

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.220 OF 2001
Cuttack this the 18th day of Sept. 2001

Mani Mohan Poddar

.....

Applicant.

Versus.

Union of India & Others

.....

Respondents

For Instructions

1. Whether it be referred to the Reporters or not? ☒
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not? ☒

L. 18.9.01
(G.NARASIMHAM)
MEMBER(JUDICIAL)

2

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.220 OF 2001
Cuttack this the 18th day of September 2001

CORAM:

THE HON'BLE SHRI G.NARASIMHAM,

MEMBER(JUDICIAL)

....

Mani Mohan Poddar.aged about 56 years,
Son of Late Jagabandhu Poddar,
permanent resident of At:Batighar,
P.O:Barakalikhola, Paradeep Port,
Dist.Jagatsinghpur at present working
as Chowkidar, Office of the P.W.I.(C),
Raja Athagarh (Store),S.E.Railway,
At/P.O.Khuntuni, Dist:Cuttack.

By the Advocates

..... Applicant.
M/s.N.R.Routray
S.N.Misra

V e r s u s .

1. Union of India, represented through the
General Manager, South Eastern Raialway,
Garden Reach, Calcutta-43, West Bengal.
2. Chief Engineer, Construction, South Eastern
Railway, At/P.O/P.S.Chandrasekharpur,
Town.Bhubaneswar, Dist.Khurda.
3. Deputy Chief Engineer, Construction, South
Eastern Railway, At/P.O/P.S.Chandrasekharpur,
Town: Bhubaneswar, Dist.Khurda.
4. Junior Engineer-I (P-Way) (Construction),
South Eastern Railway, At/P.O.Khuntuni,
Dist.Cuttack.
5. Senior Divisional Personnel Officer,
S.E.Rly., Khurda Rd. Divn,. At/PO/PS:Jatni,
Dist.Khurda.

By the Advocates

..... Respondents.
Mr.C.R.Mishra

....

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, M.M.Poddar who was initially appointed as a Gang Man in the Open line of Khurda Road Division of South Eastern Railway, came over to Construction Wing as Chowkidar in July 1971. Since then he has been serving as Chowkidar under the Construction Wing. By order dated 1.2.2001 the Deputy Chief Personnel Officer (Construction) South Eastern Railway, Bhubaneswar, he was repatriated to the open line, i.e. DRM (P)/KUR(Engg.). Pursuant to this order, authority under whom the applicant has been working, has been directed release to him by order dated 8.5.2001 (Annexure-2). The applicant challenges his repatriation and consequent order of release under Annexure-2. By order dated 6.6.2001 order under Annexure-2 has been stayed as an interim order and this order is still continuing.

2. The grievance of the applicant is that he having served the Construction Wing for ~~above~~ 30 years, should not have been transferred to Open Line. Moreover, through this order he has been deprived of pecuniary benefit as post of Chowkidar carries higher emoluments than the post of Gang Man. This apart some of his juniors (apparently lien holders of open line serving in the Construction Organisation) have been retained in the Construction Organisation.

3. The Department in their counter submit that the applicant is a lien holder in open line. Retaining his

lien in Open Line he joined the Construction Organisation at Bhubaneswar. As per the policy decision of the Construction Organization some of the staff have been declared surplus and lien holders working in the said post like Chowkidar, are ordered to be repatriated to their Parent Organisation. Accordingly the applicant becoming surplus has been repatriated. The applicant being a lien holder has to seek his promotion in the open line. No employee of Open Line junior to the applicant is still being retained in the Construction Wing. Moreover, the averment in this respect carries no meaning when the name or names of the juniors have not been mentioned.

4. The applicant filed rejoinder reiterating his stands, and further pleaded that lien of an employee in the parent department is valid only upto two years.

5. We have heard Shri N.R.Routray, the learned counsel for the applicant and Shri C.R.Mishra the learned Additional Standing Counsel for the Railways.

6. During hearing Shri Routray contended that there is no satisfactory material that the applicant is still having lien in the open line and as he continued in the Construction Wing from the year 1971, it is deemed, he has lost his lien in the open line. This submission of the learned counsel is beyond the pleadings. On the other hand, in para 4.3 of the Original Application the

10

applicant himself admitted that he is being made to go back to his parent lien which means that he is still aware that he is having lien in the open line. This apart in his representation dated 11.5.2001 under Annexure-1 he clearly admitted that he is having lien in Khurda Division. I may as well quote the relevant sentence in para 3 of his representation "I served more than 30 years service in Construction Organisation though I am having lien in KUR Division". This apart the order under Annexure R/1 regarding repatriation clearly reveals that the applicant is still having lien in the Open Line. The specific case of the Department that the Construction Wing have surplus staff has not been denied in the rejoinder. Law is well settled that the deputationist has no right to continue on deputation or for permanent absorption in the borrowing Department, unless his permanent absorption is covered by a statutory provision, vide K.Nanda Vrs. Union of India reported in 2000 SCC (L&S) 705.

7. I am aware that in the rejoinder the applicant had taken a plea that the lien of an employee is valid in the parent department only upto two years and after expiry of the said period the employee is deemed to have been permanently absorbed. On the other hand, Shri C.R.Mishra, the learned Additional Standing counsel for the Department, denied the existence of any such rules. Shri Routray in this connection brought to my notice the Railway Board circular dated 13.4.76 which was dealt in

L.N.Kurim Vrs. Union of India reported in (1993) 23 ATC 238. The actual wordings of that circular though not quoted in this decision, discussion of facts reveals that the circular was issued for screening and empanelling casual labour for absorption in regular class IV posts in various Railways. The applicant therein was serving as casual motor driver in Mahanadi Bridge Construction Division of the South Eastern Railway from 19.4.64 to 19.3.65. After screening and medical examination the applicant was given a paper lien in the South Eastern Railway for a class IV post. Though he continued to work in the Metro Railway Project, on 8.8.86 he was served with a notice to show cause against the proposed cancellation of his lien in South Eastern Railway. On ~~that~~ facts, Calcutta CAT Division Bench which passed this judgment observed that the word "lien" used in the circular dated 13.4.76 has been used in special sense, i.e., a right to be considered for appointment. Thus it is clear that this circular, relied on by the learned counsel, does not relate to the case of a deputation of a regular employee of one Department of Railway to another, as the case before us. Thus there is no force in this submission of the learned counsel in this regard.

8. In the result, I do not see any merit in this Original Application which is accordingly dismissed but

12

without any order as to costs. The interim stay stands vacated.

14.01.01

(G.NARASIMHAM)
MEMBER(JUDICIAL)

CRB