

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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Date of Order : 07.08.2001

O.A.NO. 517/1994

1. Purshottam Malav, S/o Shri Nandlal, aged 34 years, R/o Village Sankhali, District Baran, now-a-days working as Head Draftsman, Railway Electrification, Kota in the office of Deputy C.S.T.E. (R.E.), Kota.
2. Rajendra Singh Bisht, S/o Shri Pan Singh, aged 28 years, R/o Chapar, District Almorah, now-a-days working as Head Draftsman, Railway Electrification, Kota in the office of Deputy C.S.T.E., (R.E.), W.R., Kota.

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.....Applicants.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. General Manager (E), W.R., Churchgate, Bombay.
3. Divisional Railway Manager, W.R., Kota Division, Kota

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.....Respondents.

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Mr. Hemant Gupta Adv.brief holder for Mr. Shiv Kumar, Counsel for the applicants.

Mr.Manish Bhandari, Counsel for the respondents.

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C O R A M :

Hon'ble Mr.A.K.Misra, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member

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PER MR.A.K.MISRA, JUDICIAL MEMBER :

The applicant had filed this O.A. with the prayer that the respondents be directed not to transfer the lien of

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the applicants from Kota Division to Jaipur and Ratlam Division respectively and the order of the respondents dated 6.10.1994 (Annex.A/1) issued in this regard, be quashed and the applicants be ordered to be retained ^{in Kota} at Kota Division.

2. The applicants had also prayed for interim relief seeking a direction to the respondents not to transfer the lien of the applicants from Kota Division to Jaipur and Ratlam Division respectively. After hearing the learned advocate for the applicants, the operation of the impugned order dated 6.10.1994 (Annex.A/1), was stayed. The stay is continuing till date.

3. Notice of the O.A. was issued to the respondents who have filed their reply to which no rejoinder was filed by the applicants.

4. We have heard the learned counsel for the parties and have gone through the case file. The facts of the case which are not in dispute can be summarised as follows :

Both the applicants were appointed as Senior Draftsman in the pay scale of Rs. 1400-2300 in July 1986 after having been duly selected by the Railway Recruitment Board. Thereafter, the applicants were promoted on the post of ~~head~~ Draftsman on ad hoc basis in the year 1990 by different orders, however, the seniority of the applicants was not fixed by the respondents. The applicants filed one O.A. in the year 1991 which was registered at No. 205 of 1991 seeking direction to the respondents that seniority of the applicants be fixed and promotions to the higher posts be given accordingly. In that case, the respondents filed

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the reply stating therein that applicants were absorbed in Kota Division but the matter of transfer of their lien was not finally decided. In that case, it was alleged by the applicants that in order to give benefits to few favoured employees, the respondents were not publishing the seniority list and few employees have been given ad hoc promotion twice on two higher posts. During the pendency of the said O.A. the impugned order which is a subject matter of challenge in this O.A. was passed by the respondents. The O.A. filed by the applicants which was registered at No. 205/1991 was decided by the Tribunal on 8.5.1995 and the respondents were directed to prepare and publish a seniority list of Senior Draftsmen in the pay scale of Rs. 1400-2300 in Kota Division within three months from the date of receipt of a copy of the order and the applicants were given opportunity to file O.A. if they were aggrieved of their placement position in the seniority list. During the pendency of the said O.A., the present O.A. was filed by the applicants against the impugned order with the prayer as mentioned above.

5. It was argued by the learned counsel for the applicants that the applicants were working in Kota Division right from their appointment and inspite of lapse of so many years their lien was not fixed in Kota Division and in order to deprive the applicants of their rightful claim of being promoted on the higher posts in the same Division the order of transferring the lien was passed malafidely and consequently, the same deserves to be quashed. On the other hand, it was argued by the learned counsel for the respondents that in the earlier O.A. the respondents had

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clearly stated that inspite of applicants working in Kota Division their lien has not been finally fixed in Kota Division, therefore, the impugned order cannot be said to be mala fide simply because the same was passed by the respondents during the pendency of the earlier O.A. It was further argued by the learned counsel for the respondents that in that O.A. the applicants had prayed for a direction against the respondents for fixing their seniority. When the impugned order was passed the applicants should have amended their O.A. incorporating appropriate relief against the impugned order now under challenge. It was further argued that in view of the order passed by the respondents transferring the lien of the applicants to Jaipur and Ratlam Division, fixation of applicants' seniority in Kota Division was out of question. Had this order been brought on record of the earlier O.A. by an appropriate amendment, the directions ~~issued~~ in that case against the respondents for fixing the seniority of the applicants on the post of Senior Draftsman, would not have *been given*. In fact, the applicants had deliberately hidden the facts relating to the impugned order while seeking decision in the earlier O.A. In view of this, the present O.A. deserves to be dismissed on the ground that the applicants have not come to the Court with clean hands.

rival arguments

6. We have given our thoughtful consideration ~~to the~~ In our opinion, an employee can have his lien in a particular seniority unit only against the sanctioned strength of the cadre and not otherwise. From the reply of the respondents given in the earlier O.A., it is clear that the question of fixing the lien of the applicants as Senior Draftsman in

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Kota Division was not finally decided. The applicants were not attributed lien in Kota Division, therefore, they cannot claim to be absorbed and adjusted in Kota Division. At the cost of repetition, we may say that employees have their lien only as against the sanctioned strength of the cadre and can claim placement accordingly in the seniority list of that Division. But, in the instant case there are no such circumstances favouring the applicants. From the impugned order, it appears that the applicants were re-allotted to different Divisions by the cadre controlling authority i.e. the General Manager of the Western Railway. The apprehension of the applicants that in the new unit, they would lose their seniority, in our opinion, is ill-founded because as per their re-allotment and fixation of lien they will have their seniority worked-out accordingly because they are being re-allotted to another Division as per the orders of the cadre controlling authority.

7. The applicants are claiming to be retained at Kota on the ground that their lien cannot be transferred to other units but, we may at the cost of repetition observe that at a particular place employees can be retained only as per the sanctioned cadre strength and not otherwise. There is nothing on record to show that while seniors are being transferred to another unit on the basis of re-allotment, the juniors are retained at Kota. Even otherwise, the applicants are being re-allotted to another unit due to administrative reasons, therefore, there is no possibility of their losing the seniority as apprehended by them. The applicants cannot claim to be retained at a particular place simply because they have been working since number of years.

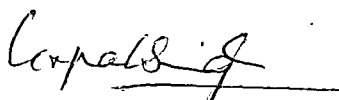
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In view of this, we do not see any merit in this case.

7. It was argued on behalf of the applicants that while they were working as Senior Draftsmen, they were given ~~ad hoc~~ promotion at Kota and now they cannot ^{be} transferred or re-allotted to any other Division but, we note that the applicants have only been given ad hoc promotion at Kota on the next higher post. Ad hoc promotion does not entitle the applicants to claim continuance at Kota, therefore, this point also does not help the applicant in the instant matter.

9. Before parting with the case, we may observe that if during the pendency of the earlier O.A. the impugned order was passed by the respondents then the correct course to be adopted by the applicants, ~~should have~~ was to get the pending O.A. amended and if on the basis of legal advice the applicants were forced to file the present O.A. then the earlier O.A. and the present O.A. should have been got heard at ~~one~~ time to avoid conflicting orders. But, the applicants' action of filing a fresh O.A. without getting it attached and decided alongwith the earlier O.A. was not fair and it can well be said that applicants have abused the process of law and they are not entitled to any relief in the instant case.

10. The O.A., in our opinion, is devoid of merit and deserves to be dismissed and is hereby dismissed with no order as to costs.


(Gopal Singh)
Adm. Member


(A.K. Misra)
Judl. Member

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