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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

O.A.No. 328 of 1987

DATE OF DECISION: 12-2-1990

~~xxxxxx~~

C.R.Muthyalu

Petitioner.

SHRI KSR ANJANEYULU

Advocate for the
petitioner(s)

Versus

Engineer-in-Chief, Army Headquarters,
New Delhi-11 & 2 others.

Respondent.

SHRI NARAM BHASKAR RAO, ADDL.CGSC.

Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HON'BLE MR. D.SURYA RAO, MEMBER (JUDICIAL).

1. Whether Reporters of local papers may be allowed to see the Judgment? *pro*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgment? *no*
4. Whether it needs to be circulated to other Benches of the Tribunals? *no*
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

BNT
B.N.J.
(HVC)

D
D.S.R.
(HMJ)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

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O.A.No.328 of 1987

Date of Order: 12-2-1990

Between:

C.R.Muthyalu

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Applicant -

and

1. Engineer in Chief, Army Hq.,
New Delhi-110011.

2. The Chief Engineer, M.E.S.,
Madras Zone, Madras.

3. Commander Works Engineer,
Mudfort, Secunderabad-3. ..

Respondents -

Appearance

For the Applicant : Shri KSR Anjaneyulu, Advocate.

For the Respondents : Shri Naram Bhaskar Rao,
Addl. Central Govt. Standing
Counsel.

CORAM

HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI B.N.JAYASIMHA,
VICE-CHAIRMAN)

The applicant herein is working as an L.D.C. in the office of the Commander Works Engineer, Mudfort, Secunderabad, i.e. the 3rd respondent herein. He states he was initially appointed in AOC (R), Secunderabad as L.D.C. w.e.f. March 1972 and posted at Ordinance Depot, Talegondebade (Pune). Thereafter he was posted to Artillery Centre, Hyderabad. Subsequently he was transferred to the 3rd respondents's office on compassionate grounds in the year 1982. He claims that he however retained his lien in AOC i.e. his parent department.

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2. The applicant contends that during his absence, his juniors in his parent Department i.e. AOC were promoted to the post of U.D.C. The AOC has called back the applicant for considering him for promotion to the post of U.D.C. There was protracted correspondence. On 5-6-1986 his parent department intimated that a post is kept vacant for the applicant at AOC Records, Secunderabad. Despite that, he was not relieved by C.W.E., Secunderabad, i.e. the 3rd respondent without assigning any reasons. Thereupon the applicant submitted a representation dated 28-10-1982 explaining the position and requesting to relieve him at the earliest as to revert back to his parent Department. After a protracted correspondence, his posting order for reversion back to AOC Records has been issued on 5-6-1986 by the AOC Records. Later the applicant was served with a copy of Chief Engineer, Madras Zone, letter dated 5-11-1986 under Commander Works Engineer, Mudfort, Secunderabad letter dated 20-11-1986, stating that "as per the provisions of Article 89 CSR.Vol.I, an individual employed against a permanent post can hold a lien for^a period of two years which can be extended for another one year at the discretion of the cadre controlling authority". It was further stated that in view of the above, the lien of the applicant has already expired on 23-6-1985 and he cannot be considered for reversion back to his unit". The applicant contends that the action of the Respondents is arbitrary. He states that he is holding lien in AOC and not with C.W.E., Secunderabad. The C.W.E., Secunderabad, being a borrowing department, does not have jurisdiction to terminate the applicant's lien at AOC. The applicant has not given consent for termination of his lien in the parent department and the lien was never cut off in his parent department. Therefore, he has got right to get repatriated.

3. The applicant, therefore, seeks a direction to declare the order of the 2nd respondent dated 5-11-1986 not relieving him for reversion back to his parent unit, is arbitrary and illegal.

4. On behalf of the Respondents a counter has been filed stating that the applicant's transfer to the 3rd respondent's department was against a regular temporary vacancy and the said transfer was on compassionate grounds as an inter departmental transfer and not on deputation. It is contended that his lien with his parent department was valid upto 8-2-1982 including extendable period of one year under article 89 CSR Vol.I. The applicant in the ^{parent} existing case was posted to the 3rd respondent's office from 22-7-1982 by which date itself the lien is deemed to be non-effective. It is further stated that at the time of his transfer on compassionate grounds, he gave an undertaking dated 21-9-1981 stating that he would revert back to his parent department within 2 years or otherwise he would resign from his parent department at the end of the said period. Since he willingly continued in the office of the 3rd respondent for more than 2 years, it is deemed that he resigned from his parent department. It is further contended that he has given up his right to be promoted in his parent department. It is further stated that his request on 12-7-1985 for reversion back to his parent department was rejected on the ground that he has no lien admissible to him and the stipulated period for validity of lien has expired. It is further stated that the applicant has now been appointed as a permanent LDC in the 3rd respondent's department with seniority effective from 1-4-1983. He has also been now selected for promotion as UDC in MES department. However he has not accepted the promotion order on the pretext that

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his case for reversion back to his parent department is pending with this Tribunal. It is further contended that despite his permanency and promotion as UDC in MES department and his ineligibility to continue to hold a lien with AOC Records, the applicant is still insisting over the same. Hence the Respondents prayed that the application of the applicant be dismissed.

4. Heard the learned Counsel for the applicant Shri KSR Anjaneyulu and Shri Naram Bhaskara Rao, learned Additional Central Government Standing Counsel, on behalf of Respondents.

5. In this case the counsel for the applicant relies on the letter dated 5-6-1986 from the AOC Records Office, Secunderabad, addressed to the 3rd respondent. By this letter the AOC Records Office, Secunderabad, has stated that a vacancy of Clerk has been kept reserved at AOC Records, Secunderabad, for the applicant on his reversion back to AOC, and requested to relieve the applicant from the 3rd respondent's office and direct him to report to AOC Records, Secunderabad, for duty on reversion to parent department (AOC). The only question is ^{whether} by this letter the applicant is entitled to be reverted to the parent department or whether by virtue of Art.89 CSR Vol.I, his lien is deemed to have been terminated. Article 89 CSR Vol.I reads as follows:-

" (3) A question has been raised as to the authority under which civilians employed in the Defence Services are permitted to retain a lien on their permanent appointments when released for appointment outside the Department. It has been decided that although there is no rule in the CSR corresponding to F.R.14(a), it is an accepted principle under these regulations that the lien of a Government servant may not be terminated against his will. The 'lien' means among other things, the 'right to return' to a permanent post when summoned, and it has, therefore, to be retained suspended or

To:

1. The Engineer in chief, Army Hq. New Delhi-110 011.
2. The Chief Engineer, M.E.S. Madras Zone, Madras.
3. The Commander works Engineer, Mudfort, Sec'bad-3.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, 1-1-365/A, Advocate, Bakaram, Hyderabad-500 020.
5. One copy to Mr.Naram Bhaskara Rao, Addl.CGSC, CAT, Hyd.
6. One spare copy.

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Amc
Received on 16/4/90
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active till the individual concerned acquires a lien on a permanent post elsewhere outside the cadre or till he returns to the permanent post which he was holding in a substantive capacity.

A Government servant's lien on a permanent post shall, however, stand terminated on his acquiring lien on another permanent post (whether under the Central Government or State Government) outside the cadre on which he is borne.

(G.I.M. of Defence Memo No. 25(63)58/13637/D(Appts), dated the 24th December, 1958 as amended by Memo No. 25 (II) 67/D(Appts), dated the 7th August, 1967).

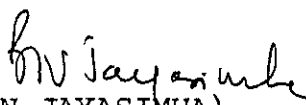
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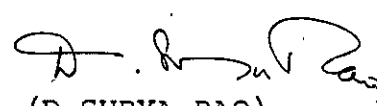
In this case it is clear that the lien of the applicant has not been suspended as evident from the letter of the AOC Records, Secunderabad, dated 5-6-1986 (Annexure 1).

Secondly, according to the instructions, the lien could not be suspended ^{without} with the consent of the employee and it ^{could} should be suspended only by the parent department.

6. In these circumstances, the application must be allowed and we accordingly do so. The applicant will be relieved by the Respondents and asked to report to his parent department. This should be done within two months from the date of receipt of this order. No order as to costs.

(Dictated in Open Court)


(B.N. JAYASIMHA)
VICE-CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDICIAL)

Date: 12-2-1990

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