

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A. No.81/86

Shri P.C.Dosi,
22, Mehr Naaz,
Cuffe Parade,
Colaba,
Bombay.400 005.

... Applicant

V/s.

1. Director of Audit,
Western Railway,
Church Gate,
Bombay.400 020.

2. Comptroller & Auditor
General of India,
Bahadur Shah Zafar Marg,
New Delhi.

... Respondents

Coram: Member(A), J.G.Rajadhyaksha,
Member(J), M.B. Mujumdar.

Appearances:

Applicant in person.

Shri Atre for
Shri P.M.Pradhan Counsel
for Respondents.

Tribunal's Order:

(Per J.G.Rajadhyaksha, Member (A))

Dated: 21.10.1986

The applicant submitted this application on the 21st March, 1986 praying for certain reliefs, which include (i) that respondent No.1 should be asked to comply with FR 14(a)(2) as it stood prior to its amendment, and provide suspended lien to the applicant, (ii) Respondent No.1 may be directed to count the period between 23rd September, 1963 to 30th October, 1983 as service in the Railway Audit Department.

By way of interim relief he prayed for issue of complimentary passes on post retirement scale for himself and his family, as per rules.

The facts leading to the dispute in brief are that the applicant joined the Audit Wing of the

Railways as a clerk in 1949 (10.11.1949). He continued to serve there until 23.9.1963, on which date he was promoted and absorbed permanently and substantively in the Indian Audits and Accounts Service. The applicant retired on 31.10.1983 while on deputation to the New India Assurance Company. It is the applicant's case that Respondent No.1 should have suspended his lien in the audit wing of the Railways and maintained it until it was officially terminated. It is also his case that he was never asked to exercise option in favour of termination of lien, nor was action taken by Respondents to terminate his lien. His representation in 1981 met with the reply that he had been substantively appointed to the I.A. & A.S. and, therefore, all his correspondence culminated in a negative reply on 17.5.1984.

The matter was heard on 6.10.1986, when the applicant appearing in person argued that there were mandatory provisions regarding suspension of lien and maintenance of suspended lien which the Western Railways had ignored. He draws our attention to Enclosure.3 of his application in which he reproduces FR.14 as it stood prior to its amendment. At page 39 of his compilation he reproduces F.R.14-A Clause 'b' which became effective on 22.4.1967 and it is, therefore, his contention that these rules regarding automatic termination of lien would apply to his lien in the IA & AS and not to the suspended lien in the Western Railway. He further points out in Enclosure.5, the rules regarding issue of post retirement complimentary passes to Railway officers on deputation until the lien is terminated. It is because his plea was rejected by the Comptroller & Auditor General that he has come to this Tribunal.

Shri Atre argues for the Respondents pointing out that there were certain well established rules and regulations in the matter of free travels available to Railway departmental employees as well as Indian Audits and Accounts Service personnel on deputation to Railway Audit Wing. Assisted by Shri M.N.Rana, Deputy Director of Audit, Western Railway, he points out that officers who complete 20 years of service in the Railway Audit Wing are entitled to these passes even after they leave the Railways; but otherwise the concessions are available only as long as IA & AS Officers are on deputation to the Railways. It is further contended that even the Director of Audit in the Railways is directly under the administrative control of the Comptroller and Auditor General. Applicant joined service as a clerk in the audit wing of Western Railway in 1949; and served there only for 14 years i.e. up to 1963. His promotion was in the same line as in the parent department and his substantive promotion to the IA & AS leads to suspension of lien in parent cadre namely the Western Railway. Therefore it is contended that applicant's lien stands terminated. It is further pointed out that since nobody can have two liens at one and the same time, the applicant who was substantively appointed into the IA & AS could not possibly have a lien both in that service and in the Audit Wing of Railways. Railway employees on deputation are covered by letter dated 20-9-1965 (Enclosure 5) cited by the applicant. It allows for concessions for 4 years and thereafter, post-retirement benefits of complimentary passes subject to certain conditions. Therefore considering all aspects the applicant has no case and the application deserves to be dismissed.

We have very carefully gone through the application and its enclosures, and we have extensively heard the applicant as mentioned above. It appears that the applicant's only grievance is that of loss of complimentary passes, and it is for this reason that he has stressed that his suspended lien continued till his retirement, i.e. the 30th October, 1983. We are unable to accept his contention that the amended FR's (Financial Rules) do not apply to his case. We are also unable to accept the plea that the old FR's permitted suspended lien indefinitely. It is true that enclosure 4 which is the extract of Government of India's O.M dated 19.6.1963 speaks of positive action for termination of lien. FR.14(A)(2) speaks of 'suspension of lien of a Government servant on a post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne'.

In his enclosure 3 (latter half) unfortunately, the applicant has not reproduced Rule FR 14A which starts by 'excepting' provisions in Clause(C) of that particular rule and Rule 97. Even if it is presumed for the time being that the Rule 14 as it stood prior to amendment did not provide for termination of lien on substantive appointment in another cadre, the result would be very anomalous. In fact rule FR 14 Clause (C) reads as follows :-

"notwithstanding anything contained in Clause (a) or (b) of this rule a government servant's lien on tenure post may in no circumstances be suspended. If he is appointed substantively to another permanent post, his

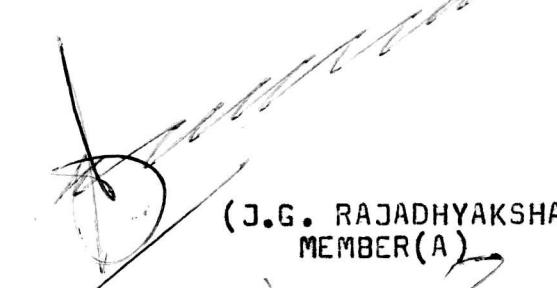
lien on the tenure post must be terminated."

When this portion is read with 14A(a) or 14A(b) it will be clear that though earlier positive action was expected on the part of Government, after the amendment Rule 14(A)(d) necessarily leads to termination of the lien of a government servant on his acquiring a lien on a permanent post elsewhere. Therefore the scheme of the rules seems to be that if a person is provisionally appointed outside his cadre his lien may be suspended, unless and until he acquires substantive appointment in the cadre to which he is transferred. If however, he is substantively appointed to another cadre, the suspension of his lien in the previous cadre should be automatic.

In the instant case admittedly applicant came to be appointed to the Audits and Accounts Service w.e.f. 23rd September, 1963, the same letter also indicates that not only is he appointed to the IA & AS but his appointment was substantive in the Time Scale of Indian Audit and Accounts Service from the date of his assumption of charge. By no stretch of imagination, therefore, can it be held that applicant continued to hold a lien or even a suspended lien in the Audit Wing of the Railways. His construction of the rules is certainly far-fetched and, therefore, not acceptable. In the result we have no alternative, but to hold that the applicant does not succeed in establishing that he held a suspended lien in the Audit Wing of Railways until his retirement. In the result the application fails and his prayers have to be rejected.

O R D E R

The application is dismissed with no order
as to costs.


(J.G. RAJADHYAKSHA)
MEMBER(A)


(M.B. MUJUMDAR)
MEMBER(J)