

Paresh Chandra Nandi

Vs

Controller of Stores, N. F. Railway, Pandu and Others

Civil Appeal No. 191 of 1967

(J. M. Shelat, C. A. Vaidialingam, P. Jagmohan Reddy JJ)

07.12.1970

JUDGMENT

SHELAT, J. -

1. This appeal is founded on a certificate granted by the High Court of Assam and Nagaland against its order of dismissal of the writ petition filed by the appellant.
2. The appellant joined service in the North-East Frontier Railway as a Depot clerk in 1942 and was confirmed and made permanent in that pose on August 15, 1947. He was promoted to the post a Ward Keeper on June, 4, 1949 in the Depot Wing of the Controller of Stores.
3. During the last World War, the said Railway organised temporarily a Food Supply Organization wherein a number of person, including respondents 4 to 8, were appointed. Respondent 4 was appointed as a salesman in the said organisation in 1944 and was confirmed with effect from August 15, 1947 under the Deputy Traffic Superintendent, Lumding. Respondent 5 was appointed a clerk in 1943 and was confirmed in the Head Office Wing of the Controller of Stores Department in 1944. Respondent 6 was appointed in 1943 and was confirmed in his post under the Depute Traffic Superintendent, Lumding with effect from August 15, 1947. Respondent 7 was appointed first as a salesman in 1943, and then as a clerk in 1944 in that organisation and was confirmed with effect from August 15, 1947. Respondent 8 was appointed a Ward Keeper in 1943 and was confirmed as ticket-collector under the Deputy Traffic Superintendent, Lumding with effect from August 15, 1947. Thus, both the appellant and respondents 4 to 8 were confirmed in their respective posts on the same day, i.e., August 15, 1947.
4. On termination of the war, the Food Supply Organisation was wound up. The Railway, Board, there on, decided that the temporary staff employed in that organisation should be absorbed in the other departments and should be confirmed in the same manner as the temporary staff initially recruited in the other departments. With a view to implement this policy directions were issued to keep unfilled 10 per cent. of the vacancies in permanent posts and accommodate in such vacancies the staff of the said organisation. Accordingly, the members of the staff of the said organisation were gradually absorbed in the various departments. In January 1951, the then Chief Administrative Officer issued a list showing the absorption of the staff of the said organisation against the 10 per cent. reservation in the permanent posts in the different departments and their confirmation in such posts. Respondents 4 to 7 were shown in the said list in the category and scale of TYC/55-130 and respondent 8 as ticket collector with effect from August 15, 1947 and were allotted to the office of the Deputy Traffic Superintendent, Lumding. They, therefore, acquired their lien on the respective posts assigned to them and declared against their names in the said list.

5. The Controller of Stores, by Memorandum, dated May 26, 1960, transferred the lien of respondents 4 to 8 to the Stores Department wherein the appellant, as aforesaid, was a permanent time-keeper, from the respective posts to which they were assigned with effect from August 15, 1947 against the posts of Depot-Clerks. The Memorandum also declared that the seniority of respondents 4 to 8 should be given effect to as from August 15, 1947 in the Stores Department.

6. The grievance of the appellant was that by bringing in respondents 4 to 8 in the Stores Department and transferring their line in the Stores Department and calculating their seniority with effect from August 15, 1947, his chances for promotion were materially affected. His case was that the two wings, namely, the Depot Wing and the Head Office Wing, being separate and having separate cadres, and respondents 4 to 7 having been absorbed as permanent employees in the Head Office Wing with effect from August 15, 1947, their liens could not be validly transferred. This was particularly so, as, according to him, there were no permanent vacancies in the Stores Department over which their liens could be transferred. According to him, therefore, the transfer effected under the said memorandum was valid and inoperative.

7. Having unsuccessfully exhausted his departmental remedies through representations, the appellant filed the writ petition in the High Court challenging the validity of the said memorandum and, as aforesaid, the High Court dismissed the writ petition. Hence this appeal.

8. In our view, the High Court rightly rejected the appellant's challenge to the validity of the said memorandum as he was not able to show that the said memorandum was in any manner contrary to the statutory rules governing the employment of the railway employees.

9. Rules 2003 of the Railway Fundamental Rules defined in Clauses 3 and 14 the terms 'cadre' and 'lien'. 'Lien', as defined in Clause 14 means the title of a railway employee to hold substantively a permanent post to which he has been permanently appointed. According to this definition, therefore, the appellant and respondents 4 to 8 were entitled to, with effect from August 15, 1947 (when all of them were made permanent), a lien on the respective posts to which, as from that day, they were confirmed and made permanent. So far as respondent 4 to 8 were concerned, this was done, as explained earlier, as a result of the closure of the Food Supply Organisation which necessitated the absorption of those employed therein during the War period in the different departments of the railways in Assam. Accordingly, the authorities had published the said list in 1951 showing how and where the absorbed staff was fixed up in accordance with the reservation of 10 per cent. vacancies in the various departments.

10. The question is, could the railway authorities, under the rules, transfer or not any one or more of the said staff so absorbed from the posts where they were allotted to any other department or departments where such transfer or transfers became administratively necessary. We may note that the transfer of lien enjoyed by respondents 4 to 8 in the Head Office was not a mere paper transfer, for, respondents 4 to 8 were actually transferred from the Head Office Wing to the Stores Department. Since they were permanent employees, enjoying liens in their respective posts to which they were confirmed since August 15, 1947, ordinarily their conditions of service, e.g., salary and seniority, could not be affected to their prejudice as a result of their transfer to any other department or wing. Once, therefore, they were transferred from one permanent post to another permanent post they would be entitled to hold substantively the permanent posts to which they were transferred bringing along with them the seniority which they had in the posts from which they were transferred. If that were not so, the result of a transfer from one post to another would mean that a transferred employee would have to start de novo, from a scratch and would consequently stand last

in the department to which he is transferred. In actual practice, therefore, no transfer can be effected from one department to another without materially affecting the chances of promotion of such an employee. As we shall presently show, the rules do not contemplate such a position.

11. Rule 2007 provides that unless the lien of a permanent employee is suspended under Rule 2008 or transferred under Rule 2010, a railway servant holding substantively a permanent post retains a lien on that post while performing the duties of that post, or while on foreign service or holding a temporary post or officiating in another post, or during joining time or transfer to another post, or while on leave, or lastly, while on suspension. Under Rule 2010, the power to transfer lien is confined to any other permanent post in the same cadre. But Rule 2010 is subject to the provisions of Rule 2011 which confers power to transfer a railway servant from one post to another post. Rule 2011 reads as follows :

"Transfer of Railway servant :

(a) A competent authority may transfer a railway servant from one post to another; provided that, except -

(1) on account of inefficiency or misbehavior; or

(2) on his written request, a railway servant shall not be transferred substantively to, or, except in a case covered by Rule 2038, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien and his lien had not been suspended under Rule 2008."

Thus, the only limitation to the power conferred on the competent authority to transfer a railway servant from one post to another is that such transfer cannot be to a post carrying less pay than the pay of the post on which the transferred employee had a lien.

12. Two things are thus clear, (1) that the competent authority has the power to transfer a railway employee even though he holds a permanent post from one such post to another under Rule 2011, and (2) that once such an employee is transferred from one permanent post to another permanent post, he is entitled to a lien in respect of that other post to which he is permanently posted as a result of the transfer. This is the effect of Rule 2007. That being so, the appellant could not possibly contend that the transfers of respondents 4 to 8 to the Stores Department were contrary to the Fundamental Rules or that the transfer of their liens from the posts to which they were posted in 1947 to the posts in the Stores Department was in any manner contrary to the rules.

13. The other point raised by the appellant was also without substance as he failed to show before the High Court that these transfers were made without there being vacancies in the respective posts to which respondents 4 to 8 were transferred. That being the position, the High Court was right in dismissing the appellant's writ petition.

14. The appellant must consequently fail and is dismissed, but in the circumstances of the case there will be no order as to costs.

</html