

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 224 of 2013

OA No. 227 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA 224/2013

Binaya Bhusan Choudhury, aged about 43 years, S/o S.V.R.Choudhury, at present working as Diesel Power Controller under Chief Motive Power Engineer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Permanent resident of Vill – Bato Goudo Street, PO-Parlakhemundi, Dist. – Gajapati, Odisha.

OA 227/2013

Khirod Kumar Sahoo, aged about 45 years, S/o Late Ratha Sahoo, at present working as Diesel Power Controller under Chief Motive Power Engineer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Permanent resident of Vill/PO-Benipur, Via-Charinagal, Dist.- Kendrapara, Odisha.

.....Applicants.

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
2. Chief Personnel Officer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO – Jatni, Dist.-Khurda.
4. Sr. Divisional Electrical Engineer (OP), E.Co.Rly., Khurda Road Division, At/PO-Jatni, Dist.-Khurda.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.R.S.Bhera, counsel (OA 224/2013)

Mr.S.P.Mohanty, counsel (OA 227/2013)

Heard & reserved on : 9.1.2020

Order on : 04.02.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Both the OAs are considered for this common order as the facts and the reliefs sought for and grounds urged in both the cases are same or similar. Identical reliefs sought for in both the OAs are as under:-

“(a) To quash the notification dtd. 21.3.2013 & order of repatriation dtd. 04.04.2013 under Annexure-A/8 & A/11.

(b) And to direct the Respondents to absorb the applicant permanently in Mechanical Department of HQ/BBS/ECoR.

(c) And/or direct the Respondents to promote the applicant to the post of Chief Loco Inspector at par with Juniors as per under Annexure A/4 before his repatriation/transfer.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall every pray.”

2. The applicants in both the OAs were initially appointed as Train Assistant Driver (Electrical/Diesel) and they were both deputed to the Mechanical Department of the Zonal Headquarters (in short ZH) in the year 29.9.2004 (for OA No. 227/13) and 24.1.2006 (for OA No. 224/13) to work as Diesel Power Controller (in short DPC) on temporary basis vide the orders at Annexure-A/2 in both the OAs. In the seniority lists dated 22.12.2006 (Annexure-A/3) and dated 1.8.2010 (annexure-A/4) for Loco Pilots under Khurda Road Division, both the applicants' names were reflected. It is alleged in the OAs that Khurda Road Division promoted some of the juniors of the applicants to a higher post of Chief Loco Inspectors with the GP of Rs. 4600/- on 12.5.2011 (Annexure-A/4) while the applicants continued in lower Grade Pay of Rs. 4200/-.

3. Thereafter, on 27.2.2013 (Annexure-A/5), the applicants represented to be absorbed permanently in ZH cadre and it was rejected vide order dated 4.4.2013 (Annexure-A/11) citing the circulars of the Railway Board RBE No. 9/98, 162/2004 and 51/2009. The applicants in para 4.10 and 4.11 of both the OAs claim that the said circulars referred in the impugned orders will not be applicable for them as they were not drafted to ZH to work as DPC, but were posted on the basis of options called for posting in ZH vide letter dated

2.1.2003 notified after creation of new Railway Zone at Bhubaneswar. Hence, it is averred in the OAs that the respondents have wrongly applied the aforesaid circulars of the Railway Board to reject their cases. It is averred in the OA that without properly considering the grievances of the applicants, the authorities have issued the notification dated 21.3.2013 (Annexure-A/8) calling for application for drafting of the drivers for the duty of DPC/Power & Crew Controller at ZH and to repatriate the applicants back to the Division, which is illegal.

4. It is further stated in the OA that the divisional authorities did not inform about the promotion to the post of Chief Loco Inspector (in short CLI) as a result of which many juniors of the applicants are now working as CLI at a higher post compared to the post at which the applicants will be posted after repatriation to the division after such a long period of time when they were posted at the headquarters to work as DPC.

5. Counters urging similar points have been filed in both the OAs on behalf of the respondents. It is stated that when the applicants were working under Khurda Road Division the options were called for the post of Diesel Power Controller in ZH on temporary basis while keeping their lien in Khurda Road Division in place as revealed by the orders at Annexure-A/2. Accordingly the applicants applied and being found suitable by the authorities they were posted as DPC on a temporary basis that their lien in the Division as per order at Annexure A/2. It is stated that the terms and conditions of Annexure A/2, which included retention of their lien with Khurda Road Division, have been accepted by the applicants and now they cannot raise any dispute. It is stated that regarding their promotion, it is stated that the CLI post was notified and the applicants failed to submit any application for which their cases were not considered. It is further submitted in the Counter that in a similar issue the Tribunal had passed an order dated 24.10.2011 in OA Nos. 245, 250 and 251 of 2009 in which the claims were rejected with the following observations :

“the applicants were continuing on temporary transfer basis in the ECoRly in ex-cadre post and upon completion of their tenure they can have no claim to be absorbed and absorption of any other employee cannot give a right to the applicants to claim such absorption de hors the Rule and directed to respondents to invite fresh options against the posts in which the applicants were continuing. However in case of the applicants apply pursuant to the fresh notification, the respondents should also consider the case of the applicants along with others in accordance with Rules.”

The applicants in those OAs approached Hon'ble High Court in Writ Petitions which are subjudice as on date and the aforesaid applicants are continuing in the ZH by virtue of the interim order passed by the Hon'ble High Court. It is further stated in the counter that there are six ex-cadre posts for Power Controller in Mechanical Department of ZH. In pursuance to the interim order of the Hon'ble High Court three incumbents were allowed to continue against 3 posts for which options were called for and rest 3 posts after repatriation of 3 staffs which included the applicants. It is stated that by virtue of Railway Board circular RBE No. 9/1998 and 162/2004 the eligible Train Drivers are being selected to work as Power and Crew Controller/DPC in the ZH on tenure basis while keeping the lien as Driver intact in the Division and hence the request of the applicants for permanent absorption in ZH cadre is not permissible under the rules.

6. Rejoinders have been filed by the applicants mainly reiterating the stand taken in the OA and stating that the case of the applicants is similar to that of the applicants in OA No. 245, 250 & 251 of 2009. It is stated that the respondents have not stated anything about their options for permanent transfer from Division to Headquarters. Regarding the promotion it is submitted that the respondents may promote the applicants to the post of CLI first before repatriating since there is no bar for promotion of the applicants during continuation in the ZH.

7. Heard learned counsels for the applicants and the respondents who reiterated their contentions in the respective pleadings. One of the ground taken by the applicant in support of his claim for permanent absorption in the ZH is that he had submitted his option for absorption in the Headquarters in response to the letter dated 2.1.2003 at the time of creation of new Zone at Bhubaneswar. Such contention is not supported by any documents or evidence on record. Whether the option furnished by the applicant was considered or accepted or rejected has not been mentioned. On the basis of record available the applicants in both the OAs were posted to the ZH on temporary basis keeping their lien in the ZH to work as DPC vide order at Annexure A/2 which stated as under :

“Sub : Transfer of Sri B.B.Choudhury, Loco pilot (Goods)/TLHR, KUR division to E.Co.Railway Head Quarters on temporary basis. Mech-Rd-Dept.

Ref : CPO/ECoR/BBS's letter No.ECoR/Pers/05/Temporary Tfd./BBC dt. 02/04.01/08.

In terms of CPO/ECoR/BBS's letter cited above, Sri B.B.Choudhury, Loco Pilot (Goods) Gr.II in scale Rs.5000-8000/- (RSRP) working under CC/TLHR, KUR division to transferred to E.Co.Railway

head Quarters to work as DPC in the Central Control/ECoR/BBS, with his existing pay, scale and capacity.

This issues with the approval of the competent authority.

Note(s) :

1. Date of releasing and reporting of Sri Choudhury, should be intimated to this office for record.
2. His lien will be maintained in KUR division.
3. His salary will be drawn at CPO/E.Co.Railway/BBS as his temporary Hd.Qrs. will be at BBS during this temporary transfer.”

Similar order was issued in respect of the applicant in OA 227/2013. There is nothing in this order which says that the applicants were transferred to the Headquarters as per the option furnished for permanent transfer. If there was any dispute relating to the options furnished by the applicants for permanent transfer to the ZH, then the orders at Annexure A/2 should have been disputed by the applicant since these orders clearly stated that the transfer of the applicants was on temporary basis and in the Note No.2 of the order it was stated that the lien of the applicant will be maintained in the Division. Hence, the order at Annexure A/2 cannot be considered to be a permanent transfer in response to the option if any, furnished by the applicants in response to the letter dated 2.1.2003.

8. On the other hand the contention of the respondents in the Counter that the applicants had applied when the options were called for to work as DPC in the Mechanical Department of ZH on ex-cadre/temporary basis in terms of RBE No. 9/1998 and 162/2004 and after being found suitable they were deputed to ZH vide orders at Annexure A/2. Such contentions in both the OAs have not been contradicted by the applicants in their pleadings. **It is clear that the order at Annexure A/2 does not arise out of the option for permanent transfer of the applicant's and it arises out of the option furnished by them for deputation to the Zonal headquarters on temporary basis to work as DPC as per order at Annexure-A/2.** The contention that their posting in ZH was as per the option furnished by the applicants for permanent transfer to headquarters has no legs to stand.

9. It is seen that in similar circumstances, the Tribunal has passed the order dated 24.10.2011 in which a similar dispute had been adjudicated. In the said OAs the Tribunal after examining the provisions of the RBE No. 162/2004, 117/2002 and 187/2003, concluded as under :

“14. From the above, it is clear that the entire exercise was/is governed by well settled principles evolved by the Railway Board./ No where the Applicants have disputed that they were continuing in ex cadre posts. It is also not in dispute that the applicants were brought to the ECoRly Hqrs with the understanding that their continuance was for a fixed period.

15. Law is well settled in a plethora of judicial pronouncements that no employee can claim as a matter of right to be transferred to any other post/place nor the employees have any right to claim absorption in a deputed/transferred post. Absorption is subject to compliance of various parameters provided in the Rules. No material has been produced by the Applicants establishing their right to be absorbed. Rather the instructions relied on by the Respondents clearly provide that the applicants being the running staff can be retained in the ex cadre posts for three years and with the approval of the GM upto five years. While the applicants were continuing at the ECoRly Headquarters on option transfer, they were promoted in the Divisions where their lien was maintained which they have accepted without any demur. The Applicants claim parity with the employees who have been absorbed under Annexure-A/6 but it is the case of the Respondents that the applicants cannot claim parity with the persons who have been absorbed in Annexure A/6 as they were not continuing in any ex cadre post either in their parent unit or in the ECoRly Hqrs. At the cost of repetition, it is mentioned that the Applicants were continuing on temporary transfer basis in the ECoRly in ex cadre posts and upon completion of their tenure they can have no claim to be absorbed and absorption of any other employee cannot give a right to the applicants to claim such absorption de hors the Rule. Meanwhile the applicants have been repatriated to their parent unit. Hence Respondents, if so required, are free to invite fresh options against the posts in which the applicants were continuing in the ECoRly Hqrs. However, we make it clear that in case the Applicants apply pursuant to the fresh notification, the Respondents should also consider the case of the Applicants along with others in accordance with Rules.”

10. Since the facts and circumstances and disputes in the OAs referred above are similar to the present OAs, the order dated 24.10.2011 of the Tribunal will also cover the present OAs. Accordingly, both the OAs are disposed of with the direction that the respondents are free to invite fresh option from the staffs against the post for which the applicant is continuing in the East Coast Railway Zonal headquarters and if the applicants apply in pursuance to the notification for fresh option already issued or to be issued, then the respondents are required to consider the applicants’ case for deputation to the Zonal headquarters along with others in accordance with the Rules.

11. Both the OAs stand disposed of with the aforesaid observations and directions. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

