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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.197 of 1987.

Date of decision : April 12, 1989.

Subhas Chandra Das, son of Mayadhar Das,
D.S.K.Gr.III, Carriage Repair Workshop
S.E.Railway, Mancheswar, Dist.Puri.

... Applicant..

Versus

1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Controller of Stores, South Eastern Railway, Garden Reach, Calcutta-43.
3. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43.
4. Assistant Controller of stores, Carriage Repair Workshop, South Eastern Railway, At/P.O. Mancheswar, Dist.Puri.
5. Assistant Personnel Officer(Stores), South Eastern Railway, Kharagpur,
6. Apurva Kumar Mandal, DSK Gr.III, Carriage Repair Workshop, South Eastern Railway, At/P.O. Mancheswar, Dist.Puri.

... Respondents.

For the applicant ... M/s.J.Patnaik,
A.K.Bhagat,
H.M.Dhal, Advocates.

For the respondents ... Mr.Ashok Mohanty,
Standing Counsel(Railways)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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16JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash Annexures-3 and 4 and to order reinstatement of the applicant in the post of Depot Store Keeper Grade III with all consequential financial benefits.

2. Shortly stated, the case of the applicant is that he was appointed as Junior Clerk under the South Eastern Railway on 15.5.1975 and was attached to the Office of the Assistant Controller of Stores, Shalimar. On 5.12.1983 the applicant was promoted to the post of Senior Clerk. Soon after 5.12.1983 vide Annexure-6 option was sought for from different employees posted at Shalimar as to whether any of them would like to join the Carriage Workshop Depot at Mancheswar. It is further maintained by the applicant that he gave his option to move to Mancheswar and accordingly vide Annexure-1 dated 28.5.1986 the applicant was posted at Mancheswar as the Senior Clerk under A.C.M.E. (Stores), Carriage Repair Workshop. On 13.1.1987 vide Annexure-2 the applicant was promoted to the post of Depot Store Keeper on ad hoc basis (Grade III). Soon hereafter the grievance of the applicant has arisen and that is one Mr. Apurva Kumar Mandal (Respondent No(f)) being directly recruited on 4.6.1987 came over to Mancheswar and has been provisionally appointed as Temporary Depot Store Keeper Grade III in consequence of which the applicant stood reverted. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the applicant came over to Mancheswar on his own request and therefore the seniority position of the applicant is maintained at Shalimar and therefore, there was no illegality committed by the competent authority in reverting the applicant to his former substantive post after Shri Mandal joined the post as per Annexure-3. It is further maintained by the respondents that one Mr. J. M. Patnaik though junior to the applicant at Mancheswar yet he has been given promotion because the seniority of the applicant is maintained at Shalimar and Shri J. M. Patnaik having come ~~up~~ from Kharagpur he is bound to get promotion over the head of the applicant and the applicant's ~~prayer~~ ^{promotion} shall become due ~~when~~ according to the seniority maintained by him at Shalimar. According to the respondents, such being the situation no illegality has been committed by ^{the} competent authority reverting the applicant to his former ~~substantive~~ post and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. J. Patnaik, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel appearing for the Railway Administration at some length. The pertinent fact which would determine the issue at hand so far as this case is concerned is as to whether the transfer of the applicant from Shalimar to Mancheswar was on his own request or it was due to administrative exigencies. If the transfer of the applicant is on his own request, then the applicant is undoubtedly out of Court, otherwise his case should stand on a different footing. For this purpose,

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we had requested Mr. Ashok Mohanty, learned Standing Counsel appearing for the Railway Administration to produce the correspondence between the applicant and his authorities requesting transfer of the applicant from Shalimar to Mancheswar. On this count, we had given some adjournments to learned Standing Counsel for the Railway Administration, Mr. Mohanty but as yet such document has not been produced. Before the hearing commenced, Mr. Mohanty strenuously urged before us that ~~some~~ further opportunity must be given to the department to produce the document. We feel that no fruitful purpose would be achieved if any further adjournment is granted which will be only delaying the matter in regard to disposal of the case. We are also of opinion that on the basis of documents before us we can give a positive finding whether the transfer of the applicant to Mancheswar was on his own request or it was in pursuance ~~of~~ administrative exigencies. Hence, we cannot accede to the request of Mr. Mohanty to adjourn this case.

5. Now, coming to the pertinent question, we find from Annexure-5 - a letter sent by the Chief Material Manager to the Deputy COS, South Eastern Railway, Kharagpur requesting him to call for options from different persons willing to join at Mancheswar. In furtherance thereof, vide Annexure-A which is annexed to the counter of the Respondents it is found that the Deputy Controller of Stores, Kharagpur called for options vide his memorandum dated 8.5.1984. Annexure-6 dated 12.12.1983 is also issued by the Assistant Controller

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of Stores calling for option from willing staff in all categories (including Class IV staff) who are willing and prepared to move over to Mancheswar Carriage Workshop from January, 1984. Both Annexures-5 and 6 have been marked to Shalimar Depot where the applicant was admittedly serving. In response thereto the applicant admittedly gave his willingness to be transferred to Mancheswar. From Annexure-1 which is the posting order issued by the competent authority posting the applicant at Mancheswar, we find that lien of the applicant and one Shri B.B.Dhal ^{is} ~~be~~ maintained in the Office at Shalimar till further advice. In case, the transfer was on the own request of the applicant, there was no scope and occasion for the competent authority to say that the lien of the applicant is maintained at Shalimar. Hence, taking into consideration the above mentioned documents and the aforesaid facts and circumstances, there is no escape from the conclusion that the transfer of the applicant was in pursuance to Annexures 5 & 6 and Annexure-A and therefore it was not ^a ~~the~~ transfer on the own request of the applicant but it was a transfer due to administrative exigencies and in usual course.

6. Now, the question arises as to whether the demotion or reversion of the applicant to substantive post because of one Mr.A.K.Mandal, a direct recruit having joined at Mancheswar and because of the promotion given to Shri J.M. Patnaik, is legal or otherwise. Mr.Ashok Mohanty, learned Standing Counsel appearing for the Railway Administration emphatically urged before us that by virtue of the fact

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that Mr. Mandal who was recruited against direct recruitment quota having joined at Mancheswar and Mr. J. M. Patnaik being borne in the seniority list of Kharagpur and the applicant's lien being maintained at Shalimar, the competent authority was perfectly justified in giving promotion to Shri J. M. Patnaik especially ordering reversion of the applicant which is consequential. On this issue, we refrain ourselves from expressing any opinion on the rival contentions of the parties made before us i.e. the seniority position between Mr. J. M. Patnaik and the applicant and we further more refrain ourselves from expressing any opinion because Shri J. M. Patnaik is not before us as a party in this case. We would therefore, remit this case back to the Controller of Stores, South Eastern Railway, Gardenreach, Calcutta to determine the seniority between the applicant vis-a-vis Shri J. M. Patnaik keeping in view our finding that the applicant has come over to Mancheswar not on his own request but due to administrative reasons and thereafter he who is determined to be senior, shall be given promotion to the post of Depot Store Keeper, Grade III. We further direct the Controller of Stores, South Eastern Railway, Garden Reach, Calcutta to give a personal hearing to the applicant and Shri J. M. Patnaik before arriving at his own conclusion.

7. There was a dispute presented before us that the appointment of Mr. Mandal cannot be under the direct recruitment quota as per the Rules. No Rules to this effect were placed before us. Therefore, we would also direct the

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Controller of Stores, South Eastern Railway, Gardenreach, Calcutta to determine as per the recruitment Rules as to whether the appointment of Mr. A.K. Mandal was ~~at best~~ ⁱⁿ reserved for direct recruitment at Mancheswar on the basis of direct recruitment quota and the competent authority should pass orders according to rules. We expect the competent authority would pass the final orders within four months from the date of receipt of a copy of this judgment.

8. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

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Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,

I agree.

Arshad ^{12.4.89}
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 12, 1989/Sarangi.

