

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 516 of 2016

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

Rabindra Kumar Samal, aged about 41 years, Son of Jagabandhu Samal, working as a Track Maintainer-III, under SSE/P.Way/E.Co.Rly/Harichandanpur, Dist-Keonjhar, Permanent resident of Vill. Brahmapur, P.O./P.S.-Jenapur, Dist- Jajpur.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist- Khurda.
2. Senior Divisional Personal Officer, E.Co. Rly., Khurda Road Division, At/P.O.- Jatni, Dist- Khurda.
3. Senior Divisional Engineer (Co. Ordn.), E,Co. Rly., Khurda Road Division, At/P.O.- Jatni, Dist- Khurda.
4. Asst. Divisional Engineer, E.Co. Rly., Keonjhargarh, At- Ghumura, P.O.- Ghuntur, Dist- Keonjhar.
5. Upendra Nath Jali, Track Maintainer-III under SSE(P. Way)/ E.Co. Rly., Harichandanpur, Dist- Keonjhar.

.....Respondents

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

For the respondents : Mr. M. K. Das, Counsel (for Respondent Nos. 1 to 4),
Mr. D.K. Mohanty, Counsel (for respondent no. 5)

Heard & reserved on : 10.2.2020 Order on : 13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The dispute in this OA arises on account of promotion of the applicant and respondent no. 5 to the post of Track Maintainer-III as a part of restructuring of cadre in the respondent-railways. The applicant avers that he was initially appointed as a Trackman (in short TM) on 1.11.2012 and was posted as TM-III (Keyman), but subsequently his designation was changed to TM-IV and he was considered to be TM-III w.e.f. 1.4.2014 instead of 17.8.2012, while promoting the respondent no. 5 as TM-III w.e.f. 17.8.2012. Aggrieved by this decision, the applicant had filed the OA No. 394/16 which was disposed of vide order dated 7.6.2016 (Ann.-A/11), with direction to dispose of the applicant's representation after giving an opportunity of hearing to the

respondent no. 5. Accordingly, the authorities have considered the matter and rejected the applicant's representation dated 24.2.2016 (Ann.-A/11) by the order dated 1.7.2016 (Ann. -A/12). The applicant has challenged the rejection order at A/12 in this OA, seeking following main reliefs as under:-

- (i) **To quash the order of promotion dtd. 21.1.2016 under Ann.-A/9 so far as Respondent No. 5 is concerned and reasoned order dtd. 01.07.2016 under Ann.-A/12.**
- (ii) **And to direct the Respondents not to change the date of promotion of the applicant in the post of Track maintainer-III from 17.8.2012 to 01.14.2014 under restructuring of cadre as proposed vide Note No. 7 of order dtd. 21.01.2016 under Ann.-A/9.**

2. The main ground urged in the OA is that as per the letter dated 27.11.2014 (Ann. -A/7), the cut off date for submission of option by the employees to be repatriated to the parent units to avail the benefit of promotion due to restructuring of the cadre of Trackman vide order dated 17.8.2012 (Ann.-A/1) and dated 1.4.2014 (Ann. -A/2). It is alleged by the applicant that although the respondent no. 5 had not submitted his option to be repatriated to his parent cadre by 6.1.2015, the authorities allowed him to submit his option to come back to the parent cadre to avail the promotional benefits and promoted him to TM-III vide order dated 21.1.2016 (Ann.-A/9) without any authority, for which the orders at Ann.-A/9 and Ann.-A/12 have been challenged in this OA.

3. Counter filed by the respondents stated that the applicant was initially appointed as TM on 1.11.2012 and vide order dated 14.5.2015 (Ann.-A/5) he was promoted as TM-III. The respondent no. 5 was initially appointed as TM-IV on 19.8.2008 and was promoted as Keyman vide order dated 4.8.2014. He is senior to the applicant and without considering his case, the applicant was promoted as TM-III vide order dated 14.5.2015 (Ann.-A/5). Accordingly, the case of the respondent no. 5 has been considered for promotion to the post of TM-III after restructuring of the cadre as per the Railway Board order dated 17.8.2012 (Ann.-A/1) and the applicant's date of promotion was shifted to 1.4.2014 vide order dated 21.1.2016 (Ann.-A/9). It is further averred that the minutes of the meeting on 27.11.2014 (Ann.-A/7) is not a circular. The applicant was considered for promotion to TM-III as the name of the respondent no. 5 was not shown in the seniority list which was rectified subsequently and since he was senior to the applicant as TM, he was promoted in place of the applicant. Regarding option of the respondent no. 5, it is stated in the Counter that inadvertently, he was not communicated the letter asking for submission of option for transfer to his former unit to avail the promotion. Promotion of the applicant by order at Ann. A/5 was an administrative error.

4. The applicant has filed Rejoinder, stating that the applicant was given promotion as per the seniority list in which the respondent no. 5 was not there

as he was posted in Keonjhar. It is also stated that vide letter dated 27.4.2015, SSE, Keonjhar was informed that the respondent no. 5 has given his unwillingness to return to his previous station (Ann.-A/15). The applicant also opposed the contention in the Counter about the minutes dated 27.11.2014 (Ann.-A/7) and stated that the interpretation has been done to help respondent no. 5 to avail promotion although he had given his unwillingness.

5. Respondents have filed Additional Counter in reply to Rejoinder, stating that the document at Annexure-A/15 showed unwillingness of Upendra Nayak and not the respondent no. 5 and no document has been furnished to show that the respondent no. 5 had given his unwillingness to go back to his former unit. It is further stated that the respondent no. 5 had given his willingness to go back to his former unit on 12.10.2015 (Annexure-R/2) and accordingly the competent authority had approved his transfer from Keonjhar. It is stated that as per para 228 (Annexure-R/5) of the Indian Railway Establishment Manual (in short IREM), there is provision for correction of administrative error. The minutes dated 27.11.2014 in which the last date for option was fixed to be 6.1.2015, were not informed to the respondent no. 5 for which his option was considered.

6. We heard learned counsel for the applicant who filed a copy of the information received by the applicant under the RTI Act, 2005 in which a copy of the letter dated 8.4.2015 showing unwillingness of the respondent no. 5. It is also submitted that the information shows that the letter regarding the benefits of restructuring was circulated through the notice board.

7. Learned counsel for the official respondents was heard and he also filed a written notes of submissions. It is mentioned that the after issue of the circular of Railway Board dated 17.8.2012 on restructuring, it was decided that the staffs who were working other units will be given an option to come back to their earlier unit to avail promotion or continue in the new unit. But the said notice could not be served on the respondent no. 5, who had been transferred to Keonjhar unit on administrative reason. Hence, respondent no. 5 could not submit his option for which the applicant was promoted to TM-III with stipulation that the promotion will take effect after the residency period of 2 years. When the mistake was noticed, it was corrected as per para 228 of the IREM. It was further submitted that as the applicant had not completed the residency period of 2 years, he cannot be allowed promotion to the post of TM-III prior to 1.4.2014 when it was allowed.

8. Learned counsel for the respondent no. 5 was heard and he also filed a written note. He submitted that the respondent no. 5 was not informed about the circular fixing the last date to be 6.1.2015 for opting to go back to earlier

unit to avail promotion benefit on account of the restructuring of the cadre. It was further stated that he was transferred to Keonjhar unit in administrative interest. It was also submitted that when it came to his knowledge, he submitted his willingness to the authorities to go back to his former unit. The fact that the respondent no. 5 is senior to the applicant and the applicant had not completed 2 year residency period has been highlighted in the written note filed by the respondent no. 5.

9. The applicant wants that his promotion to TM-III should be as per the order dated 14.5.2015 (Ann.-A/5) and he is aggrieved by the promotion of the respondent no. 5 to the post of TM-III as per the order dated 21.1.2016 (Annexure-A/9) and has challenged the same in the OA on the ground that he did not submit his option by 6.1.2015 as per the minutes dated 27.11.2014 (Ann.-A/7 series) and informed his unwillingness. We do not find the ground advanced by the applicant to challenge the respondent no. 5's promotion to be convincing. The decisions taken in the meeting with the unions vide the minutes dated 27.11.2014 cannot be considered to be binding unless appropriate instructions are issued by the competent authority on the basis of these decisions. The rightful claim of an employee for being considered for promotion as per the rules cannot be taken away by these minutes. Further, it is seen from the paragraph 2 of the Minutes dated 27.11.2014 that the following decisions were taken:-

“2.This option has to be exercised within 15 days time by 6th Jan 2015. It will be informed that staff not submitting option within the target date will be treated as ‘Not Willing’ and no subsequent option will be entertained. The notice for option will have to be acknowledged by the staff concerned. This option is available only to the Trackman who were transferred to other Engg. Units of ECoRly as per their request but not to the staff whose category has been changed as per own request and transferred to other Zonal Railways.”

10. It is clear from above stipulations in the Minutes dated 27.11.2014 as extracted above, that the provision for option was there for the staff who have been transferred to other engineering units of the East Coast Railways and they had to submit their option by 6.1.2015. From the order dated 14.8.2014 by which the respondent no. 4 was transferred from Harichandanpur to Keonjhar was the order on administrative interest. It is also stated in para 5 of the Additional Counter that the name of the respondent no. 5 was not reflected in the seniority list of his original unit at Horichandanpur or in the unit at Keonjhar. It was a mistake on the part of the Railway authorities to delete the name of the respondent no. 5 from the seniority list of the TMs under Harichandanpur unit after his transfer to Keonjhar on administrative interest. Had his name been included in the seniority list of Keonjhar unit, then due to his failure in submission of option, he would have forfeited his claim for promotion in Harichandanpur unit in which the applicant had got promotion.

Non-inclusion of the respondents no. 5's name in the seniority list was a mistake and after its detection, the respondent no. 5 was rightly given option to come back to his original cadre at Harichandanpur unit. In fact since the respondent no. 5 was transferred to Keonjhar on administrative interest (as would appear from the order at Ann A/6), deletion of his name from the seniority list of Trackmen of Harichandanpur unit was a mistake on the part of the railway authorities, which has been corrected subsequently. Taking into account the specific facts as applicable for the respondent no. 5 as discussed above, we are of the view that the last date of 6.1.2015 as per the Minutes dated 27.11.2014 (A/7 series) will not make the subsequent option furnished by the respondent no. 5 to go back to Harichandanpur unacceptable and the objection raised by the applicant in this regard does not have force.

11. We can consider the matter from another angle also. The respondents have averred that to be eligible for promotion to the post of TM-III, a minimum residency period of 2 years is required. Such contention in the impugned order dated 1.7.2016 (Ann. A/12 of the OA) has not been contradicted by the applicant in his pleadings. It is also seen from the note 2 at the end of the order dated 14.5.2015 (Ann. A/5) by which the applicant was promoted as TM-III, it was mentioned clearly that "Sl. No. 20 to 48 of above list date of promotion will effect after completion of two year service." This stipulation was applicable for the applicant who was listed at serial no. 38 of the list in the order dated 14.5.2015. Since the applicant had initially joined service on 1.11.2012, he would not complete two years of service by the date he has claimed promotion to TM-III in the OA and he would not fulfil the eligibility criteria for promotion to TM-III. Hence, the action of the respondent-authorities to shift the date of promotion of the applicant to 1.4.2014 cannot be faulted.

12. In view of the discussions above, we are unable to agree with the grounds furnished by the applicant in his pleadings in this OA, which is devoid of merit. The OA is accordingly dismissed, but without any order on cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)