

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 26th DAY OF Nov, 2010)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr S.N Shukla, Member (A)

Original Application No.1103 of 2007

(U/S 19, Administrative Tribunal Act, 1985)

Pradeep Kumar Singh son of Shri Parmanand Singh, Chief Law Assistant Grade Rs. 7450-11500 working under SDGM/CORE/Allahabad.

..... *Applicant*

Present for Applicant : Shri N.P Singh
Ms. A Bashir
Shri M.K Upadhyaya

Versus

1. Union of India, through the General Manager (P) Central Organization of Railway Electrification, Allahabad.
2. The General Manager (P) South Eastern Railway/Head Quarter/Garden Reach, Kolkata.
3. The General Manager (P) South East Central Railway, Head Quarters Office, Bilaspur.
4. Shri Amiya Kumar, Chief Law Assistant, CCM/South East Central Railway, Bilaspur.

..... *Respondents*

Present for Respondentst : Shri P.N Rai
Shri K.P Singh
Shri D.P Singh

[Signature]

ORDER**(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)**

Shorn of details that are less proximate to the core issue involved in this case, the facts of the case are as under:-

(a) The Zonal Railways had the South Eastern Railway as one of the zones. The applicant joined this South Eastern Railway as Law Assistant in 2000 and in 2001, he was posted on deputation to the Central Organization Railway Electrification, Allahabad, retaining his lien in the South Eastern Railway. In 2003, the South Eastern Railway was trifurcated as (a) South Eastern Railway (SER), (b) South East Central Railway (SECR) and (c) East Coast Railway (ECoR), Obviously, there was a need to seek option from the employees of the undivided SER which would be considered before allotting them to any particular trifurcated Zone. Notification inviting such offer was issued by the Railway Board in its letter dated 19-07-2002 to the Zonal Railway which in turn circulated the same to all concerned on 31-07-02, which was again renewed by letter dated 07-08-2002, and the same reads as under:-

"South Eastern Railway

No. P/H-5/NZR/Poly

*Office of the
Chief Personnel Officer
Dated: 07.08.2002.*

All concerned

*Sub:- Calling of options form staff to serve in the
Headquarters of*

- (i) East Coast Railway, Bhubaneswar*
- (ii) South East Central Railway, Bilaspur.*

b

Fresh options are invited from staff of South Eastern Railway Headquarters from all departments and those of the staff who are borne in the Headquarters' seniority but excluding staff working in RPF to serve in the new zonal headquarters ECOR and SECR.

2. *Option may be exercised latest by 30.11.2002 as per proforma enclosed. Those of the staff who had already exercised the option earlier with reference to this office notification in 1997 are requested to apply fresh.*

3. *All other conditions as contained in the Est. Sl. NO. 83/02 shall apply.*

*Sd. Illegible
M.R. Goel
For Chief Personnel Officer*

D.A: Option form

Copy for information and necessary action to:-

- i) All PHODs of all Departments
- ii) General Secretary, SE Railwaymens Union
- iii) General Secretary, SE Railwaymen's Congress".

(b) The format prescribed the choice of Head Quarter in order of preference (to be ticked at appropriate box) and the applicant, vide Annexure A-2 reflected his order of priority as under:

1 st	✓ SER	East CoR	SECR
2 nd	SER	East CoR	✓ SECR
3 rd	SER		

The aforesaid option was forwarded by the Central Organization, Railway Electrification Organization at Allahabad (where the applicant was serving) to the G.M. CORE, Allahabad for onward transmission to the Chief Personnel Officer, S.E.R. vide Annexure A-4.

(c) As no response was received by the applicant, he had penned a representation dated 10-03-2005 to the General Manager,

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S.E.C.R., the G.M. S.E.R. as well as G.M. CORE, Allahabad stating that his junior one Shri Amulya Kumar had been absorbed in the SECR while orders in the case of the applicant have not been issued. Annexure A-5 refers. In response to the above, the S.E.R. vide Annexure 7 letter dated 10-05-2005 had informed the CORE, Allahabad inter alia as under:-

- (a) *Formal acceptance of SECR which was required to be received was not received.*
- (b) *Mere exercise of option does not imply that the transfer would be automatically effected.*
- (c) *The cadre in the Headquarters Office of new Zonal Railways have closed on 31-10-2003.*

2. The applicant then approached the S.E.C.R. by Annexure A-8 representation dated 14-07-2005, which was again followed by representation dated 29-08-2006 (Annexure A-9) as well as 12-09-2007 (Annexure A-10).

3. As no response was heard from the South East Central Railways, the applicant had moved this OA praying for a direction to the respondents to absorb him in the SECR in pursuance of the policy dated 07-08-2002 and fix his seniority accordingly. As an interim relief, the applicant prayed for a direction to the respondents to consider his application vide Annexure A-8 to A-10, as well as his option exercised.

4. When the case came up for admission, while issuing notice, it was mentioned that it is always open to the respondents to consider the representation of the applicant before the O.A is admitted. Order dated 16-11-2007 refers.

5. Vide letter dated 19-12-2007, the SECR informed the applicant that his first option was for SER while that of Amulya Kumar was SECR. In fact, the option form was not forwarded by the SER, obviously due to the reason that the first priority of the applicant was only SER. Finally, it was informed to the applicant that there is no scope for absorption of the applicant. Annexure AA-1 refers.

6. When the SECR was to hold selection for the post of Law Officer and the applicant was one of the aspirants as the applicant was not borne the said Railway, the SECR had, vide Annexure AA-2 rejected his application.

7. The applicant filed amendment application and impugned the above said two orders also and the said amendment application was allowed by the Tribunal.

8. During the pendency of the case, the applicant sought permission to appear in the selection for the post of Law Officer in the SECR and he having been permitted provisionally under the orders of the Tribunal, in the panel, his name was included as a

provisionally selected candidate and he stands second in the panel, the first being respondent No. 4, vide Annexure A-14.

9. The following are inter alia the relief(s) sought for by the applicant in this O.A.

- "(i) *to issue a writ, order or direction in the nature of mandamus directing the respondents to allow the claim of the applicant for absorption in Head Quarter of South East Central Railway, Bilaspur in pursuance of policy dated 7.8.2002 and fixed seniority accordingly.*
- (ii) *to issue a writ, order or direction in the nature of mandamus directing the respondent to consider the representation of the applicant dated 29.8.2006 in pursuance of letter dated 7.8.2002, 13.4.2005, 20.9.2006 of respondent No.1 and in the light of judgment of Hon'ble C.A.T Cuttack bench in O.A. NO. 944 of 2005 and 777 of 2006 to which the applicant shall be ever grateful.*
- (ii-a) *to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 19.12.2007 and 5.6.2008 passed by respondent No.3 and impugned order dated 23.1.2008 passed by respondent No.2.*
- (ii-b) *To issue a writ, order or direction in the nature of mandamus directing the respondents to pass posting order in favour of applicants on the post of Law officer Group 'B' in pursuance of panel dated 2.7.2009 and permit to join.*
- (iii) *Issue any other order or direction, as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case".*

10. Respondents have contested the O.A. Their main points of defence are succinctly as under:-

- (a) The application is barred by limitation. For, as early as on 10-05-2005, the applicant's claim having been rejected, the cause of action had arisen at that time itself and as such, his case is liable to be dismissed on the ground of limitation.

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(b) The option exercised by the applicant clearly indicated SER as the first priority. As such, he had been retained in SER. He cannot insist for his second priority to be operated and should be posted to SECR, when the respondent No. 4 had exercised as his first priority allocation to SECR.

(c) The applicant was promoted as Chief Law Assistant in the SER and accepted his promotion as early as November, 2005.

11. Rejoinder, supplementary counter etc., have all been exchanged, which by and large are revolving on the very same contentions as contained in the OA and the counter reply respectively. As said Lord Denning in *Jones v. National Coal Board* — let the advocates one after the other put the weights into the scales — the 'nicely calculated less or more' — but the judge at the end decides which way the balance tilts, be it ever so slightly (cited in *Charan Lal Sahu v. Union of India, (1990) 1 SCC 613*).

12. Arguments were advanced by the counsel for the parties at length and their eloquence had been supplemented by dexterity by way of written submissions as well. In the written submission, the following points were highlighted by the applicant:-

"(a) Option floated by the respondent No.1 was contrary to notification 7.8.2002.

- (b) Column No.1 showing option form SER (Old Zone) will become irrelevant/redundant.
- (c) Option is to be treated only for South East Central Railway and East Coast Railway.
- (d) The applicant's option form was sent by South Eastern Railway to South East Central Railway.
- (e) South Eastern Railway has not considered the option form of the applicant and considered and accepted only the option form of junior (respondent NO. 4)
- (f) South East Central Railway, on the other hand, initially denied the very receipt of option form but subsequently negated the claim of the applicant stating "close perusal of option" form which only shows contrary contradiction.
- (g) South East Central Railway cannot allow to blow hot and cold.
- (h) The applicant has proved his mettle being successful in the selection for the Law Officer and has been empanelled by South East Central Railway though on provisional basis as per order of the Tribunal.
- (i) The contention of the applicant has not given the first option form S.C.E.R is not legal and valid.
- (j) Whatever controversy about receipt or otherwise of the option form, it is between two zonal Railways and it should not affect the case of the applicant.
- (k) As per R.B.E. No. 123/96 (RA-1 of Amendment Application, Page 11), the applicant comes under priority No.1.
- (l) There is no need at all to exercise the option for South Eastern Railway.
- (m) In an identical case, A.K. Tiwari, C.L. A Dhanbad Division-respondent No. 3 has rectified the mistakes and entertaining the option form.

13. In the written submission of the respondents, the focus is on the following:-

- (a) Bar by limitation citing the following cases :-
- (i) Arun Agarwal Vs. Nagreeka Exports (P0 Ltd. (2002 (10) SCC 101
- (ii) Ramesh Chandra Sharma etc. Vs. Udhamp Singh Kamal and Others, 2000 SCC (L&S) 53.
- (iii) Administrator of Union Territory of Daman and Diu and other Vs. R.D. Valand, 1996 SCC (L&S)
- (iv) O.A. No. 1393 of 2006 K.L. Agarwal Vs. Union of India and Ors. 2009 (3) (C.A.T.) (AISLJ) Volume 102 Part 111.
- (v) In Karnataka Power Corporation Ltd. Through its Chairman & Managing Director and another Vs. K. Thangappan and another 2006 (3) SLJ 2001: (2006) 4 SCC 322.

- (vi) *K.V. Raja Lakshmiah Setty Vs. State of Mysore, AIR 1967 SC 993.*
- (vii) *Rabindra Nath Bose Case, AIR 1970 S.C. 470.*
- (viii) *State of Orissa Vs. Pyarimohan Samantray, AIR 1976 SC 2617".*

(b) *Barred by the principle of non joinder of necessary party stating:*

- (i) *The applicant had not impleaded in the array of the respondents the Chief Law Assistant and Law Assistant of South East Central Railway, Bilaspur which will directly affected if the request of the applicant would be considered.*
- (ii) *Hon'ble Supreme Court in Prabodh Verma and others Vs. State of Uttar Pradesh and others [(1984) 4 SCC 251 at p. 273] has held that "A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgments being before it as respondent....". Similarly Hon'ble Supreme Court in Ramrao and others Vs. All India Backward Class Bank Employees Welfare Association and others [(2004) 2 SCC 76 at page 86] has held that an order issued against a person without impleading him as a party and thus without giving an opportunity of hearing must be held to be bad in law.*
- (iii) *In terms of CPO, South Eastern Railway Kolkata letter dated P/H-5/NZR/Poly dated 16.10.2002, the person who wants to stay back in S.E. Railway Headquarter should also fill up their option (Annexure ADR-2 of Counter to Civil Misc. Amendment Application).*
- (iv) *It is apparent from the letter of General Manager (P), Central Organization for Railway Electrification, Allahabad dated 21.11.2002 (Annexure 4 of the Original Application) that the option form of the applicant has been forwarded to the GM(P), South Eastern Railway, Kolkata stating that "option in the prescribed format of following staff working under CPO/CORE/ALD for posting in S.E. Rly./Kolkata Or S.E.C. Rly./Bilaspur in order of priority are forwarded herewith for necessary action. "It is clearly evident from the option (Annexure 2 of the Original Application) preferred by the applicant that the applicant has preferred 1st priority for SER (South Eastern Railway).*
- (v) *The applicant has tried to compare his case with Sri Amiya Kumar i.e. respondent No. 04 whose option has been considered by the South East Central Railway Bilaspur.*
- (vi) *It is evident from the option of Sri Amiya Kumar that the respondent NO. 4 has preferred 1st priority for SECR (South East Central Railway) and accordingly the option of the respondent NO. 4 has been considered by South East Central Railway, Bilaspur.*
- (vii) *The applicant has opted for SER as 1st priority and respondent No. 4 has opted for SECR as 1st priority so the applicant cannot claim for equality with the respondent No. 4.*

(viii) the applicant cannot claim for absorption in South East Central Railway Bilaspur ignoring the prescribed priority given in his option form.

(ix) In the case of State of M.P and others Vs. Sanjay Kumar Pathak and others JT 2007 (12) SC 219 it has been held that merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies. (see- and All India SC &ST Employees' Association and Anr. Vs. A. Arthur Jeen and others AIR 2001 SC 1851.

14. Arguments were heard, documents as also the written submissions perused. First, the two preliminary objections have to be considered. As regards limitation, the Respondents have laboured a lot in citing a good number of precedents wherein the ratio was that stale claims cannot be considered by the courts. According to the respondents, the cause of action arose as early as in 2003 when the option for change over was closed in October, 2003 and the claim of the applicant being absorption in the SECR prior to closure date and corresponding seniority, the application filed as late as in 2007 is certainly belated one. Again, it has been argued that the final rejection letter was issued on 10-05-2005. As such, the limitation ends by 10-05-2006. Beyond that the OA filed is barred by limitation. This contention has to be rejected for, the applicant was informed through letter dated 10-05-2005 that the G.M. SECR had not communicated the acceptance of the applicant's option. It was thereafter that the applicant wrote to the SECR and since he did not get any response, much less positive response, he approached the Tribunal. The interim relief prayed for is for a direction to dispose of the pending representation before the SECR

and on liberty being granted to the SECR, the SECR considered and rejected the case of the applicant. This too has later on been challenged by amending the O.A. Thus, the OA is **not** barred by limitation.

15. As regards non joinder of parties, i.e. the Chief Law Assistant etc., of the SECR, as contended in the written submission, the same too has to be rejected since what the applicant claims is that the authorities ought to have absorbed the applicant in SECR of their own. In case the SECR had absorbed the applicant (as they had done in the case of Amulya Kumar), even then there may be some impact upon the career prospects of the Chief Law Assistant of the SECR. But there is no need to put them to notice in this regard. Likewise, when the applicant claims absorption now through this OA, there is no need to implead any other party. The applicant has impleaded Respondent No. 4 only on the basis of the fact that should there be only one post of Law Assistant for absorption, the applicant being senior, in the event of his being absorbed, respondent No. 4 has to be repatriated. For this purpose only Respondent No. 4 had been impleaded. Thus, no error could be discerned in respect of array of parties in the O.A.

16. Coming to the merit of the matter, the basic issue is whether the option exercised by the applicant ought to have been considered by the SECR and whether he should have been absorbed with due seniority in the grade of Law Assistant.

17. The applicant's contention is that though he had given SER as the first priority, the same loses its significance, vide para 14 of the written submission wherein he has stated - "*That as per notification dated 19-07-2002 the clause 1 of Old Zone i.e. South Eastern Railway, Kolkata of the option form which has been floated by the respondent No. 2 was illegal arbitrary, irrelevant and therefore, redundant itself, in these circumstances the priority No.1 automatically came at SECR, Bilaspur*"

18. Clause 1 of the order dated 19-07-2002 reads, "In this Ministry's letter of even No. dated 06-12-1996 as modified ...instructions were issued for calling options from the staff to work in the Headquarters offices of the new zonal Railways subject to the conditions as stipulated therein." Perhaps, the applicant would have thought that option is required only in respect of new zones and not the existing zone. But, the mother letter calling for options dated 06-12-1996 stipulate that options non gazetted staff of affected Divisions in categories/cadres controlled by Headquarters will have the option to remain in the existing Zonal Railway or join the New Railway for which they must exercise option. The respondents have in their written submission stated that as per the CPO order dated 16-10-2002, option was to be exercised by all without exception, including those who prefer to stay put in the same zone.

19. In fact, when the option form indicated the three zonal railways, i.e. SER, SECR and ECoR, obviously, the same meant the new SER after the carving out from undivided SER, the SECR and ECoR and thus, the applicant's option indicated his preference to the present SER, i.e. after such carving out.

20. The applicant had comfortably accepted his promotion in the SER as Chief Law Assistant. This is after he had been informed as to the fate of his option, vide order dated 10-05-2005. Thus, he having accepted a promotion without registering any protest in the SER, he cannot claim from an earlier date for his posting at SECR.

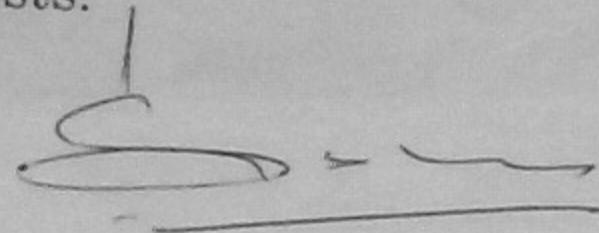
21. A slight confusion did arise when in their letter dated 10-05-2005 the SER has stated that the option was sent to SECR, while the latter has denied receipt of the same. In any event, in their omission in sending the option, the SER has not in any way adversely affected the case of the applicant as his first priority was only to SER. Amulya Kumar's case was promptly sent as his first choice was SECR.

22. In view of the above, the applicant could not make out a case. Hence, **this O.A. is dismissed.** The interim order directing the SECR to consider the case of the applicant for promotion as Law Officer and the provisional selection made by the SECR would be of no consequence due to the dismissal of this O.A. It is however, open to the applicant to apply for inter-zonal transfer to SECR if he so

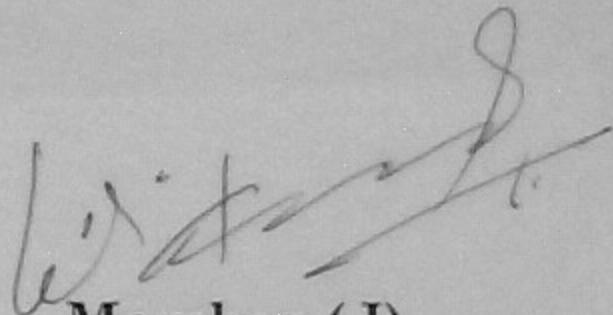
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desires and in that event, his case would be considered in accordance with law.

13. No costs.



Member (A)



Member (J)

Manish/-