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**(2003) 07 PAT CK 0051**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 1567 of 2002**

Sri. B.P. Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 14-07-2003

**Acts Referred:**

Bharat Wagon and Engineering Company Ltd. (Conduct, Discipline and Appeal) Rules  
— Rule 21, 3, 33, 33(1), 33(2)

**Citation :** (2003) 3 PLJR 641

**Hon'ble Judges :** Chandramauli Kr. Prasad, J

**Bench :** Single Bench

**Advocate :** S.N. Jha and A.K. Sinha, for the Appellant; Subhas Prasad Singh, for the Union of India and Vinod Kumar Kanth and Udayan Chaudhury for Respondents 3 and 4, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Chandramauli Kr. Prasad, J.—De hors, subterfuge facts giving rise to the present application are that the Petitioner prior to his appointment as the Managing Director of Bharat Wagon and Engineering Company Ltd. (hereinafter referred to as the Company) was working as the General Manager of the said Company. The Union Government by its letter dated 4th December, 1997 addressed to the Company Secretary of the Company conveyed the sanction of the President to the appointment of the Petitioner as the Managing Director of the Company on the terms and conditions enumerated in the said letter. According to that the period of Petitioner's appointment as Managing Director shall be of 5 years with effect from 8.10.1997 in the first instance or till the age of superannuation whichever is earlier. There is no dispute that the Petitioner's tenure of 5 years would have been earlier than the age of his superannuation. As regards the Conduct, Discipline and Appeal Rules; the condition laid was that the rules framed by the Company in respect of the other non-workmen category of staff would mutatis mutandis apply with the modification that the disciplinary authority in the case of the Petitioner shall be the President. It is common

ground that the non-workmen category and all the staff of the Company is governed by the Bharat Wagon and Engineering Company Ltd. (Conduct, Discipline and Appeal) Rules (hereinafter referred to as the Rules).

2. While the Petitioner was working as the Managing Director of the Company the President in exercise of the powers conferred by Article 67 of the Articles of Association and Rule 21 of the Rules placed him under suspension with immediate effect in contemplation of the disciplinary proceeding. Petitioner resorted to the remedy of appeal against the order of suspension (sic) application by order dated 8.11.2002. His appeal has been dismissed.

3. Petitioner was served with the memo of charge dated 17th of July, 2000 (Annexjre-7) along with the statement of articles of charges and statement of imputation of misconduct in support of articles of charges. According to the charge, Petitioner while working as the Managing Director during the period 14.8.1997 to 30.9.2000 allowed the financial system of the Company to be subverted by Sri L. Gopal Krishnan where all powers of handling the cheque books, cash, reconciliation, bank statements, internal audit etc. were usurped by the latter. It has been alleged that during the aforesaid period he failed to monitor the movement of large sums of money in spite of the fact that an amount of Rs. 1 crore was very critical in a company starved of working capital. It has further been alleged that the Petitioner showed undue favour in releasing Sri R. Gopal Krishnan by giving vigilance clearance, sanctioning him housing loan from provident fund a couple of days before release and relieving him well before the expiry of the notice period. According to the charge when certain officers after the departure of Sri R. Gopalakrishnan from the Company pointed out the irregularities and missing financial books/papers, Petitioner did not take any corrective measures. Petitioner submitted his reply denying the charges and by order dated 20.11.2002 (Annexure-10) enquiry officer has been appointed to hold enquiry in relation to the charges levelled against him.

4. As stated earlier, the Petitioner was appointed as the Managing Director for a period of 5 years and he was put under suspension by order dated 30.10.2001 and the President in exercise of his powers under Article 67(1)(a) of the Articles of Association, of the Company terminated and tenure of the Petitioner with immediate effect. It is relevant here to state that it came to the notice of the President that there is no uniformity amongst the "Public Sector Enterprises in regard to retention of lien of employees below board level when they are selected and appointed to the post at the board level, hence in exercise of the power conferred under Articles of Association the President directed that the Company should permit retention of lien for a period not exceeding 3 years to its employees holding post below board level when they are appointed to the post at the board level in the same public sector undertaking or in any other Central public undertaking.

5. This writ application was initially filed by the Petitioner for quashing the order of suspension and by way of interlocutory application several other reliefs have

been sought but when the matter is taken up Dr. S. N. Jha, Senior Advocate appearing on behalf of the Petitioner has questioned the continuance of the disciplinary proceeding initiated while the Petitioner was in service after the expiry of the Petitioner's term. His submission is to quash the disciplinary proceeding. Other relief pressed by the Petitioner is for a writ in the nature of mandamus commanding the Respondents to permit him to resume the duty of General Manager, the post which he was holding prior to his appointment as the Managing Director.

6. Dr. S.N. Jha submits that the departmental proceeding initiated prior to the expiry of the term as the Managing Director cannot be continued and when confronted that Rule 33 does permit so, he points out that Rule 33 of the Rules which provides for the continuance of the proceeding after retirement or superannuation shall not apply in the case of the Petitioner. It has been pointed out that before an order under Rule 33 can be passed the Managing Director is to be consulted and the Petitioner himself being a Managing Director, disciplinary proceeding cannot be allowed to continue with the aid of Rule 33 of the Rules. It has been further pointed out that the Petitioner's appointment being for a fixed tenure of 5 years i.e. contractual appointment, he does not come within the expression "employee" and as such Respondents cannot take recourse to Rule 33 of the Rules for continuance of the disciplinary proceeding.

7. Mr. Subhash Prasad Singh, Addl. Standing Counsel of the Union of India and Mr. V.K. Kanth, Senior Advocate appearing on behalf of Respondents 3 and 4 submit that Rule 33 of the Rules permits the continuance of the disciplinary proceeding instituted before the retirement or superannuation and the plea of the Petitioner is absolutely misconceived.

8. The rival submissions necessitate examination of Rule 33 of the Rules. Same reads as follows:

Rule 33- Proceedings after retirement or superannuation:

(i) The Appointing Authority shall have the right of withholding settlement of final dues and payment of terminal benefits, and of ordering recovery from the outstanding amount of the whole or part of any pecuniary loss caused to the Company, if, in the disciplinary proceedings, the employee is found guilty of misconduct or negligence during the period of his service;

Provided that the Chairman/Managing Director shall be consulted before any final orders are passed;

(ii) the disciplinary proceedings if instituted while the employee was in service before his retirement or superannuation be deemed to the proceedings under this Rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

9. From a plain reading of the aforesaid rule it is evident that the disciplinary

proceeding instituted while in service shall be continued and concluded by the authority by which it was commenced even after retirement or superannuation. It is well settled that rule governing service conditions can provide so and in fact has not been questioned. In fact the plea of the Petitioner is that he is not covered under Rule 33 of the Rules. Plea of the Petitioner that he will not come within the expression "employee" mentioned in the aforesaid rule being employed for a fixed term does not appeal to me at all. The expression "employee" has been defined under Rule 3(a) of the Rules to mean a person in the employment of the Company other than casual, workcharged or contingent staff or a workman covered by Standing Orders. Here in the present case the Petitioner was appointed as the Managing Director of the Company for a tenure of 5 years. His appointment, therefore, cannot be said to be casual or workcharged and it is nobody's case that he is covered by the Standing Orders. In my opinion the Petitioner comes within the expression "employee" and by force of Rule 33(2) the disciplinary proceeding instituted against him while in service shall continue. Rule 33(1) confers powers of withholding settlement of final dues and payment of terminal benefits and of ordering recovery from the outstanding amount of the whole or in part of any pecuniary loss caused to the Company. In such case the Chairman of the Managing Director has to be consulted before passing any final order. As observed earlier the terms and conditions under which Petitioner was appointed clearly stipulates application of the rules with the modification that the disciplinary authority in his case would be the President. Merely the fact that the rule provides for consultation of the Chairman/Managing Director before passing of the final order does not itself exclude the application of the rules in view of specific term in the order of appointment. In case the Respondents proposes to pass final order, in the case of the Petitioner his disciplinary authority would be the President. In view of what has been stated above, I am of the opinion that the plea of the Petitioner that disciplinary proceeding can not continue on account of expiry of the tenure is absolutely misconceived.

10. Mr. Jha, then contends that Petitioner prior to his appointment as the Managing Director was working as the General Manager of the Company and having not attained the age of superannuation, he has right to function as the General Manager, till he attains the age of superannuation. He points out that the Petitioner shall be deemed to be holding the lien on the post of General Manager till his lien is terminated. In support of his submission reliance has been placed on a decision of the Jharkhand High Court in W.P.S. No. 1038 of 2003 (Deobrat Sahay v. Union of India and Ors.) disposed of on 8th April 2003 [reported in 2003 (3) JLR 113] and my attention has been drawn to paragraph 23 of the judgment, which reads as follows:

Admittedly before appointment as Director (personnel) in Western Coalfields Ltd. on substantive post of Chief General Manager in Central Mine Planning and Design Institute Ltd. There is no dispute that all these Central Coalfields Ltd. Western Coalfields Ltd., Eastern Coalfields Ltd., Central Mine Planning and Design

Institute Ltd. are the subsidiary companies of Coal India Ltd Both in the capacity of Chief General Manager and Director (Personnel), Petitioner was in the service of the Coal India Ltd. There is nothing in the letter of appointment or in the terms and conditions annexed therewith which expressly provides that after the expiry of the period of five years, Petitioner shall cease to be the employee of the subsidiary company of Coal India Ltd. In the impugned order dated 19.2.2003 whereby extension of the tenure was not approved, it is directed that the Petitioner is relieved from his duties as Director (Personnel) Central Coalfields Ltd. Ranchi. The Respondents have not shown any rule or service conditions whereby in the event of non extension of tenure, Petitioner shall cease to be the employee of the Coal India Ltd. In any circumstance, Petitioner cannot and shall not be deemed to have been removed from the service of the subsidiary company before attaining the age of superannuation only because the tenure of service as Director expired. In that view of the matter, in my considered opinion, Petitioner is entitled to continue as Chief General Manager of the subsidiary company of Coal India Ltd.

11. Mr. Kanth, however, submits that in view of the decision of the President in its order dated 9th of March, 1994, person on lien to the post of General Manager could not have continued for a period exceeding three years and in that view of the matter Petitioner having no lien to the post of General Manager, he cannot be allowed to assume the office of the General Manger.

12. The word "lien" has been derived from Latin word ligamem which means binding. Its forensic meaning is to right to retain and the word is variously described and used under different context such as contractual lien, equitable lien, specific lien, general lien, partners lien etc. This word has acquired a meaning in relation to a post in the service. It is well settled that in service jurisprudence the expression "lien" connotes the right of a public servant to hold the post on which he is substantively appointed. However, it has to be borne in mind that providing lien to a post is not a constitutional requirement and existence of such lien and the incidence thereof are governed by the service rule or terms and conditions by which public servant is governed.

13. Here in the present case no rule has been brought to my notice governing the lien of the employees of the company. However, order dated 9th of March, 1994 brought to my notice by Mr. Kanth, inter alia, provides that "the President is pleased to direct that all the above mentioned companies should permit retention of lien for a period not exceeding three years to its employees holding posts below board level when they are appointed to posts at the board level within the same Public Sector Undertaking or in any other Central Public Undertaking." The Company in question is covered under the order. In my opinion, the decision of the President, referred to above, does not in mandatory terms provides that no employee when appointed to the post at the Board level will retain the lien. In fact it enables the company to permit retention of lien for a period not exceeding three years. The concept that public servant with a lien on

a post is appointed substantively to another post, he acquires the lien against the later post and lien against previous post disappears has to be understood in the background of the service conditions by which such public servant is governed and is not a principle of universal application in respect of all the employees. Further the period for which the public servant holding the permanent post shall hold lien also depends upon the period provided in the rule and as on a general proposition it cannot be said that public servant shall hold the lien on the previous post till he is appointed substantively on another post. In the present case, nothing has been brought to my notice which provides for holding of the lien on the post of General Manager by virtue of any rule or decision. The order dated 9th March, 1994 enables permitting retention of lien for a period not exceeding three years. Even assuming in favour of the Petitioner that by the said order he has a right to retain lien on the post of the General Manager by virtue of the time stipulated in the said letter it cannot exceed three years. Petitioner was appointed as Managing Director for a period of five years with effect from 8.10.1997 and the maximum period for which lien on the post can be retained having expired, Petitioner cannot be allowed to function as the General Manager of the Company after he ceased to be the Managing Director. The decision of the Jharkhand High Court in the case of Deobrat Sahay (supra) was on the fact of that case which has no similarity with the present case and in that view of the matter same is clearly distinguishable.

14. In the result, I do not find any merit in this application and it is dismissed accordingly. No costs.