

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**ORDERS OF THE BENCH**

**Date of Order: 25.03.2014**

OA No. 874/2012

None present for applicant.

Mr. Anupam Agarwal, counsel for respondents.

At the request of learned counsel for the respondents,  
put up the matter on 27.03.2014 for hearing. I.R. to  
continue till the next date.

*Anil Kumar*  
(ANIL KUMAR)  
ADMINISTRATIVE MEMBER

Kumawat

27/03/2014

OA No. 874/2012

Mr. Sajid Ali, counsel for applicant.  
Mr. Anupam Agarwal, counsel for respondents

Heard learned counsel for  
the parties.

Order is reserved.

*Anil Kumar*  
[Anil Kumar]  
Member (A)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH  
JAIPUR**

**Order reserved on 27.03.2014**

**Date of Order: 4.04.2014**

**ORIGINAL APPLICATION NO. 874/2012**

**CORAM**

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Bhagchand Sharma son of Shri Moolchand Sharma aged about 39 years, resident of Quarter No.A-2, Railway Loco Colony, Jaipur presently posted as Khallasi in P.C.E. Office, N.W.R., Jaipur.

.....Applicant

(By Advocate Shri Sajid Ali)

**VERSUS**

1. Union of India, through General Manager, North Western Railway, H.Q. Jawahar Circle, Jaipur
2. The General Manager,(Personnel), North Western Railway, H.Q. Jawahar Circle, Jaipur
3. The Divisional Railway Manager, Secunderabad, South Central Railway, Personnel Branch, 4<sup>th</sup> Floor, Sanchalan Bhawan, Secunderabad.

.....Respondents

(By Advocate Shri Anupam Agrawal)

**ORDER (ORAL)**

The applicant has filed present Original Application praying for the following reliefs:-

"(i) This O.A. may kindly be allowed and both the communications dated 19.09.2012 (Annexure-A/1&2), 10.10.2012 (Annexure-A/3 & 4) and order dated 11.12.2012 (Annexure-A/5) may kindly be quashed and set aside and the act of respondents to repatriate the applicant to South Central Railway, Secunderabad may be declared illegal and same may be quashed and set aside.

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(ii) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

(iii) Cost of this Original Application may kindly be awarded in favour of the applicant."

2. The brief facts of the case as stated by the learned counsel for the applicant are that applicant was initially appointed as substitute Khallasi T.R.S. Organisation in the South Central Railway. In the year 1996 looking to the formation of new Railway Zones, a circular was issued on 6.12.1996, by which provision was made to call for the options from the staff to serve in the Headquarter of the new Railway zone and to determine the seniority of the staff on transfer to new Zones.

3. The learned counsel for the applicant further submitted that in clause 6 of the aforesaid circular it was mentioned that cadre in the Headquarter Office of the new Zonal Railway will remain open till the date of the new Zonal Railway becoming operational and till then the staff transferred thereto will continue to progress in their original cadre.

4. In pursuance to this circular, applicant was also transferred on option basis from South Central Railway to North Western Railway on the post of Khallasi vide Order dated 07.04.1997(Annexure-A/8). The applicant joined at N.W.R.,

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Jaipur on 11.04.1997. To accommodate the applicant, the pay scale of work-charged Khallasi of Rs.775-1025 was down graded. The applicant was posted on the same pay and post which he was holding in his parent department. This order dated 01.05.1997 also speaks that it was a transfer on option basis (Annexure-A/9).

5. That the new Zone i.e. North Western Railway, Jaipur became operational in the year 2003 and cadre in the Headquarter office was closed on 31.10.2003. After cadre closure no transfer to parent department is permissible, as with the cadre closure the applicant is confirmed in the N.W.R., Jaipur. Therefore, prior to 31.10.2003 the applicant's lien was maintained in its parent department i.e. S.C.R., Secunderabad and 01.11.2003 onwards lien of the applicant lies with N.W.R., Jaipur. The Railway Board has issued orders in regard to cadre closure i.e. orders dated 26.03.2003 and 30.10.2003.

6. That after transfer of the applicant to N.W.R., Jaipur, the junior employees holding similar post of Electrical Khallasi in the South Central Railway were given promotion to the post of Electric Fitter SK-III in the scale of Rs.3050-4590 vide order dated 17.12.1999 (Annexure-A/11). In the aforesaid list, name of the applicant was not there, nor was he called for Trade Test. Therefore, he submitted representation raising his grievance

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with the N.W.R. The South Central Railway, Secunderabad issued an order dated 01.04.2002 to N.W.R., Jaipur to consider the applicant for promotion to the post of Artisan SK-III w.e.f. 28.12.1999 on proforma basis after passing Trade Test (Annexure-A/14). In terms of this order the applicant was allowed to appear in the Trade Test conducted on 13.07.2002. The applicant qualified in the Trade Test. Even then the applicant was not promoted to the post of Artisan SK-III. Thereafter the cadre was closed in the year 2003. After cadre closure the applicant was again called for appearing in Trade Test for the post of Electric Fitter by T.M.C. (Track Machine) Department and the report of Trade Test was issued on 29.06.2004. Thus the applicant's Trade Test was conducted twice, once before the cadre closure and second time after cadre closure. Even then the applicant was not promoted.

7. Subsequently, a seniority list dated 08.04.2005 of Group -D employees issued wherein the applicant was also shown in the seniority list of peon. Surprised with the seniority list, applicant immediately filed a representation against the seniority list. The applicant was informed that his case of promotion will be considered as per the seniority list of peon vide letter dated 17.11.2005 (Annexure-A/19).

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8. The learned counsel for the applicant submitted that aggrieved with the communication dated 17.11.2005 the applicant preferred OA No.269/2006 before the Hon'ble Tribunal which was disposed off with liberty to file substantive O.A. vide order dated 06.04.2010. Thereafter applicant preferred fresh O.A. No.399/2010. The Hon'ble Tribunal allowed the O.A.No.399/2010 vide its order dated 02.08.2012, and respondents were directed to promote the applicant to the post of Artisan SK-III in the scale of Rs.3050-4590 w.e.f. 28.12.1999 and further directions were issued to undertake the exercise to promote the applicant to the post of Artisan SK-III on proforma basis expeditiously but not later than 4 months from the date of passing of the order (Annexure-A/20).

9. The learned counsel for the applicant submitted that respondent No.2 misinterpreted the order passed by the Hon'ble Tribunal and asked the applicant vide letter dated 19.09.2012 to go back to S.C.R. for getting promotion or to hold the post of peon in N.W.R. The respondent No.2 has wrongly contended the issue relating to non-availability of post of Skill Grade-III in the Headquarter. There was no question to opt for the post of Skill Grade-III at the time of his transfer to N.W.R. At the time of transfer to N.W.R. , applicant was holding the post of Electric Khallasi and he was posted in N.W.R. on the post of Khallasi at the same pay scale and post. The cadre in the N.W.R. has

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already been closed in 2003 and, therefore, now no lien is pending with S.C.R. 2003 onward S.C.R. is not the parent department of the applicant. It is illegal and beyond the rule position to contend that for availing promotion applicant has to repatriate to S.C.R. Similarly, it is wrong on the part of respondent No.2 to state that if applicant does not want to go to S.C.R. then he has to hold the post of peon.

10. The learned counsel for applicant argued that in compliance of the order of the Tribunal the applicant is entitled to be promoted in N.W.R., Jaipur itself.

11. The learned counsel submitted that respondents filed a review application No.23/2012 before the Hon'ble Tribunal against the order of the Tribunal dated 02.08.2012 passed in O.A.No.399/2010. This review application was dismissed vide order dated 30.11.2012 (Annexure-A/22). The respondents have not filed any writ petition before the Hon'ble High Court, therefore, the order of CAT , Jaipur Bench in OA No.399/2010 (supra) has attained finality.

12. The applicant further submitted his representation dated 17.12.2012 to the respondent No.2 praying for his promotion in N.W.R. He has also given his consent to be posted in Jaipur

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Division where post of Artisan SK-III is available. He has also made a request to post him in T.M.C. Department.

13. The applicant has received a copy of order dated 11.12.2012 on 19.12.2012 through post, issued by the respondent No.3 to respondent No.2, by which instruction have been given to relieve the applicant so that he may be promoted to the post of Skill Grade-III in S.C.R., Secunderabad. This order is very surprising as the same has been issued in gross violation of law and Railway department orders. Such transfer is impermissible, as the cadre has already closed in the year 2003 and after cadre closure no employee of the one Zone can be transferred to another Zone, saying it to be parent department. S.C. R., Secunderabad is no more parent department of the applicant and even no lien of the applicant is maintained after 2003 in the S.C.R. Applicant's name does not find place in any of the seniority list in S.C.R.

14. Being aggrieved by this action of respondents the applicant has filed present O.A.

15. The respondent No.3 has filed reply. According to the statement made by the learned counsel for respondents on 5.12.2013 the reply filed by respondent No.3 is adopted by respondents No.1 & 2. In the reply the respondents have stated

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that the applicant was engaged as substitute Khallasi in the pay scale of Rs.750-940 (a Group-D post) with S.C.R. vide order dated 10.06.1996. Subsequently he was regularized as Khallasi in the pay scale of Rs.750-940 vide order dated 15.01.1997.

16. Subsequently, the applicant requested for inter railway transfer to North West Railway on bottom seniority basis. The applicant was transferred to North West Railway on the same pay and scale on bottom seniority at his own request with certain conditions.

17. Pursuance to the above orders, the applicant joined the North Western Railway on 11.04.1997 and as per the conditions of his transfer order dated 07.04.1997 the applicant severed his connections with the parent railway i.e. South Central Railway.

18. The respondents have denied that the transfer of the applicant from S.C.R. to N.W.R. was on option basis. The learned counsel for the respondents submitted that it can be seen from the employee's application enclosed as Annexure-R/III that he had requested for transfer to N.W.R. on bottom seniority. He further requested in his application dated 28.03.1997 that he was willing to join even as Peon in Engineering, Operating or Commercial Departments. Thus it is clear that the applicant's transfer to N.W.R., Jaipur was on the

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terms and conditions governing "inter railway request transfer" and not on "option" as is being contended by him in the present Original Application. Therefore, any rule that is intended, to protect the seniority of any optee joining a New zonal Railway on option is thus not applicable to him.

19. The rights of transferred employees are detailed in Indian Railway Establishment Code Vol.I in the form of "Lien". The concept of lien has been defined in chapter 2 of this Establishment Code. The relevant paras explaining the concept of the lien and relevant to the present O.A. are incorporated below:-

"228. **Retention of lien on transfer:** The lien of a permanent staff transferred to another railway will be retained by the transferring railway till he is finally absorbed on the other railway.

229. **Transfer on Request:** Transfers ordered in the interest of employees shall be within the same seniority group, or different group or a mutual exchange. If such transfers are within the same seniority group under the same railway the seniority is not affected but if the transfers are inter divisional or outside the seniority group, the railway Ministry's decision below rule 226 for inter railway transfers shall apply."

**Railway Ministry's Decision:** "Requests from railway servants in Group-C & D for transfer from one railway to another on grounds of special cases of hardships may be considered favourably by the railway administration. Such staff transferred at their request from one railway to another shall be placed below all existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment, irrespective of date of confirmation or length of officiating service of the transferred employees.

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(Railway Ministry's letter No.E.55SR/6/6/3 dated 19<sup>th</sup> May, 1955)

20. The respondents have further stated that on joining N.W.R., he was provided with a lien in N.W.R. in the category of peon w.e.f. 15.01.1997 (Annexure R-VI). Thus he ceased his connection with the old seniority unit from that day. On his acquiring regular status in the new unit, he can only aspire to progress in the new unit.

21. The respondents have admitted that it was a blunder on their part to ask the N.W.R. to conduct the Trade Test but could not promote the applicant for the reasons that the avenue for promotion were not available to the applicant. The applicant was communicated the decision of North Western Railway vide order dated 17.11.2005.

22. The applicant vide OA No.399/2010 made a prayer that a direction be issued to the respondents to promote the applicant in Group-C post in the pay scale Rs.3050-4590 w.e.f. 28.12.1999 with all consequential benefits. The Hon'ble Tribunal vide its order dated 02.08.2012 directed the respondents to consider the case of the applicant for promotion to the post of Artisan Skilled in the scale of Rs. 3050-4590 w.e.f. 28.12.1999. As the direction of the Hon'ble Tribunal was to consider promotion of applicant in South Central Railway in all

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humbleness to implement the orders of Hon'ble Tribunal, the respondents vide proceedings dated 11.12.2012 (Annexure-R-VII) have asked North Western Railway to relieve the employee to South Central Railway so that he can be promoted to the post of Artisan SK-III to implement Hon'ble Tribunal's directives. However, the applicant filed the present OA before the Tribunal requesting for extending the promotion in the new unit. The applicant's request is to be viewed as highly impractical for the reason that to have the promotion effected as per his request, notwithstanding its inadmissibility as explained in detail, his joining the unit at which the post is available is necessary. He can not expect the promotion in his new seniority unit on the basis of his request and the orders of Hon'ble Tribunal were related to comparing the seniority position with his erstwhile juniors at Electric Loco Shed, Lallaguda, Secunderabad. His present request to continue at North Western Railway, Jaipur with the promotion that accrue to him primarily on his comparing the position with erstwhile juniors in the old unit against the post available in the old unit, progressing further in the new unit is not only highly imaginative/impractical, but also directed at giving a go by to all rules, regulations, established procedures.

23. The learned counsel for respondents argued that the O.A. being devoid of merit it should be dismissed with cost.

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24. The applicant has also filed the rejoinder.

25. Heard the learned counsels for parties and perused the documents on record.

26. The main controversy in this case is regarding the date of lien of the applicant. In para 8 of the reply by respondents it has been stated that on joining North Western Railway the applicant was provided with a lien in North Western Railway in the category of peon w.e.f. 15.1.1997(Annexure R-VI). The applicant thus ceased his connection with the old seniority unit from that date. On his acquiring regular status in the new unit, he can only aspire to progress in the new unit. On the other hand the learned counsel for the applicant argued that applicant was having lien with S.C.R. till the cadre was closed in N.W.R. In N.W.R. the cadre was closed on 31.10.2003, therefore, his promotion to the post of Skill Grade III from the date on which his juniors were promoted should be given by the S.C.R. and its consequential benefits would be available to the applicant in N.W.R. He further submitted that even according to Rule 228 of Indian Railway Establishment Code Volume-I which has been quoted by the respondents in their reply provides that "lien of a permanent staff transferred to another railway will be retained

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by the transferring railway till he is finally absorbed on the other railway."

27. Even according to this rule the applicant's lien was with S.C.R. till the closure of cadre in N.W.R. On his joining N.W.R. even on transfer basis there was no order by N.W.R. regarding absorption in N.W.R. prior to closure of cadre on 31.10.2003.

28. The respondents have stated that the applicant's lien was conferred on 15.1.1997 by N.W.R. vide Annexure R-VI. I have carefully perused Annexure R-VI. It is seniority list of peon cadre. In this list the date 15.01.97 is shown as the date of working in present grade on regular basis. From the perusal of pleadings it is clear that the applicant was transferred to NWR vide order dated 7.4.1997 and applicant joined at NWR, Jaipur on 11.4.1997. NWR issued posting orders on 1.5.1997. Therefore, when there was not even transfer order of applicant from SCR to NWR, Jaipur on 15.1.1997, then how can applicant have lien at NWR, Jaipur w.e.f. 15.1.1997. Therefore, the contention of the respondents that the applicant's lien with NWR was w.e.f. 15.1.1997 can not be accepted.

29. The learned counsel for the applicant also submitted that the question of lien has already been decided by this Bench vide

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its order dated 02.08.2012 in OA No.399/2010, therefore, respondents can not raise the issue of lien again.

30. I have carefully perused the order of this Bench passed in OA No.399/2010 dated 02.08.2012 in Bhagchand Sharma Vs. Union of India. Para 10 of the order is quoted below:-

"10. Having considered the rival submissions of the respective parties and upon careful perusal of the relevant provisions as well as the material available on record, we are satisfied with the submissions made on behalf of the applicant that at the relevant point of time when the applicant was transferred to NWR, his lien was maintained at SCR and case of promotion of the applicant ought to have been considered for the post of Artisan SK-III in the scale of Rs.3050-4590 w.e.f. 29.12.1999, the date on which his immediate junior was promoted, which is also admitted by the SCR vide letter dated 1.4.2002 issued by the Sr.DPO, SCR that the applicant's case deserves to be considered for promotion. Although after a lapse of about more than 9 years, the aforesaid letter has been withdrawn, which is of no consequence because at the relevant point of time the applicant was entitled to be considered for promotion and that too by the SCR."

Thus the question of lien has already been decided by this Tribunal and it has been held that at the relevant point of time when the applicant was transferred to NWR, his lien was maintained at SCR and the case of promotion of the applicant ought to have been considered for the post of Artisan SK-III in the scale of Rs.3050-4590 w.e.f. 29.12.1999 the date on which his immediate junior was promoted.

31. The learned counsel for the applicant has also argued that there is no rule under which now applicant can be transferred from NWR to SCR, therefore, the respondents plea that if he wants to get the promotion to Skill Grade III then the applicant has to go back to his parent railway i.e. SCR, Secunderabad is

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not in accordance with rules. The learned counsel for the respondents could not show any rule or instruction of the railway under which now applicant can be directed to go back to SCR for getting the benefit of his promotion for the period when his lien was with SCR.

32. This Tribunal has already held vide its order dated 2.8.2012 in OA No.399/2010 that at the relevant point of time the applicant had the lien with SCR. Against this order Review Petition was filed by the respondents which was dismissed. According to the learned counsel for the applicant no writ petition has been filed by the respondents against this order of the Tribunal before the Hon'ble High Court, therefore, it has attained finality. The learned counsel for the respondents neither in their written reply nor during the course of arguments could state that the order of this Tribunal in OA No.399/2010 has been challenged before the Hon'ble High Court at Jaipur. Therefore, I am in agreement with the contention of the learned counsel for the applicant that the order passed by this Tribunal in OA No.399/2010 has attained the finality.

33. That being so I am of the opinion that the applicant is entitled for his proforma promotion to the post of Artisan SK-III in the scale of Rs.3050-4590 w.e.f. 29.12.1999 as if he would have been promoted in SCR from that date i.e. 29.12.1999 the

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date on which his junior in SCR was promoted as he had the lien in SCR on that date and consequential benefits would follow as per rules. It is made clear that the applicant would not be entitled for the actual salary for that period as he has not worked on that post. The NWR is at liberty to accommodate the applicant either at the Headquarter of NWR or if there is no post at the Headquarter then the applicant may be considered for his posting in Jaipur Division if the vacancy is available there or in T.M.C. Department of the Headquarter. This exercise shall be completed within a period three months by the respondents. The applicant will not be asked to go back to SCR for getting his promotion.

34. Thus with these directions the OA is disposed off with no order as to cost.

*Anil Kumar*  
(ANIL KUMAR)  
ADMINISTRATIVE MEMBER