

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/682/2015

Date of Reserve:15.11.2019

Date of Order:19.12.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Binay Kumar Behera, aged about 42 years, S/o. Jayakrushna Behera, At-Deulabasta, PO-Argul, PS-Jatni, Dist-Khurda – at present working as Junior Clerk in Personnel Branch, Sr.DPO Office, Khurda Road, Khurda.

...Applicant

By the Advocate(s)-M/s.M.K.Khuntia
G.R.Sethi
J.K.Digal
B.K.Pattnaik

-VERSUS-

Union of India represented through:

1. The Secretary, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, East Coast Railway, Rail Sadan, Chadrasekharapur, Bhubaneswar, Dist-Khurda.
3. Chief Personnel Officer, East Coast Railway, Bhubaneswar, Dist-Khurda.
4. Divisional Railway Manager, East Coast Railway, Khurda Road Division, Dist-Khurda.

...Respondents

By the Advocate(s)Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Junior Clerk in the Personnel Branch under the East Coast Railways. His grievance is directed against communication dated 12.10.2015 (A/6) whereby his request for appearing suitability test for the post of Sr.Clerk in Personnel Branch has been turned down, inter alia, on the ground that his name did not figure in the eligibility list for appearing the said examination, since he had given in writing to be placed in the bottom seniority in the alternative absorption of medically de-categorized staff as Junior Clerk in the Personnel Branch. Hence, he has

invoked the jurisdiction of this Tribunal by filing the present O.A. in which he has sought for the following reliefs.

- i) To quash the order dated 12.10.2015 under Annexure-A/6.
- ii) To direct the respondents to consider the case of applicant for promotion to the rank of Senior Clerk.
- iii) To direct the respondents to declare the applicant eligible for promotion to the rank of Senior Clerk.
- iv) And pass such other order/direction as deemed fit and proper in the interest of justice in the facts and circumstances of the case.

2. Facts of the matter in brief are that the applicant, while working as Head Constable in the Railway Protection Force (in short RPF) under the East Coast Railways was declared medically unfit in B1 and fit in C1, as a result of which, the Medical Board recommended for alternative appointment in the year 2014. In the above backdrop, the applicant submitted an application dated 25.5.2014 to the Senior Divisional Personnel Officer, East Coast Railways, with a request to provide him an alternative appointment in the post of Junior Clerk in the Personnel Branch, with bottom seniority. The applicant along with others were considered for alternative appointments by a duly constituted Committee, whereafter, with the approval of Divisional Railway Manager, East Coast Railways (Res.No.4), the applicant was absorbed as Junior Clerk in the Personnel Branch with bottom seniority vide letter dated 27.6.2014 and accordingly, he joined as such on 3.7.2014.

3. In order to fill up 25 vacancies of the posts of Senior Clerk in Personnel Branch, of which 13 belonging to UR category, a circular dated 21.01.2015 (A/4) was issued by the Office of Senior Divisional Personnel Officer in which 13 Junior Clerks belonging to UR category, as named therein, in exception of the applicant, were called upon to appear at the written test that was

scheduled to be held on 14.10.2015. Needless to mention that the applicant belongs to UR category. Aggrieved with the circular dated 21.01.2015, the applicant submitted a representation dated 24.9.2015 (A/5) to the Divisional Railway Manager (P), East Coast Railways, to allow him to appear at the written test for promotion to the post of Senior Clerk. This requested of the applicant was turned down vide communication dated 12.10.2015 (A/6), on the grounds as under:

"Your name is not figured in the eligible list for appearing the said examination as you have given in writing to be placed in bottom seniority in the alternative absorption of medically de-categorised staff as Jr.Clerk in personnel branch vide your application dtd. 28.05.2014. Hence your seniority is fixed with bottom seniority in Jr."Clerk group of Personnel branch vide O.O.No.PERS/32/2014 dated 03.07.2014.

In view of the above your representation for appearing the written test for Sr.Clerk is not considered".

4. Hence, this Application seeking for the reliefs as mentioned above.
5. The grounds urged by the applicant in support of his claim are that as per Rules-1309 and 1310 of Railway Establishment Manual, he is entitled to the benefit of his past service as well as fixation of seniority. It is the contention of the applicant that fixation of bottom seniority means as on the date of absorption, the employees working in the organization or branch concerned shall stand en-block senior to the applicant irrespective of the date of his initial appointment. According to applicant, the employees who are appointed and/or absorbed subsequent to him, shall stand junior to him. In this connection, the applicant has pointed out that whereas he was absorbed in the alternative post of Junior Clerk in the Personnel Branch with effect from 03.07.2014, one Ch.Sanyasi Rao, who is similarly situated like him having been medically decategorized, was absorbed as Jr.Clerk in Personnel Department

on 04.12.2014. Similarly, another employee, viz. Pravasini Rout being medically decategorized as Asst.Loco Pilot, was also absorbed as Jr.Clerk in Personnel Department in June, 2015. Based on this, the applicant has contended that as would reveal from A/4, they have been declared eligible to appear at the written test for the post of Senior Clerk, whereas he being senior to them, has been eliminated from the zone of consideration from appearing the written test. This, action of the respondents, according to applicant, is violative of Articles 14 & 16 of the Constitution of India. The applicant is also aggrieved by the fact that whereas before taking up promotion, gradation list in the feeder grade ought to be prepared and published, in the instant case, no such gradation list has been published and therefore, the respondents have violated the statutory provisions of the recruitment rules while deciding seniority of the incumbents of Junior Clerks in the Personnel Branch.

6. Opposing the prayer of the applicant, the respondents have filed a detailed counter. According to respondents, while the applicant was working as Head Constable in PB-1 with GP Rs.2400/- was medically decategorized. On his own volition, he submitted an option preferring bottom seniority in absence of any such available provision. His request having been accepted, the applicant was absorbed as Junior Clerk carrying the Grade Pay of Rs.1900/- in the Personnel Branch. Respondents have pointed out that "gradation list was last published on 01.02.2013 and though due for publication on 01.02.2015, which could not be published due to administrative reason". However, staff senior to the applicant under A/4 to the O.A. were called upon to appear the written test in which no junior to the applicant has been called upon to appear the said examination for the post of Senior Clerk. It is the case of the respondents that the applicant's name could not figure in the eligibility list for

appearing the written test for promotion to the post of Senior Clerk inasmuch as, his conditional request has been accepted and the applicant was also posted in Personnel Branch accepting bottom seniority in the alternative absorption. Since his request was conditional, how he cannot turn back and say that he has been deprived of available other benefits. As regards Ch.Sanyasi Rao and Pravasini Rout, the respondents have pointed out that as per Rules-1302 and 1311 of Railway Establishment Manual under A/7 of the O.A., they have been given the benefit of past service in alternative post, .i.e., Jr.Clerk, but the applicant on his own had opted for his absorption/posting as Jr.Clerk with bottom seniority in Personnel Department. Relying on the RBE No.86/2003, the respondents have stated that since applicant's seniority is being reckoned from the date of his joining as Jr.Clerk with effect from 03.07.2014 with bottom seniority and loss of Grade Pay according to his willingness, therefore, on the date of written examination, .i.e., 14.10.2015, he had not rendered minimum two years service in the immediate lower grade, i.e, Junior Clerk for promotion to the post of Senior Clerk.

7. With these submissions, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

8. Applicant has filed rejoinder to the counter in which he has more or less reiterated the same points as averred in the O.A.

9. We have heard the learned counsels for both the sides and perused the records. It is to be noted that vide order dated 13.10.2015, this Tribunal while admitting the O.A., as an interim measure, had directed the respondents to allow the applicant to take the examination that was scheduled to be held on 14.10.2015 for filling up the vacancies of Senior Clerk. It was further directed that the result of the examination in respect of the applicant shall not be

published without leave of the Tribunal. Complying with the aforesaid direction, the respondents allowed the applicant to appear the written examination for promotion to the post of Senior Clerk and his result has been kept in the sealed cover.

10. From the recital of above facts, it is an admitted position that the applicant, while working as Head Constable in the RPF was declared medically decategorized and consequent upon his willingness for accepting the bottom seniority, he was absorbed in the alternative post of Junior Clerk in the Personnel Department with effect from 03.07.2014. It is not the case of the respondents that the applicant's absorption as such in the alternative post of Junior Clerk is against any rules or instructions, for the time being in force. It has been submitted by the respondents in their counter that there is no provision of exercising any option for absorption in the alternative post with bottom seniority. Therefore, the contention of the respondents that the applicant submitted his willingness to accept the bottom seniority on his absorption against the alternative post of Junior Clerk *ip so facto*, does not wipe out either the past serve rendered by him prior to his absorption or the determination of his conditions of service with effect from 03.07.2014, when he was absorbed in the alternative post. Therefore, the plea of the respondents that because of willingness for acceptance of bottom seniority was tendered by the applicant, he will forfeit his seniority till eternity is unreasonable and improper. It is because, if at all this plea of the respondents is accepted, then, exercising option will be the governing factor in lieu of rules and instructions on the subject in so far as absorption of an employee declared medically unfit, in an alternative post. What with absorption in the alternative post in RPF or the Personnel Branch of the Railways, absorption of

the applicant in the alternative post in the Railways is in accordance with the rules governing such absorption and in this context, the plea of the respondents that by exercising option to accept bottom seniority, the applicant has forfeit the benefit accrued to him in respect of his past service is overruled not being sustainable in the eye of law.

11. Secondly, while rejecting the representation of the applicant vide A/6, it has been mentioned that applicant's seniority is fixed with bottom seniority in Jr.Clerk group of Personnel Branch vide Office Order No.PERS/32/2014 dated 03.07.2014. It is not in dispute that Ch.R.Sanyasi Rao and Pravasini Rout have been absorbed against the posts of Junior Clerk in the Personnel Department after the absorption of the applicant as such. Since the absorption of employees in the alternative posts consequent upon medical decategorization is governed under Rules-1302 and 1311 of Railway Establishment Manual, non-consideration of the applicant's grievance for appearing at the written test for the post in question amounts to violative of Articles-14 & 16 of the Constitution of India. Therefore, the persons absorbed against the post of Junior Clerk in the Personnel Department on medical decategorization after the applicant's absorption on 03.07.2014, can by no stretch of imagination be senior to him. Because, as already indicated above, absorption on medical decategorization is governed by a same set of rules and instructions. We may add that although a duty was cast on the respondents to at first publish the seniority list in the grade of Junior Clerks in the Personnel Department before calling upon the Junior Clerks as per circular dated 21.09.2015 to appear at the written test for promotion to the post of Senior Clerk, but, for the reasons best known they have not done so. Even, while calling upon the Junior Clerks to appear at the written examination vide A/4 dated 21.09.2015, their

inaction in indicating the date of absorption against each of the incumbents named therein, makes it conspicuous that there is lack of transparency in the personnel management. Be that as it may, the respondents vide A/6 having made it clear that the with bottom seniority in Jr.Clerk group of Personnel Branch vide Office Order No.PERS/32/2014 dated 03.07.2014, with effect from 03.07.2014, there was no justifiable reason for them to eliminate the applicant from the zone of consideration for appearing at the written examination for the post of Senior Clerk. From this, the corollary is that the persons appointed in the post of Junior Clerks in the Personnel Branch after 03.07.2014 shall stand junior to the applicant.

12. As regards the plea of the applicant that the applicant having not completed two years service is not eligible to appear at the written test, we would like to note that Paragraph-2 of RBE No.86/2003, as relied on by the applicant, which states as follows:

- "2. A question has been raised by NFIR whether a medically de-categorized staff absorbed in alternative post has to complete the prescribed minimum service in the new cadre before he is considered eligible for promotion or whether the service rendered by him in his original cadre in the same, or equivalent grade is to be reckoned towards the prescribed period of service in the relevant grade in the new cadre. It is clarified that while the prescribed period of service will be required to be completed in the new cadre, the procedure indicated above regarding eligibility of a senior with reference to eligibility of a junior, whenever necessary, will also apply in the case of promotion of medically de-categorized staff absorbed in alternative posts".

13. As held above, since Ch.Sanyasi Rao and Pravasini Rout have been absorbed in the alternative posts of Junior Clerk on being medically decategorized later than the applicant in the instant O.A. and that the provisions of RBE No.86/2003 as quoted above, provides such a course of

action regarding eligibility of a senior with reference to eligibility of a junior for promotion of medically decategorized staff absorbed in alternative posts, the applicant admittedly being senior, had an indefeasible right to take the written examination. Since, by the interim direction of this Tribunal, as mentioned above, the applicant has been allowed by the respondents to take the written examination and his result has been kept in the sealed cover, in the interest of justice, equity and fair-play, we direct the respondents to open the sealed cover and in case the applicant comes out successful in the examination, he shall, subject to other provisions of rules, be considered for promotion to the post of Senior Clerk with effect from the date Shri Ch.Sanyasi Rao and Pravasini Rout had been so promoted and in such eventuality, the applicant shall be entitled to all consequential service benefits. In view of this, we quash and set aside the impugned letter dated 12.10.2015 (A/6). This exercise shall be completed within a period of 120 days from the date of receipt of this order.

14. In the result, the O.A. is thus allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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