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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.551/95

Date of order: 4.4.1996

Dr.B.K.Mathur : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.R.N.Mathur : Counsel for applicant.

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member.

PER HON'BLE MR.O.P.SHAFMA, ADMINISTRATIVE MEMBER.

Applicant Dr.B.K.Mathur in this application under Sec.19 of the Administrative Tribunals Act, 1985, has prayed that the respondents may be directed to repatriate the applicant in the service of the Railways by issuing necessary orders. It appears that what the applicant means by repatriation is that he should be appointed or reappointed in the service of the Railways.

2. The facts of the case as stated by the applicant are that he was initially appointed as Asstt.Divisional Medical Officer, A Group-A post vide order dated 24.12.82 issued by the Railway Board, on the recommendation of the Union Public Service Commission (UPSC). The applicant joined duty in the Railways on 28.12.82 against a substantive and clear vacancy and he was placed on probation for a period of 2 years. While in the service of the Railways, the applicant submitted an application for appointment as Sr.Medical Officer (Surgery) in Hindustan Copper Ltd, a Public Sector Undertaking of the Govt. of India, through proper channel. On his selection in Hindustan Copper Ltd, he was offered appointment therein which he accepted and joined duty there on 31.12.83. Before joining service with Hindustan Copper Ltd, he submitted his resignation from the service of the Railways, which was accepted.

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3. Further, according to the applicant, he submitted an application on 20.12.84 to the Railways requesting that he may be taken back in the service of the Railways on the ground that his health did not permit him to continue at Khetri and for certain other reasons. On 19.6.85 he received a communication from the Ministry of Railways that his request was under consideration and he was also asked whether he was prepared to join the Railways as a fresh enterant without claiming any benefit of his past services (communication dated 19.6.85 is at Annex.A2). The applicant conveyed his acceptance with the stipulation that his last drawn salary in the Railways may be protected. (The applicant's communication dated 9.7.85 is at Annex.A3). On 3.6.86, the applicant received a communication from the Railway Board (Annex.A4) wherein it was conveyed that the UPSC had not agreed to the request of the applicant for reappointment in the Railways. On 14.6.88, the applicant made another request vide Annex.A5 praying that he may be allowed to exercise the right of his lien. It was added in this communication that the applicant was relieved from the Railway service with the approval of the competent authority. On 24.4.87, the Ministry of Railways sent a recommendation to the UPSC (Annex.A6) emphasising that Railways are in need of qualified and regularly selected Doctors like the applicant. Therefore, the UPSC may reconsider the request for reappointment of the applicant in the Railways as a fresh enterant. However, the applicant's request was finally rejected vide letter dated 9.2.89 (Annex.A7). The applicant submitted another representation praying that since his case had been referred to the UPSC, a decision may be taken in his case in consultation with the UPSC.

4. Further according to the applicant, he had also approached the Central Administrative Tribunal, Jodhpur Bench, by filing an O.A No.73/89 which was however rejected on

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23.4.91 as being time barred. The applicant's Special Leave Petition before the Hon'ble Supreme Court against the said decision of the Tribunal was also rejected. There was no decision on merits by the Tribunal and therefore, the Hon'ble Supreme Court also did not consider the applicant's case on merits. The applicant submitted yet another representation to the Ministry of Railways and the Ministry accordingly made fresh offer to the applicant vide letter dated 6.4.93, wherein it was stated that if the applicant is ready to forgo the benefits of past service and if he accepts appointment as Asstt.Divisional Medical Officer in one of the Sonal Railways, his case would be referred to the UPSC (Communication dated 6.4.93 is at Annex.A8). On 30.5.93 (Annex.A9), the applicant sent a letter to the Railways stating that he was a permanent employee of the Railways on the eve of his leaving the service to join Hindustan Copper Ltd, his application for transfer was forwarded through proper channel and he had submitted a formal resignation on technical necessity as none can serve two masters. He had a lien in the parent department for at least two years, if not more. He, therefore, declined to give undertakings at Sl.No.I to II of the column dated 6.4.93 (Annex.A9), as sought by the Railways. The conditions stipulated in the Railway Board's communication were that he would have to forgo the benefit of past service and accept appointment as a fresh appointee and will also have to accept seniority amongst the Asstt.Divisional Medical Officer who had last joined the Railways. He prayed that a favourable decision should be taken in his case. However, vide communication dated 8.10.93 (Annex.A10) the Railways rejected the request of the applicant. The applicant made a fresh representation dated 24.12.93 (Annex.A11). This representation was rejected vide communication dated 8.9.94 wherein it has been stated that his

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request for rejoining the Railways cannot be agreed to as he had resigned from Railways in 1983 while he was still on probation, which resignation was accepted in 1983 itself. The applicant's grievance is that his case has not been considered on merit in a proper manner. His case has now been finally rejected, for wrong reasons. He was appointed against a substantive vacancy on a substantive post after regular selection and therefore, he had a lien on the post. Lien, according to him, has been defined in para 239 of the Indian Railway Establishment Code, Vol. I, V Edition, as follows:

"Lien: Unless in any case it is otherwise provided in these rules, a railway servant on substantive appointment to another permanent post acquires a lien on that post and ceases to hold any lien provisionally acquired for any other post." Further, according to para 242 of the Code,

"The railway servants lien can not be terminated even with his consent if the result will be to leave him without a lien or suspended lien upon a permanent post. The lien of railway servant stands terminated on acquiring a lien on permanent post outside the cadre on which he is borne."

Since the applicant had submitted an application for rejoining the Railways within one year and had not been confirmed in Hindustan Copper Ltd, his right to lien in the Railway service continued. The applicant has also given the definition of the expression 'probationer' as prescribed in the Indian Railway Establishment Code. The Railways had agreed to accept him back in service when the applicant exercised his right of lien but a condition was attached that he will have to forgo past service. There was no need to consult the UPSC when the applicant had a lien with the Railways and he exercised his right to retain his lien. The UPSC has not given any reason as to why it has not agreed to the recommendations of the

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Railways regarding his being taken back in service. The UPSC is required to be consulted only when a gazetted officer suffers a major penalty after a disciplinary proceedings are held but in other matters, the UPSC is not required to be consulted.

5. The learned counsel for the applicant, arguing the case for admission, stated that when the applicant tendered his resignation to join the service of the Hindustan Copper Ltd, he had retained his lien with the Railways. Even if the applicant was a probationer when he tendered resignation from the service of the Railways, even then he was entitled to retain his lien atleast for a period of 2 years in terms of the definition of the expression 'lien' as incorporated in the Indian Railway Establishment Code Vol.I. Therefore, when after tendering his resignation from Railways on 31.12.83 to join Hindustan Copper Ltd, he applied on 20.12.84 to rejoin the service of the Railways, he was entitled to be taken back in service in the Railways. He added that retention of lien in the Railways, in view of the definition of the expression 'lien' was unconditional and therefore, he could exercise his right to come back to the Railways within a period of 2 years from the date of resignation, if he so chose. As regards the earlier O.A filed by the applicant before the Jodhpur Bench of the Tribunal, since it was dismissed as time barred and there was no decision on merits, the applicant was entitled to file a fresh O.A on the subject as reasons have now been disclosed to the applicant why his prayer was not being accepted by the Railways. The reasons have now been disclosed vide Annx.Al dated 8.9.94 which has been now impugned by the applicant.

6. We have heard the learned counsel for the applicant and have gone through the material on record and have also checked up the Rules cited by him. The applicant has not shown

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us what prayers were made in the earlier O.A filed before the Jodhpur Bench of the Tribunal and what was the exact order passed by the Tribunal. It can however be assumed that in the earlier O.A also the applicant would have prayed for his being taken back into the service of the Railways or his repatriation to the Railway service, as he would have called it. In the present application also the prayer of the applicant is that the respondents i.e. the Union of India, the Railway Board, the Union Public Service Commission, etc. may be directed to 'repatriate' the applicant in the service of the Railways by issuing necessary orders. Thus, basically, the prayer of the applicant in the earlier O.A and in the present O.A would be the same. Therefore, once the earlier application has been rejected as time barred, the applicant would not be entitled to file a fresh application assailing any subsequent communications issued by the Railway Board giving reasons why the prayer of the applicant for reappointment in the Railway service has not been accepted. Thus, as a matter of fact, this fresh application is not maintainable. However, still we have considered the present application on merits.

7. The applicant's almost entire case is built around the definition of the expression 'lien' incorporated in the Indian Railway Establishment Code Vol.I and other provisions related thereto. The definition of 'lien' and the provisions of paras 239 and 242 of the Indian Railway Establishment Code relied upon by the applicant are not in dispute. Point however is that the applicant tendered his resignation from the Railway service on 31.12.83 to join Hindustan Copper Ltd. On tendering his resignation, the applicant ceased to be a Railway employee and therefore, a government servant. The provisions relating to lien are applicable to a Railway servant. That is to say a person who continues to be a Railway

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servant but has been given an appointment to another permanent post or holds another post outside his own cadre. The presupposition therefore is that for a person to retain lien in the Railway service he should not have tendered his resignation from employment of the Railways. A government servant can retain lien in a government post only as long as he remains in government service. This is not merely a matter of commonsense but is also implied in the provisions of paras 329 of the Indian Railway Establishment Code and 242 of the Indian Railway Establishment Code quoted by the applicant himself in the O.A. On tendering resignation, the relationship of a Railway servant with the Railways would be snapped. It is not the applicant's case that he went on another post in the Railways or Govt. of India while holding the post of ADMO whether on probation or otherwise. He in fact resigned from his post and therefore ceased to be a Railway employee and hence he had no right to lien on the post held by him in the Railways.

8. The learned counsel for the applicant has stated that the reasons given in Anxx.A1 dated 8.9.94 issued by the Railway Board are not tenable. These are that the applicant's request for appointment or reappointment in the Railways cannot be agreed to because he had resigned from the Railways in 1983 when he was still on probation. The learned counsel for the applicant stated that his resigning the Railway service while on probation would not make any difference to his claim for being taken back in the Railway service. We are not concerned with all the reasons given in Anxx.A1 and we do not pronounce upon the correctness or otherwise of the reasons given in Anxx.A1. However, fact remains that the applicant had resigned from the Railway service before joining Hindustan Copper Ltd, and this fact of resignation itself is sufficient

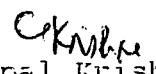
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to warrant a conclusion that he could not retain a lien in his original post in the Railways.

9. For all the above reasons, we are of the view that there is no merit in this application. It is, therefore, dismissed at the stage of admission.


(O.P. Sharma)

Member (Adm.)


(Gopal Krishna)

Vice Chairman.