. Accordingly we find that the applicant in view of the facts stated above was substantively appointed and posted (Pad Sthapit) only in the Engineering Department against the post of clerk. She acquired the lien only on the post of Clerk in the Engineering Department. Mere regularisation and continuance on the post of typist in the Accounts Division would not give a lien to the applicant on that post.

9. In the above conspectus, it would be clear that the applicant was not holding the post of typist substantively and therefore, the question of lien on the post of typist in the Accounts Division or for that matter transfer of lien or termination of lien which did not exist, does not arise.

10. It may not be out of place to make a mention here that it appears from the Railway Board's letter dated 14.3.96 that the matter was referred to the Railway Board for considering the regularisation of six typists including the applicant as clerk and it was in compliance of the Railway Board's letter that typing proficiency test was arranged. The

As per Court order dt. 29.9.04 correction is carried out

Railway Board also specified that the regularisation would be from the prospective effect and that too on the post of ^{clerk} ~~typist~~. The applicant was regularised on ~~28.10.2003~~ ^{28.10.2002} as typist. Thereafter, on 29.10.2003, she was deemed to be regularised on the post of clerk.

4/10/04
6/10/04
DR

REGISTRAR
General Administrative Tribunal
Lucknow Bench, Lucknow.

On 1.12.2003, she was substantively appointed

in the Engineering Department. This clearly shows that the applicant after regularisation was not substantively appointed against a regular vacancy. She was allowed to continue to work in the Accounts Department. She was entitled to be considered for substantive appointment from the date of regularisation. The

applicant accordingly ^{may} move a representation, ^{if so} advised, to the respondents with regard to treating her substantive appointment on a post after regularisation. Respondents would consider the representation of the applicant, if ~~any~~ ^{such} a representation is received, to appoint the applicant substantively on ^{the} ~~the~~ post from the date of regularisation and accord her the lien

and seniority on the post accordingly.

11. With the above observation, the O.A. is disposed of with no orders as to costs.



(S.P. ARYA)
MEMBER (A)



(BHARTI RAY)
MEMBER (J)

HLS/-