

18
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 100 OF 1998
Cuttack, this the 22nd day of May, 2000

N.Srinivas Rao Applicant

vrs.

General Manager, SE Railway and others ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

[Signature]
(G.NARASIMHAM)
MEMBER (JUDICIAL)

[Signature]
(SOMNATH SOM)
VICE-CHAIRMAN

22.5.2000

19
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 100 OF 1998
Cuttack, this the 22nd day of May, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
N.Srinivas Rao, aged about 49 years, son of N.Prakash Rao,
residing at Railway Colony, Koraput, At/PO-Koraput, at
present working as Motor Trolley Driver-cum-Mechanic
Grade-III, under the control of Assistant Engineer, South
Eastern Railway, Koraput Sub-Division, At/PO/Dist.Koraput

.....Applicant

Advocates for applicant - M/s C.A.Rao
S.K.behera
P.K.Sahoo

Vrs.

1. General Manager, South Eastern Railway, Garden Reach,
Calcutta-43, West Bengal.
2. Divisional Railway Manager, South Eastern Railway
Division, Headquarter at Waltair (Andhra Pradesh)
3. Senior Divisional Personnel Officer, South Eastern
Railway, Waltair (Andhra Pradesh)
4. Assistant Engineer, South Eastern Railway, Koraput
Sub-Division, At/PO/Dist.Koraput.
5. Divisional Signal of Telecom Engineer, Waltair, Andhra
Pradesh
6. Sri Nirod Nanda, at present posted as Adhoc Motor
Trolley Driver-cum-Mechanic, C/o AssistantEngineer,
S.E.Railway, Koraput Sub-Division, At/PO/Dist.Koraput
.....
Respondents

Advocates for respondents-M/s D.N.Misra
S.K.Panda
& S.C.Samantray
for R-6.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

The petitioner has prayed for quashing the
order at Annexure-10 giving ad hoc appointment to respondent
no.6 and for quashing the consequential transfer order
disturbing him. By way of interim relief he had prayed that
the order of ad hoc appointment and consequential order of

transfer should be stayed. In order dated 24.2.1998 the prayer for staying the ad hoc promotion of respondent no.6 during the pendency of the OA was rejected, but the respondents were directed not to relieve the applicant from his present post till disposal of the O.A.

2. The applicant's case is that he joined as Trolley Man on 2.6.1971 and was transferred on 17.8.1972 as Motor Trolley Man under Assistant Engineer, S.E.Railway, Koraput Sub-Division. While the applicant was working as Motor Trolley Man on 8.4.1976 he was again transferred as Trolley Man and he worked as such till 31.10.1989. On 1.11.1989 he was again transferred and posted as Motor Trolley Man and continued as such till 3.6.1995. During this period on different occasions he was allowed to officiate as Motor Trolley Driver-cum-Mechanic ("MTDM", for short) and finally on 4.6.1995 he was given officiating promotion as MTDM under Assistant Engineer, Koraput Sub-Division and continued as such till 1.5.1997. On 15.4.1997 respondent no.6 was given officiating promotion as MTDM in place of the applicant with a condition to be reverted back as and when regular incumbent is posted. This order is at Annexure-1. The applicant has stated that he has put in more number of years as Motor Trolley Man than respondent no.6 and he filed representation praying for consideration of his case for promotion to the post of MTDM. Though his application was duly forwarded, no orders were passed on it. On 30.9.1997 a circular was issued (Annexure-3) inviting option for undergoing trade test. The applicant opted for undergoing trade test but respondent no.6 did not give any option. A list of persons who opted in response to Annexure-3 is at Annexure-4. The applicant was directed in the letter at Annexure-5 to appear at a trade

SSM

test on 14.10.1997. Accordingly he appeared at the trade test and was declared passed in order dated 23.10.1997 (Annexure-6). The applicant has stated that on the basis of his earlier representation and on the basis of trade test on 29.12.1997 he was given regular promotion to the post of MTDM and was posted as such under Assistant Engineer, Koraput Sub-Division. In the same order dated 29.12.1997 (Annexure-7) respondent no.6 was reverted to the post of MTM on availability of a regular MTDM. Respondent no.6 handed over charge and the applicant submitted joining report on 12.1.1998 (Annexure-8). The applicant has stated that till date respondent no.6 has not passed the trade test. But with a mala fide intention and only to accommodate him at Koraput on 2.2.1998 an order has been passed (Annexure-10) giving ad hoc appointment to respondent no.6 to the post of MTDM till the posting of a regular MTDM and it has been mentioned in the order that posting order of the applicant will follow. The applicant has stated that when a candidate like him who has passed the trade test is available there is no occasion to give ad hoc appointment to respondent no.6 who has not passed the trade test. It is further stated that the authorities are taking steps to transfer the applicant to Waltair against a vacant post in the office of Divisional Signal & Telecom Engineer, S.E.Railway, Vizag. The applicant has further stated that his ailing 80 years old mother cannot be shifted from Koraput and his daughter is prosecuting her study in Class-X and in case he is shifted her studies will be adversely affected. In the context of the above facts, he has come up with the prayers referred to earlier.

3. The departmental respondents in their counter have stated that the applicant is a regular Trolley Man under Assistant Engineer, Koraput and he is the juniormost Trolley Man. The post of MTDM is a non-selection post and has to be filled up from amongst the Trolley Man of the concerned Division by maintaining interse seniority. As respondent no.6 is the seniormost Trolley Man, he was promoted to the post of MTDM on ad hoc basis in the exigency of service. A gradation list of Trolley Men has been enclosed at Annexure-R/1 showing that respondent no.6 is senior to the applicant. It is further stated that Divisional Railway Manager, S.E.Railway, Waltair, in his order dated 19.8.1997 (Annexure-3) of the O.A. invited options from willing candidates to fill up the newly created posts in Koraput-Rayagada Line. In response to the above letter the applicant submitted his option, was trade-tested and found fit for the post of MTDM in Koraput-Rayagada Line. The option given by the applicant is at Annexure-R/2. It is stated by the departmental respondents thatafters he cleared the trade test he was erroneously and inadvertently posted under Assistant Engineer,Koraput, instead of being posted to Koraput-Rayagada Line and as the applicant is the juniormost Trolley Man and the post of MTDM is divisionally controlled respondent no.6 was allowed to continue as MTDM on ad hoc basis on account of his being seniormost Trolley Man under Assistant Engineer,Koraput and the applicant was posted under S.E.(Signals),Rayagada at Rayagada. The departmental respondents have stated that if the applicant is not willing to move on promotion to Rayagada, then he has to forego the promotion and has to revert to his former post of Trolley Man. On the above grounds the departmental respondents have opposed the prayer of the applicant and have also prayed for

vacation of the stay order.

4. Respondent no.6 was issued with notice. Even though he has appeared through his counsel, no counter has been filed on his behalf. The learned counsel for respondent no.6 has filed written note of submissions.

5. The applicant has filed a reply in which he has stated that in response to the notice inviting option five persons including him took the trade test and besides the applicant, one C.A.Swamy and N.Iswara Rao passed the trade test.C.A.Swamy was promoted as MTDM and transferred to Koraput-Rayagada Line in the only existing vacancy. In respect of the applicant and N.Iswara Rao, as there were no vacancies in Koraput-Rayagada Line they were promoted as MTM and posted in Koraput Division. It is also stated that the departmental respondents' plea that the applicant has been posted under S.E.(Signal), Rayagada at Rayagada gives the impression that he has been posted at Rayagada in Koraput-Rayagada Line. But the applicant hasstated that his posting as MTDM under SE (Signal) ia also in Open Line and not in Koraput-Rayagada Line. On the above grounds the applicant has reiterated his prayer in the OA.

6. We have heard Shri C.A.Rao, the learned counsel for the petitioner, Shri D.N.Mishra, the learned Standing Counsel (Railways) appearing for the departmental respondents, and Shri S.C.Samantray, the learned counsel for respondent no.6, and have also perused the records.

7. It has been submitted by the learned counsel for the petitioner with reference to the letter at Annexure-2 forwarding his application that on the basis of service records, the details of which have been given in this letter, the Assistant Engineer,Koraput, the forwarding

officer has specifically mentioned that the applicant has put in more number of years of service as Motor Trolley Man than respondent no.6. In view of this, it has been submitted that the applicant must be reckoned as senior to respondent no.6 for further promotion. This contention is without any respondents merit because the departmental /have enclosed the seniority list and from the seniority list it is clear that respondent no.6 is senior to the applicant. From this seniority list at Annexure-R/1 it does not appear when it has been issued. But in this OA the petitioner has not challenged the seniority list and therefore it cannot be taken that the applicant is senior to respondent no.6.

8. The other aspect of the matter is that from the letter calling for option at Annexure-3 and the option letter given by the applicant (Annexure-R/2) it is clear that the applicant has given his option to work in Koraput-Rayagada Line for a minimum period of three years in the next higher grade of MTDM. Therefore, passing of the trade test by the applicant is only for the purpose of his appointment as MTDM in Koraput-Rayagada Line. It is admitted between the parties that the applicant was appointed as MTDM in his present Division without sending him to Koraput-Rayagada Line. The departmental respondents have stated that this was done inadvertently and erroneously. The applicant has stated that besides him, another person who also qualified in the trade test, had been appointed as MTDM in Koraput Division in Open Line and therefore the applicant's appointment as MTDM in Koraput Division is legal. We are unable to accept this contention because the applicant had opted specifically for going on promotion as MTDM in Koraput-Rayagada Line and for that purpose only he was trade-tested and found successful. In view of this, on the basis of that trade test, he cannot claim that he should

24
SJM

be appointed as MTDM in his existing wing. This contention is also held to be without any merit and is rejected.

9. It is submitted by the learned counsel for the petitioner that the post in Rayagada to which he has been transferred is not in Koraput-Rayagada Line but in Open Line. He has furtherstated that of the three persons who qualified in the trade test, one was posted as MTDM in the only available vacancy in Koraput-Rayagada Line and the other two persons were adjusted in Koraput Division itself and therefore his promotion in Koraput Division is valid. This contention is also without any merit because option was called for working in Koraput-Rayagada Line. If more number of persons have qualified in trade test for a particular post, i.e., MTDM in this case and the number of vacancies is less, then the seniormost amongst the qualifying persons has to be posted against the vacancy in Koraput-Rayagada Line as MTDM and the other two persons cannot get promotion in view of absence of posts. But because of absence of posts, they cannot be promoted in another Division. Many other persons might not have opted for going to Koraput-Rayagada Line and might not have taken the trade test on that account. Therefore, because he has qualified in the trade test which was meant for Koraput-Rayagada Line, the applicant cannot claim that he should be promoted in his present Division.

10. The last contention made by the learned counsel for the petitioner is that even though he has been trade-tested and has qualified for the post of MTDM respondent no.6 has not appeared at the trade test and has not qualified for the post of MTDM and therefore an unqualified person should not have been given ad hoc appointment to the post of MTDM in Koraput Division in place of the applicant. As we have already noted the trade test

was meant only for Koraput-Rayagada Line. Moreover, it is also seen that respondent no.6 is the seniormost Trolley Man whereas the applicant is the juniormost. For the purpose of giving ad hoc appointment, the departmental respondents have gone by seniority, and no fault can be found with them for this.

11. In the result, therefore, we hold that the O.A. is without any merit and the same is rejected but without any order as to costs. The stay order also stands vacated.

→
(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
20/5/2000
VICE-CHAIRMAN

AN/PS