

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**CWP No.26258 of 2015
Date of decision: 17.12.2015**

Sanjeev Chauhan

.....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Rohit Ahuja, Advocate for petitioner.

DARSHAN SINGH J.

The present civil writ petition has been preferred under Articles 226/227 of the Constitution of India with a prayer to issue a writ in the nature of certiorari quashing the order dated 24.09.2014 passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'Tribunal'), vide which the Original Application moved by the petitioner has been dismissed. It has been further prayed that the order dated 13.08.2013 (Annexure A/1) and 28.09.2006 (Annexure A/2) passed by respondent No.2 be quashed and a direction be issued to the respondent to accept the request of the petitioner for reversion to his parent department with all consequential

benefits.

2. Petitioner Sanjeev Chauhan, while working as Senior Technical Assistant 'B' with respondent No.2, submitted an application for the post of Junior Engineer with respondent No.3 (Municipal Corporation, Chandigarh) on 30.05.2005. The said application was duly forwarded by respondent No.2. The petitioner was appointed as Junior Engineer by respondent No.3 vide appointment letter dated 07.02.2006. The petitioner submitted the technical resignation dated 15.02.2006 and he was relieved to join the new assignment w.e.f. 06.03.2006 with the benefit of counting his past service for pension in the new department under Rule 26(2) of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules'). No order qua retention of his lien was passed by respondents No.1 & 2. As per Fundamental Rule 13 and Government of India Office Memorandum dated 14.07.1967, whenever a regular employee undertakes fresh appointment, the parent department is required to retain his lien for two years. So, the lien of the petitioner was required to be retained. It is further pleaded that the petitioner submitted an application dated 08.08.2006 for reversion to his parent department as he was not granted benefit of the past service in the new establishment. His request was declined by respondent No.2 vide order dated 28.09.2006. In consequence of his further correspondence the same stand was reiterated vide letter dated 13.08.2013. Ultimately, the petitioner filed the Original Application No.1334-CH-2013 before the learned Tribunal, which was dismissed by the impugned order dated

24.09.2014. Hence this civil writ petition.

3. The claim of the petitioner was contested by respondents No.1 & 2 before learned Tribunal on the grounds *inter alia* that under Order No.1, blow Fundamental Rule 14-A, this rule applies only so long as a Government servant remains in the Government service i.e. where an employee has migrated from one Government organization to another Government organization, only then the benefit of the aforesaid rule is available. It was further pleaded that petitioner who has joined the Corporation, is not entitled to the benefit of retention of lien. In view of this position, the request of the petitioner was declined. It was further pleaded that on acceptance of technical resignation, there was no provision of retention of lien. With these pleas, respondents No.1 & 2 have pleaded for dismissal of the Original Application.

4. The respondent No.3, the Municipal Corporation, Chandigarh had also filed the written statement before the learned Tribunal pleading therein that the request of the petitioner for grant of pro-rata pension has been taken up with respondents No.1 & 2 and is under consideration.

5. Aggrieved with the impugned order dated 24.09.2014, passed by learned Tribunal, the present civil writ petition has been preferred.

6. We have heard Mr. Rohit Ahuja, Advocate, learned counsel for the petitioner and have carefully gone through the paper-book.

7. Initiating the arguments, learned counsel for the petitioner

contended that the petitioner was a permanent employee of respondents No.1 & 2. He has applied for the post of Junior Engineer with respondent No.3 through proper channel. Thereafter, on his selection as a Junior Engineer by respondent No.3, he submitted his technical resignation which was accepted vide order dated 06.03.2006 (Annexure A/7). The petitioner was also granted the benefit of continuing the past service for pension in the new department under Rule 26(2) of the Pension Rules. He further contended that when the petitioner came to know that he was not getting the benefit of previous service, he applied for reversion to the parent department vide application dated 08.08.2006 but his request has been declined by respondent No.2 vide order dated 28.09.2006 (Annexure A/2). He again moved to respondents No.1 & 2 but the same stand was reiterated vide letter dated 13.08.2013 (Annexure A/1).

8. Learned counsel for the petitioner contended that as the petitioner was permanent employee of respondents No.1 & 2, as per Fundamental Rule 13 he was having the lien on his post. He further contended that as per Fundamental Rule 13, in case of permanent Government servant, the lien may be retained in the parent department for a period of two years. During this period, he can either revert to the parent department or resign from the parent department at the end of that period. Such Government employee can be allowed to come back to his original post within a period of two years but in the instant case, the petitioner has applied for reversion to his parent post on 08.08.2006 i.e. within five months. Thus, he contended that respondents No.1 & 2 have

violated the Fundamental Rules.

9. Thus, he contended that as the petitioner was having the lien on the post of Senior Technical Assistant 'B' in the department of respondents No.1 & 2 and he has applied for reversion within two years, so he was entitled under Fundamental Rules for the said reversion and his claim has been wrongly declined by the authorities and the Original Application has also been dismissed illegally by the learned Tribunal.

10. We have duly considered the aforesaid contentions.

11. The salient facts in this case are not disputed. It is not disputed that earlier the petitioner was working as Senior Technical Assistant 'B' with respondents No.1 & 2. He applied for the post of Junior Engineer with respondent No.3 through proper channel and his application was duly forwarded by respondent No.2. He was selected to the post of Junior Engineer by respondent No.3 and was offered appointment vide letter dated 07.02.2006. Thereafter, petitioner submitted his Technical resignation dated 15.02.2006 which was duly accepted by respondents No.1 & 2 vide order dated 06.03.2006 to enable him to join his new assignment with the benefit of counting his past service for pension in the new department under Rule 26(2) of the Pension Rules. It is also not disputed that on 08.08.2006, he submitted that application to respondents No.1 & 2 for reversion to his parent department but his said request was declined vide order dated 28.09.2006 and then vide order/letter dated 13.08.2013.

12. This fact is not disputed that petitioner has taken the new

assignment with the Municipal Corporation, Chandigarh which is a corporation and not the organisation or department of the Government. Learned counsel for the petitioner has vehemently pleaded that as per Fundamental Rule 13, the petitioner had a lien on his parent post and was entitled to revert within two years to his parent post. Fundamental Rule 13 provides for retention of lien on a post by the Government servant. Fundamental Rule 14-A deals with the termination of the lien. The relevant portion of Fundamental Rule 14-A (Annexure R/10) reads as under:-

“F.R. 14-A [(a) Except as provided in Rule 13 and Clause (d) of this rule, a Government servant's lien on a post may in no circumstances be terminated, if the result will be to leave him without a lien upon a regular post]

(b) Deleted.

(c) Deleted.

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

GOVERNMENT OF INDIA'S ORDERS

(1) Procedure to be followed when a permanent Government servant is permanently absorbed by the foreign employer.- A question has been raised as to what procedure should be followed for terminating the lien of a permanent Government servant who is transferred on foreign service and is subsequently absorbed in the service of the foreign employer.

It is hereby clarified that FR 14-A applies only so long as a Government servant remains in Government service. Obtaining of consent of the Government servant to the termination of lien is

necessary in certain circumstances where the Government servant is to be confirmed in another post under Government. Such consent is not necessary in cases where the Government servant ceases to be in Government employ. XX XX XX XX XX”

13. As per Government of India's orders, Fundamental Rule 14-A applies only so long as a Government servant remains in Government service. Meaning thereby, the lien shall be retained only if a Government servant serving in one Government department/organization take up the new assignment in another Government department/organization. It has been further mentioned in the aforesaid clarification that the consent for termination of lien is not necessary in the cases where the Government servant ceases to be in the Government employment. Here in this case, the petitioner has taken up the new assignment of the Municipal Corporation, Chandigarh which is not the department of the Central Government or the State Government, rather it is a Corporation and autonomous body. So, there is no question of retention of lien by the petitioner on the post of Senior Technical Assistant 'B' of his previous department. Learned counsel for the petitioner has also contended that even as per 'No Objection Certificate', issued by respondent No.2, on being selected by the Government department/public undertaking/autonomous body for the higher post, he was treated to be on deputation for a period of one year and during this period, he could have reverted to the parent department. This 'No Objection Certificate' cannot be override the statutory rules i.e. Fundamental Rules. Moreover, at that time the 'No

Objection Certificate' was issued only to enable the petitioner to get his name registered with the employment exchange for seeking another higher post than he was already holding with respondents No.1 & 2. So, the 'No Objection Certificate' dated 24.06.1998 (Annexure A/4) will not bind respondents No.1 & 2 as the same is not in consonance with the Fundamental Rules as the principle of retention of lien can only apply if the new assignment is taken in another Government department/organization.

14. The learned Tribunal has also correctly observed that initially the request of the applicant was rejected on 28.09.2006 but he did not challenge the said rejection in accordance with law within the stipulated period of limitation. The Original Application was filed only on the basis of subsequent communication dated 13.08.2013. Both these orders are separate, passed on the basis of the separate representations. The previous order dated 28.09.2006 was passed on the basis of the application moved by the petitioner on 08.08.2006 and the subsequent order dated 13.08.2013 has been passed on the basis of the memo dated 14.06.2013. Thus, the challenge to order dated 28.09.2006 was barred by the law of limitation.

15. It is further pertinent to mention that as per the written statement filed by respondent No.3 before the learned Tribunal the matter regarding pro-rata pensionary benefit and service gratuity had already been taken up with the parent department and is under persuasion.

16. Thus, keeping in view our aforesaid discussion we do not

find any illegality in the impugned order dated 24.09.2014 passed by learned Tribunal and the orders dated 28.09.2006 and 13.08.2013 passed by respondents No.1 & 2.

17. Resultantly, the present writ petition is without any merits and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

17.12.2015
sunil yadav