

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

COURT NO. : 1

13/01/2020

O.A./260/223/2013

UTPAL MANDAL

-V/S-

M/O RAILWAYS

ITEM NO:34

FOR APPLICANTS(S) Adv. : Mr.N.R.Routray

FOR RESPONDENTS(S) Adv.: Dr.C.R.Mishra

Notes of The Registry	Order of The Tribunal
	<p>The applicant has prayed for the following relief in the present OA :</p> <p>"(a) To quash the notification dtd. 21.3.2013 & order of repatriation dtd. 4.4.2013 under Annexure A/14 & A/18;</p> <p>(b) And to direct the Respondents to absorb the applicant permanently in Mechanical Department of HQ/BBS/ECOR.</p> <p>And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.</p> <p>And for which act of your kindness the applicant as in duty bound shall ever pray."</p>

2. The applicant was appointed initially as Tr. Asst. Driver on 21.6.1993. On 19.7.2002, the Railway Board issued a circular RBE No. 117/2002 (Annexure-A/2) asking for option from the staffs to be posted in Headquarters of the newly created Railway Zones. The respondent no.2 accordingly called for options vide order dated 2.1.2003 (Annexure-A/3) for posting to headquarters of the newly created East Coast Railways (in short ECR). Accordingly, the applicant submitted his option and he was posted temporarily in Mechanical Department of the ECR headquarters vide order dated 21.6.2004 (Annexure-A/7) while retaining his lien with the parent department. Vide order dated 21.2.2008 (Annexure-A/10), 8 similarly situated employees were regularly absorbed in the ECR headquarters. The applicant made a representation dated 27.2.2013 (Annexure-A/11) for change of his lien from Sambalpur Division to Headquarters. He also submitted another representation for regular posting in headquarters.

3. The respondent no.2 passed the order dated 21.3.2013 (Annexure-A/14) to get the running staffs to perform duties as Controllers in Mechanical Department of ECR headquarters to repatriate the applicant back to his parent department without regularly absorbing his in the headquarters. The representations of the applicant were disposed of by the respondent No.2 vide order dated 4.4.2013 (Annexure-A/18) directing repatriation of the applicant to his parent cadre on posting of replacement. The applicant has filed this OA being aggrieved by the orders at Annexure A/14 and A/18.

4. The Counter filed by the respondents opposed the OA stating as under:-

"It is humbly mentioned here that earlier in similar cases in OA No. 245, 250 and 251 of 2009 this Hon'ble Tribunal vide common order dated 24.10.2011 rejected the applications of the OAs on the ground that *'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.'*

Against the order of Hon'ble CAT/CTC, the applicants filed WP(C) No. 28819/2011 (S.K.Patra), WP(C) 29467/2011 (S.K.Bhal) & WP(C) No. 29466/2011 (K.L.Kumar) before the Hon'ble High Court of Orissa, Cuttack. Now the cases are under sub-judice. However, the Hon'ble Orissa High Court vide their interim order dated 4.11.2011, 15.11.2011 & 15.11.2011 respectively directed the Railway Administration to maintain status quo in respect of the posting of the petitioner till next date."

5. In the Rejoinder filed by the applicant, it is stated that the applicants of the OA Nos. 245, 250 and 251 of 2009 which were disposed of vide order dated 24.10.2011 of this Tribunal (Annexure-R/4 of the Counter) have challenged the order before Hon'ble High Court and as an interim measure, Hon'ble High Court has directed to maintain status quo in respect of the posting of the applicants in the said OAs.

6. We heard learned counsels for the applicant and the respondents. It is submitted by the applicant's counsel that

the writ petitions filed by similarly situated employees before Hon'ble High Court are pending and the petitioners are continuing at ECR headquarters as per the interim order of Hon'ble High Court. Learned counsel for the respondents also agreed to the submissions and stated that prayers made in OAs filed by similarly situated employees as the applicant, have not been accepted by this Tribunal vide order dated 24.10.2011 (Annexure-R4 of the Counter).

7. In the result, since the present OA is similar to the OA Nos. 245, 250 and 251 of 2009 which were disposed of vide order dated 24.10.2011 of this Tribunal (Annexure-R/4 of the Counter), no relief can be granted to the applicant. The OA is 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 ECR headquarters and if the applicant applies in pursuant to the notification for fresh option, the respondents should also consider the applicants alongwith others in accordance with the Rules.

8. The OA is disposed of with aforesaid observations and directions. No costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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