

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A. No. 678 of 2013

CORAM:

THE HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
THE HON'BLE MR. T. JACOB, MEMBER (ADMN.)

Shri Suryakanta Pradhan, aged about 36 years, S/o. Sri Subal Chandra Pradhan, At-Chandipur, Po. Pokhara, Dist. Balasore presently under C/o. P.C.Pandey near Labour Colony, At/Po.Mudipara, Town/Dist. Sambalpur.Applicant

Through Legal practitioner :M/s. Bimbisar Dash,
C.Mohanta, Counsel
Counsel

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coat Ralway, 2nd floor, South Block Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Sr. Divisional Mechanical Engineer, East Coast, Railway, Sambalpur Divison, At/Po/Ps/Dist. Sambalpur.
4. Divisional Railway Manager, East Coast Railway, Sambalpur Division, At/Po/PS/Dist. Sambalpur.
5. Sri V.S.Rao, Senior Assistant Loco Pilot (G), East Coast Railway, Sambalpur Divison, At/Po/PS/Dist. Sambalpur.

.....Respondents

Through Legal practitioner :Mr. S.K.Nayak, Counsel

Reserved on: 19/02/2021

Pronounced on:12/05/2021

O R D E R

MR.SWARUP KUMAR MISHRA, MEMJBER (JUDL.)

The facts as narrated in the OA are as under:

(a) He was selected as Assistant Loco Pilot through RRB/BBS and posted in SBP Division on 6.5.2002. While continuing as such, he was selected to the post of Junior Engineer -II by RRB/BBS against GDCE. He was spared to Khurda Division vide order dated 26.11.2009 and sent for on job training;

- (b) After four months training he submitted an application dated 29.03.2010 requesting to go back to his former post of Asst. Loco Pilot on the ground of his inability to perform duties and responsibilities of JE-II in Electrical Department;
- (c) Since no decision was communicated on the said request, he filed OA No. 67/2011 which was disposed of with direction to the authority concerned to take decision on his pending request within a period of 60 days;
- (d) His request was rejected for the reason communicated to him in letter dated 14.02.2011;
- (e) The applicant challenged the said order of rejection in OA No. 440/2011;
- (f) Based on the interim order dated 11.07.2011 passed by this Bench in OA No. 440/2011 the applicant was released from KUR Division and reported at DRM (P) Sambalpur on 09.04.2012, as according to him 6.4.2012 to 08.04.2012 DRM (P) office was closed;
- (g) In between 29.03.2010 and 05.04.2012 many ALPs were promoted to the post of Sr. ALP and 34 ALPs junior to the applicant were sent for training. Hence he requested for consideration of his case to the post of Sr.ALP and accordingly his name be placed above his junior Sri V.S.Rao. Further it was contended by him that 34 ALPs who were junior to him were sent for training for the post of L.P (Goods);
- (h) In corrigendum dated 21/12/2009 it was ordered that seniority position of Sri V.S.Rao, ALP/TIG which was assigned inadvertently at Sl.No.18 due to to erroneous date in the category o ALP published in the year 2009 is corrected and assigned between Sri S.Pradhan and Sri P.K.Pradhan w.e.f. the date of seniority from 18/02/2003.
- (i) 05.04.2012 applicant was repatriated;
- (j) On 05.11.2012 applicant submitted representation requesting for his promotion to the post of Sr. ALP and then to the post of L.P (Gods) without any loss of seniority;
- (k) On 13.12.2012, DRM (P) disposed of his representation;
- (l) In between 28.10.2010 and 26.7.2012 as many as 197 ALPs junior to the applicant were promoted to the post of Sr. ALPs;

- (m) On 24.12.2012, out of 50, 29 persons who were junior to the applicant were promoted to LP (Goods);
- (n) On 15.01.2013 applicant submitted representation. Alleging non consideration of his representation he filed OA No. 300 of 2013 which was disposed of with direction to consider and dispose of his pending representation;
- (o) On 17.7.2013 he submitted another representation. On 2.8.2013 his representation was rejected.

Hence being aggrieved by the said order the present OA has been filed by him seeking the following relief:

- “a. The original application may be allowed;
- b. The operation of the impugned order under Annexure-10 and Annexure-13 may be quashed;
- c. The respondents may be directed to restore the seniority of the applicant without any loss;
- d. The respondents may be directed to upgrade the applicant to the post of Sr. Asst. Loco Pilot at least from the date when his immediate junior got the same i.e. from 01.05.2010 and then to consider his case for promotion to the post of Loco Pilot (G) again from the date when his immediate junior got the same i.e. from 24.12.2012;
- e. The Respondents may be directed to give all consequential benefits to the applicant; and

Such other order(s)/direction(s) may be given in giving complete relief to the Applicant.”

2. Respondents have filed their counter in which it has been stated that the applicant was transferred to his former post of ALP vide office order dated 13.3.2012. On 15.1.2012, he submitted representation to promote him to the post of Sr. ALP & LP (G) at par with his juniors and vide order dated 02.08.2013 the applicant was intimated that selection to the post of LP (Goods) will be considered on first available opportunity with a reasonable time and would be provided proforma seniority vis-à-vis his immediate juniors on promotion in line with para 228 of IREM Vol.I. It

has been averred that the applicant was appointed as ALP in SBP Division on 6.5.2002. On being selected for appointment as Jr. Engineer (Elect.) against GDCE was allotted to KUR Division. He was released on 26.11.2009 from SBP Division. On expiry of two years after release from Sambalpur Division on account of his selection the lien of the applicant stood cut off from Sambalpur Division and was maintained in KUR Division as per extant rules. However, in compliance of the order dated 11.7.2011 in OA No. 440/2011 the applicant was repatriated back to Sambalpur Division as ALP vide order dated 13.03.2012. It has further been averred that promotion of the applicant to the post of LP (Goods) was not acceded to due to lack of competency certificate as the applicant had not undergone Driver Promotional Training in terms of RBE No. 101/2008 which is mandatory for handling locomotives independently. Vide Memorandum dated 19.10.2010 a select list of 150 ALPs was published for the post of Sr. ALP. Since the applicant was not repatriated by that time to SBP his name was not included in the said list for promotion to Sr. ALP effected vide order dated 24.06.2013. It has further been stated that in between 28.10.2010 and 26.07.2012 another select list of 92 ALPs for promotion to Sr. ALP was issued vide OM dated 13.07.2012 and on 20.12.2012 a select list of 50 Sr.ALPs for promotion to LP (Goods) was also issued vide Memorandum dated 20.12.2012.

3. The stand taken in the rejoinder will be dealt into while dealing with the arguments advanced by the learned counsel for the applicant.
4. Heard. Perused the records. The contention of the learned counsel for the applicant is as under:

- (i) Had the applicant been repatriated in April, 2010 he could not have been denied promotion to the post of Sr. ALP on 01.05.2010 and to the post of Loco Pilot (Goods) on 24.12.2012. Delay in consideration being not attributable to the applicant he is entitled to the relief;
- (ii) When applicant was repatriated to his former post he should have been promoted to the post to which his juniors were promoted;
- (iii) The stand that as the applicant did not have undergone driver promotional training in terms of RBE No. 101/2008 he is not entitled to such promotion is wrong as in para 3 of the RBE is in respect of a situation when shunters are not available to fill up the posts of Goods Driver and not in a situation like the present nature;
- (iv) Learned counsel for the applicant placed reliance on the decision of Hon'ble Punjab Harayana High Court in the case of Union of India vs Rakesh Kumar and another in CWP 25542 of 2019 to contend that since the applicant was deprived of his promotion illegally he is entitled to be promoted with all consequential financial benefits;
- (v) The applicant was not sent for training even after his repatriation back as ALP in Sambalpur division on 09.04.2012 and promotional training course for loco Pilot (Goods) was commenced from 8.5.2012 to 30.12.2012;
- (vii) Since the applicant was under training he was not holding any post so question of maintaining lien at Khurda Division did not arise and, therefore, para 239 to 244 IREM Vol.1 has no applicability to the case of Applicant

Accordingly it has been contended that there has been miscarriage of justice caused to the applicant in the decision making process of the matter and therefore, judicial intervention in the matter is warranted.

5. We have considered the rival submissions of the parties and perused the records.

6. Since the Respondents themselves allowed the request of the applicant and he was repatriated to his former post of ALO, the Applicant

ought to have been granted promotion which otherwise in the event of his repatriation to his former post. Further, if at all any such training was required for the applicant to undergo for such training which was given to others who were promoted to the next higher post; the respondents should have shown magnanimity for arranging such training to the applicants. Thus, denial of promotion to the applicant cannot be countenanced in law. Accordingly, we quash the impugned order and direct the Respondents to consider the case of the applicants for his promotion to next higher post with effect from the date(s) his immediate junior was promoted with notional fixation of pay subject to undergoing any such training as per Rules. The promotion shall be on notional basis. The entire exercise shall be completed within a period of 60 days from the date of receipt of copy of this order.

7. In the result with the observation and direction made above this OA stands disposed of. No costs.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)

