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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS.403 & 507-508 OF 2004

Cuttack, this the 25th day of July, 2005.

V.Ramachandra Rao & 2 ors.

Applicants

-VERSUS-

Union of India & Ors.

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central

25/07/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

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(B.N.SOM)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK**

ORIGINAL APPLICATION NOS.403 & 507-508 OF 2004

Cuttack, the 25th July, 2005.

CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)**

1. V.Ramachandra Rao, aged about 52 years, Son of late N.N.Pattnaik, working as Supervisor, O/o Junior Engineer/Construction/Works/Head Quarters, Visakhapatnam-4
2. A.Sarwamangala, aged about 52 years, Wife of late A.Prasad Rao, Junior Clerk, O/o Deputy Chief Engineer Construction, East Coast Railway, Visakhapatnam
3. P.Seshagiri Rao, aged about 53 years, Son of late P.Madhusudan Rao, Senior Clerk, O/o Deputy Chief Engineer(Construction) II, East Coast Railway Jajpur Keonjhar Road

... Applicants

By the Advocates

M/s.D.D.Nayak
U.R.Jena
M.Mohanty
R.K.Pradhan
D.K.Sahoo
P.C.Mishra and
M/s/B.S.Tripathy
M.K.Rath
J.Pati

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Ril Vihar, Chandrasekharpur, Bhubaneswar, At/PO-Bhubaneswar, District-Khurda

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2. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District: Khurda
3. Chief Administrative Officer, East Coast Railway, Rail Vihar, At: Chandrasekharpur, Bhubaneswar, District: Khurda
4. Chief Engineer (Con), East Coast Railways, Visakhapatnam, At/PO-Visakhapatnam, District: Visakhapatnam
5. Asst. Personnel Officer (Con), East Coast Railway, Visakhapatnam, At/PO/Vishakapatnam, District: Visakhapatnam

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Respondents

By the Advocates

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Mr. Ashok Mohanty
Mr. R.C. Rath

ORDER

MR. B.N. SOM, VICE-CHAIRMAN:

This Original Application has been filed jointly by the three applicants, viz., S/Shri V.Rama Chandra Rao, A Sarwamangala and P.Seshagiri Rao. Applicant Nos. 1 and 2 at present are working as Supervisor and Junior Clerk in the Office of Junior Engineer/Construction/Works/Headquarters, Visakhapatnam and in the office of Deputy Chief Engineer, Construction, East Coast Railway, Visakhapatnam, respectively and the applicant No.3 is working as Senior Clerk in the Office of Deputy Chief Engineer(Construction) II, East Coast Railway, Jajpur Keonjhar Road. The first two applicants having been working under Waltair Division, Visakhapatnam, the Respondents

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have opposed their application on the ground that the same is not maintainable in law. This submission is not contested. In the circumstances, the prayer made by the applicant Nos. 1 and 2 in O.A.Nos.403 and 507 of 2004 is dismissed, and we confine our discussion with regard to controversy raised by the applicant No.3 in O.A.No.508/04.

2. The grievance of the applicant, Shri P.Seshagiri Rao, is that he has been working for about 25 years in the Construction Organization of the Respondent-Railways. While he was working as Diesel Cleaner in the Open Line, he was deputed to Construction Organization. By virtue of his merit, he secured promotion as Junior Clerk in 1983 and then in 1987 he was promoted as Senior Clerk. While he was thus continuing as Senior Clerk, vide order dated 27.5.2004 (Anexure-A/4) the Respondents ordered his repatriation to Diesel Loco Shed/Waltair with immediate effect. Being aggrieved by this order the applicant has moved this Tribunal with prayer for quashing the impugned order at Annexure-A/4 and to direct the Respondents to confirm him in the Construction Organization, where he has been working for more than 20 years.

3. The Respondents have opposed the application on several grounds. On the merit of the case they have submitted that the applicant

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being a lien holder in the Open Line where there is need for technical staff, he is being repatriated in public interest. They have further submitted that the applicant had also attended suitability/trade test held in the Open Line for his promotion in his cadre and has been promoted to the post of Technical, Gr.III in the scale of Rs.3050-4590/- with effect from 13.11.2000.

Respondents have further submitted that the applicant is holding the post of Technical, Gr.III in substantive capacity, and therefore, he is debarred from calling the order of repatriation to his parent department as illegal.

4. We have heard the learned counsel of both the parties and have perused the records placed before us.

5. The short question to be answered in this O.A. is whether the applicant has got any vested right to claim absorption in the Construction Organization. The undisputed fact of the case is that the applicant is an ex cadre appointee and is on deputation from the post of Diesel Cleaner in the Open Line to Construction Organization where he is working at present as Senior Clerk. Law is well settled that a deputationist has no right to claim absorption in the borrowing department. In the case of R.L.B. Soni vs. State of Gujarat (AIR 1990 sc 1132) their Lordships have held that a deputationist can be reverted to his parent cadre at any time and that he has no right to be absorbed. We would also like to recall here with profit the decision of the

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Apex Court in the case of State of Punjab vs. Inder Singh & Ors. (1998 (2) SLJ 113(SC). The applicants therein also had spent about 28 years on deputation and had earned ad hoc promotion. When they were ordered to be repatriated they challenged the said order claiming that they should be repatriated to the same post as presently held by them in the borrowing Department. In that case also their Lordships had held that the deputationists have no escape from going back to the same post from the cadre from which they had been deputed unless in the meantime they have been promoted in the cadre as per rules. It was further reiterated in the case of Mahes Kumar & Ors. Vs. D.I.G. of Police & Ors., Reported in JT 2002(3) SC 92 that there is no enforceable right for permanent absorption and that Writ could not be issued in that case although the applicants had worked for several years. It was further held that the borrowing Department could consider the case for absorption, only if there were rules to that extent in the organization. We are bound by the law of the land in so far absorption and/or service condition of deputationist is concerned.

6. Having regard to the decisions referred to earlier, we have no hesitation to hold that the prayer made by the applicant to be absorbed in the Construction Organization is without any merit on two grounds, firstly, that he has no vested right to claim such absorption and secondly, that,

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Construction Organization, as we were informed by the learned Standing Counsel for the Respondents, has no permanent posts in Group C cadres, which stands in the way of absosing any official from other Department/Organization on permanent basis. In view of the above position of law and facts of the case, this O.A. fails. No costs.

*Subanik
25/10/05*
(M.R.MOHANTY)
MEMBER(JUDICIAL)

Subanik
(B.N.SOM)
VICE-CHAIRMAN

BJY/PS