

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.967 of 2014

CORAM:

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

Sri P.V.B.N.S. Murthy, aged about 60 year, S/o. Late P. Surnarayan, retired as Sr. Tech. Previously working as Sr. Sec. Engineer, in O/o Dy. CST (Project), S&T, VSKP, (Shown retired as Sr. Technician) Waltair Division, Waltair, Visakhapatnam. Presently FLAT No. 502, Madhava Towers, Subbalaxmi Nagar, Visakhapatnam – 530016.

.....Applicant

VERSUS

1. Union of India represented through General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist - Khurda.
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, At/PO/Dist – Khurda.
3. Divisional Railway Manager (P) East Coast Railway, Waltair Division, Waltair, Visakhapatnam.
4. Sr. Divisional Personal Officer, East Coast Railway, Khurda Road, At/PO: Jatni, Dist – Khurda.
5. Deputy CSTE (Project), Signal and Telecom, East Coast Railway, Waltair Division, Waltair, Visakhapatnam.

.....Respondents.

For the applicant : Mr. A. Kanungo, Advocate.

For the respondents: Mr. S. K. Ojha, Advocate.

Heard & reserved on : 19.03.2021

Order on :09.07.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This Original Application has been filed by the applicant challenging the order of reversion issued by the CPO, BBSR, Respondent No. 2 under Annexure – 10 and the consequential posting order as Sr. Technician under Annexure – 11 issued by DRM (P). The applicant further challenges the refixation and recovery of the alleged overpayment directed under Annexure 15. The applicant is claiming the following relief:-

- A. Quash of the order of reversion passed by the CPO, Bhubaneswar vide order No. 216/2014 dated 29.04.2014 under Annexure 10.
- B. Quash the order of posting as Sr. Tech (Sign)/WAT issued by the DRM (P), WAT under Annexure – 11 in sequel to the reversion.

- C. Quash the order of DRM (P) dated 30.09.2014 under Annexure 15 to the Dy. Chief Signal & Telecom Engineer (Proj) ECoR, VSKP in re-fixing the pay as Sr. Technician and recovery of overpayment.
- D. And further be pleased to direct the respondents to allow the complete benefits, as if the applicant is retired as Sr. Section Engineer (SSE) as on 30.04.2014.
- E. Any other direction/directions appropriate under the circumstances be issued.

2. In compliance of notice the Respondents have filed counter and rejoinder has been filed by the applicant.

3. Heard both sides and perused the material on records, written notes of submission and citations relied upon by learned counsel for both the sides.

4. It is the case of applicant both in pleadings and reiterated during hearing that the applicant joined the respondent department as Gr. III Technician (ESM) and in the year 1986 was promoted as Tech. Gr. II (re-designated as Tech Gr. I w.e.f. 01.01.1984). The applicant then became Sr. Technician in the year 2001. The applicant was promoted as JE-II vide order dated 18.07.2007 and was directed to undergo periodical medical test, wherein he was found fit in B-1 category and not fit in A/3. In the year 2013 the applicant was again sent for periodical medical test where he was found A/3 medical fit thereby qualifying the basic criteria of the post of JE – II. The applicant on being selected through LDCE was promoted to the post of Sr. Section Engineer (SSE) against the DPQ w.e.f. 01.11.2013 vide letter dated 03.02.2014. On basis of some anonymous complaint the applicant was directed for re-medical examination on 15.04.2014 and vide letter dated 25.04.2014 a show cause notice was issued by the CPO office to the effect that the applicant did not qualify A/3 medical category and the applicant was required to show cause as to why he shall not be reverted. Thereafter the applicant was reverted to the post of Sr. Technician/signal, Waltair vide order dated 29.04.2014. The applicant claims that the order was not served on him on the date of his retirement i.e. 30.04.2014. On 02.05.2014 the order along with order of posting him as Sr. Technician was served to the applicant. Thereafter vide order dated 23.07.2014 re-fixation of pay and order of recovery was issued.

5. In para 3 of rejoinder the applicant has submitted that the statement made in paragraph 3 of the preliminary objection to the effect that administrative error or mistake can be rectified and the referred judgment D. Ganesh Rao Pathak has no application to the present case. On the other hand, it may be stated that the applicant was promoted and sent for promotional

training, completed refreshed course training, which he completed successfully. The applicant was only sent for medical test, directed only in 2013 and thereby, he was found fit in JE (II) with A/3 medical category. Since the applicant is a regular confirmed JE (II) and found fit in suitability test for the post of SSE, and the applicant was eligible & suitable in the suitability test, he was promoted to the post of Sr. Section Engineer (SSE), Signals and as such, selected & promoted. It is only on some anonymous complaint, he was again redirected for medical test, on 15.03.2014. After one year of the earlier medical test, i.e. 25.03.2013, he was alleged to have not found fit for JE (II), which he was not holding at the relevant point of time. The promotion cannot be said to be inadvertent or erroneous as he was allowed to continue as JE (II) on the medical test by the railway on 25.03.2013.”

6. We find that the applicant was allowed to continue in promotional post as JE for a period of about 7 years. Thereafter he was promoted to Sr. Section Engineer (SSE), Signals and he worked there for another period of about 5 months. It is submitted on behalf of the applicant that the order vide annexure A/10 & A/11 dated 29.04.2014 was served on the applicant after his retirement i.e. on 02.05.2014. He retired after attaining the age of superannuation on 30.04.2014. He was issued show cause notice vide annexure A/8 dated 25.04.2014 as to why he shall not be reverted. The applicant vide his reply dated 28.04.2014 (Annexure A/) submitted that he should be given at least 10 days time to submit reply since no document and materials were available with him.

7. As per the medical report vide annexure A/2 dated 03.08.2007 the applicant was found unfit for A-3 category but he was found fit for B-1 category. Subsequently on 03.01.2013 he was medically examined while he was serving as JE-II and the medical report at A/4 it was found that he was fit for A/3 category. There was no medical fitness requirement for the purpose of getting promotion from JE. But the medical requirement for getting the promotion to JE was A/1.

8. It is submitted on behalf of the respondents that although the applicant knew from the date of his medical examination as seen from annexure A/2 that he was not fit to hold the promotional post of JE, still then he did not take any step to intimate his authorities in this regard and continued to hold the promotional post although he knew that he is not suitable to hold the said post unless he is found medically fit in this regard. It is further contended on behalf of the respondents that the holding of promotional post of JE and subsequently the post of Sr. Section Engineer (SSE), Signals by the applicant for some period will not give rise to any right in his favour and the applicant cannot claim any equity for such continuance.

9. In reply to para 4.10 of the OA it has been pleaded in para 8 of the counter affidavit that as the applicant was approaching retirement w.e.f. 30.04.2014 necessary show cause notice was served on 25.04.2014 directing him to submit explanation within three days. Having failed to explain any satisfactory cause for his inadvertent promotion to the post of JE-II/Signal, the applicant was reverted to the post of Sr. Tech (Sig)/WAT with immediate effect vide letter dated 29.04.2014 which was communicated vide letter dated 29.04.2014. It is submitted on behalf of the respondents that although the orders vide annexure A/10 & A/11 were served on applicant after he attained age of superannuation, those were issued while he was still in service and accordingly there is no legal infirmity or procedural irregularity committed by the respondents in taking steps as mentioned in annexure A/10 and A/11. It was further submitted by learned counsel for the respondents that mere fact that no departmental proceedings was initiated does not come as a bar for not taking these steps against the applicant as per annexure A/10 and A/11. It was further submitted on their behalf that no such departmental proceeding was required to be initiated against the applicant since he was all along aware that he was medically eligible to hold the promotional post of JE. It was submitted by learned counsel for respondents that before passing the order vide annexure A/10 & A/11, the respondents have given him show cause notice.

10. The applicant was well aware that he was not medically fit for the promotional post of JE, therefore he cannot take financial benefit of the promotional post. Therefore, we do not find any illegality or irregularity on the part of the respondents in reverting him back and re-fixing his pay for fixing his pension. However since the applicant has not misrepresented any facts and admittedly worked in the promotional post without any complain of higher authorities and also in view of the judgment of Hon'ble Apex Court in *State of Punjab vrs Rafiq Masih, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover*, we direct the respondents not to recover any amount from the applicant for the period he had worked in the promotional post.

13. Accordingly the OA is disposed of with above observation but in the circumstances without any order to cost.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)