

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.329 OF 1999,
Cuttack, this the 24th day of March, 2005.

RABINDRANATH PADHIARY & ORS. APPLICANTS.

VERSUS

UNION OF INDIA AND OTHERS. RESPONDENTW.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? No.
2. Wheher it be circulated to all the Benches of the Central Administrative Tribunal, or not?. No.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
JUDICIAL MEMBER

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.329 OF 1999
Cuttack, this the 20th day of March, 2005.

C O R A M:-

THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, JUDICIAL MEMBER

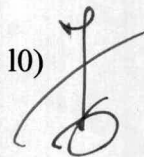
Rabindranath Padhiary & 22 Others. Applicants

By legal practitioner:- M/s.A.Kanungo, S.R.Mishra,
M.K.Biswal, B.Ray, Advocates.

-VERSUS-

Union of India and others. Respondents.

By legal practitioner:- Mr.B.Pal, Sr.Counsel.
M/s.D.N.Mishra & D.K.Panda,
ASC for Railways.
Mr.A.K.Hota,
(Intervenor for Res.Nos.5 to 10)



O R D E R

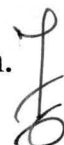
MR. MANORANJAN MOHANTY, JUDICIAL MEMBER:-

Applicants (22 in number) are working in different capacities in Sambalpur Railway Division under the erstwhile South Eastern Railway. They have moved this Tribunal seeking the following reliefs:-

“8. RELIEF SOUGHT:

- (a) Direction and/or direction be issued quashing the Notice dated 24.03.1999 as per Annexure-8 declaring the same as illegal, arbitrary, unconstitutional and contrary to law;
- (b) Direction and/or directions be issued allowing the complete service benefits and promotion from amongst the existing staff after formation of the separate and independent cadre with effect from 01-04-1997 and as per the gradation list published thereafter;
- (c) Any other direction and/or directions order and/or order as this Hon'ble Court deems fit and proper”.

2. This matter came up for admission on 15-07-1999. While keeping open the question of maintainability and limitation/delay, notices were issued to the Respondents. So far as the prayer for interim relief is concerned, it was ordered on 06.08.1999 that seniority of persons, who had opted to come over to Sambalpur Division in their respective cadres in pursuance of Annexure-8, should be subject to the result of this Original Application.



3. Respondents-Railways have filed their counter opposing the prayer of the Applicants. Applicants have also filed their rejoinder.

4. We have heard the learned counsel for the parties at great length and perused the materials adduced before us. The applicants in general have challenged the order under Annexure-8 dated 24.03.1999 and in particular Para – 2.0 thereof which reads as under:-

“2.0. In a bid of increase staff in Sambalpur Division, it has been decided to offer an Option to all the employees ;of South Eastern Railway of all Trades, grades and categories to indicate if they are willing to be transferred to Sambalpur Division on Administrative Grounds, which will protect all their benefits of service and seniority. Accordingly, options are hereby invited from the willing staff of South Eastern Railway.

Since their selection and posting to Sambalpur Division will depend upon the availability of vacancies in Sambalpur Division, willing staff may also indicate if they are desirous of going to Sambalpur Division on their own or in other departments in the same trade/category or in any other trade/category.”

5. The guidelines for determining the seniority in respect of the optees who would be willing to come on transfer to Sambalpur Division as set out in Para-3.0 of Annexure-8; which are as under:-

“3.0. On transfer to Sambalpur, the basis of determining the seniority will be as per the well established rules of the Railway of transfer on Administrative interest, i.e.

76

in the first case the seniority will be determined on basis of length of non-fortuitous service in the substantive grade”

6. The apprehension of the Applicants are that in case of operation of Annexure-8, they would be affected is a misconception; inasmuch as, it is the same terms and conditions for determining the seniority of the transferees to Sambalpur Division as set out in Para-3.2 of Annexure-2 dated 22-06-1993, formulating the policy guidelines and inviting options for filling up of the posts in different grades/cadres/categories at the time of setting up of Sambalpur Division. Thus, it cannot be said that the Respondents-Railways have adopted all together a different ^{Set 2} rules/guidelines for determining the seniority of the optees vide Annexure-8 who are similarly situated as that of the Applicants herein.

7. Conceding for the sake of argument that the operation of Annexure-8 is quashed and/or kept in abeyance, what benefits the Applicants would derive out of that is not the case here-in. The Applicants have not stated as to how Annexure-8 stands contrary to their interest more particularly when the applicability of determining seniority is one and the same.

8. Perusal of the Original Application makes the position crystal clear that the Applicants, through this Original Application intend to arrest



the administration with a view to achieving their subjective satisfaction. The Respondents-Railways have made the position very clear that it was because of expansion of the Sambalpur Railway Division, the requirement of personnel in different categories became indispensable and in the event they were not able to fill up the posts, the Railway will suffer huge loss, apart from putting the public at large in a state of predicament.

9. We are in complete agreement with the submissions made by the learned counsel for the Respondents in this regard and we hold that this is a subterfuge adopted by the applicants purportedly not to achieve any objectivity.

10. Since this Tribunal, as indicated earlier, kept the point of maintainability of this O.A. open, we cannot but deal with the same. It is in this background, profitable to quote Para 6 of the O.A. "Details of Remedies Exhausted", which reads as under :

"The applicants declares that there is no statutory remedy and what is available they have taken all sorts of remedies available to them, but no action has been taken"

11. As regards the 1st clause of the sentence '...there is no statutory remedy' we would say that where there is right there is remedy.

Under the relevant service Rules, statute has empowered an employee, if

if

aggrieved, or any right of his infringed by the Government in so far as terms and conditions of service are concerned, to exercise his remedy at first with the authorities in the Department.

12. So far as the 2nd clause of the sentence is concerned, it speaks... 'what is available they have taken all sort of remedies available to them but no action has been taken'. Although the 2nd clause stands contrary to the 1st clause of the sentence, the applicants have not substantiated this fact through any corroborating evidence on record that in fact they had availed of that remedy which ended in futile. This being the position, the inescapable conclusion that only could be derived is that the applicants have resorted to blatant false hood in order to mislead the Tribunal.

13. As regards the facts averred in the O.A., as indicated earlier, the Applicants have not been able to make out a case in what way Annexure-8 stands prejudiced to their interest. The fact of the matter is that the policy declaration as laid down in Annexure-8 is based on the policy letter dated 19.06.1991 at Annexure-2 and the policy decisions were formulated in consultation with the Staff Federations. It is a moot question as to what is the locus standi of the Applicants to challenge the transfer policy so framed when it is based on prior agreement reached between the Staff Federations and the Management. If such deviations are encouraged/tolerated it will hit



at the root of joint consultative machinery set up under law to preserve peace and harmony at the corporate/Industry level. Surely this can not be allowed. Rather, we would hold that this Original Application precisely is in the nature of public interest litigation unwittingly, at the same time strangling the greater interest of the public as is evidenced from various documents and averments made by the Railway administration.

14. It is the settled position of law that Public Interest Litigation is not maintainable before this Tribunal and therefore, this Original Application, in our considered view, is not maintainable.

15. For the reasons discussed above, we hold that the Applicants had no right to sue and, in the said circumstances, this Original Application, which is based on the conjecture and surmises does not require any interference of this Tribunal. Resultantly, this Original Application is dismissed being not maintainable. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
JUDICIAL MEMBER
02/03/2005