

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 1179, 1180 & 1189 OF 2004
CUTTACK, THIS THE 12th DAY OF *December*, 2006

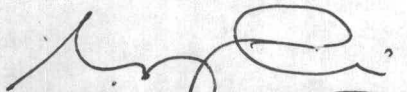
Pitambar Munda & Ors.....APPLICANTS


VS

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 Administrative Tribunal or not?


(V.K. AGNIHOTRI)
MEMBER (ADMN.)


(M.A.KHAN)
VICE-CHAIRMAN

5

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ORIGINAL APPLICATION NOS. 1179, 1180 & 1189 OF 2004
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CORAM:

HON'BLE MR. JUSTICE M.A.KHAN, VICE-CHAIRMAN

HON'BLE MR. V.K.AGNOHOTRI, MEMBER (ADMN.)

.....

(i) Shri Pitambar Munda, aged about 38 years, Son of Late Bagun Munda, presently working as Head Clerk, Office of Divisional Electrical Engineer(G), East Coast Railways, At/PO/Dist. Sambalpur.

(ii) Shri Arjun Kumar Sahu, aged about 38 years, Son of Late G.P.Sahu, presently working as Head Clerk, Office of section Engineer (Electrical), East Coast Railway, At/PO/Dist. Titilagarh, Dist. Bolangir.

(iii) Shri Binod Bihari Sahu, aged about 38 years, S/o. Sri M.R.Sahu, presently working as Head Clerk, Office of Senior Section Engineer(Electrical), at-Khetrarajpur, P.O./Dist. Sambalpur.

..... Applicants(IN O.A.Nos.1179,1180 & 1189 OF 2004 respectively)

Advocate(s) for the Applicants - Mr. P.C.Chhinchani.

VERSUS

1. Union of India, represented by the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar-751023, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railway, At/PO/Dist. Sambalpur.
3. Chief Personnel Officer, East Coast Railway, Bhubaneswar-751023, Dist. Khurda.
4. Divisional Personnel Officer, East Coast Railway, At/PO/Dist. Sambalpur.
5. B.B.Baliyar Singh (Head Clerk) under promotion to O.S.-II, Office of Divisional Electrical Engineer(G), East Coast Railway, At/PO/Dist. Sambalpur.

..... Respondents.

Advocate(s) for the Respondents - Mr. T.Rath, (A.S.C.).

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ORDER

Mr. Justice M.A.Khan, Vice-Chairman:

Common questions of law and fact have been raised in these O.As. So they can be decided by one common order.

2. In O.A.No. 1179/04, the applicant has prayed for grant of the following relief:

“ (i) to quash the impugned order of promotion passed in favour of respondent No.5 under Annexure-A/9 by holding the same to be violative of Articles-14 and 16 of the Constitution of India and being contrary to the Railway Board's Circular under Annexure-A/4 and the C.P.O's instructions under Annexure-A/5.

(ii) to declare that the respondent No.5 is liable to be placed below the applicant in the relevant grade and may accordingly direct the respondents to consider the case of the applicant for promotion to the post of OS-II by treating him as senior to the said respondent no.5 under Sambalpur Division within a stipulated time.”

3. In O.A.Nos. 1180/04 and 1189/04, the applicants are seeking the following relief:

“ (i) to quash the impugned order of promotion passed in favour of respondent No.5 under Annexure-A/9 by holding the same to be violative of Articles-14 and 16 of the Constitution of India and being contrary to the Railway Board's Circular under Annexure-A/4 and the C.P.O's instructions under Annexure-A/5.

(ii) to declare that the respondent no.5 is liable to be placed below the applicants in the relevant grade and may accordingly direct the respondents to re-cast the inter-se seniority of the applicants vis-à-vis the respondent no.5 under Sambalpur Division within a stipulated time.”

102

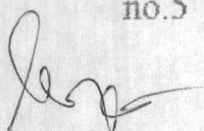
4. The background of the case is as follows.

The applicants in these O.As. are working as Head Clerks in Electrical Department of Sambalpur Division of East Coast Railways. Respondent No.5 was also working as Head Clerk in the office of Divisional Electrical Engineer (G), Sambalpur and transferred vide order dated 05.05.2003 to the Zonal Headquarters, East Coast Railways, Bhubaneswar. He was accordingly relieved on 16.05.2003 and joined Zonal Headquarters, East Coast Railways in May, 2003. Vide order dated 27.04.2004, he was repatriated (on his own request) back to Sambalpur Division of East Coast Railways. After repatriation, he was posted with effect from 18.06.2004 as Head Clerk in DEE(G) office, Sambalpur. Thereafter, he was promoted to the post of OS-II vide order dated 13.09.2004. The applicants are aggrieved by the promotion of respondent no.5 to the post of OS-II and according to them, after he was transferred to the Zonal Headquarters office, his lien in the office of Divisional Electrical Engineer (G), Sambalpur, is to be terminated by virtue of Railway Board's Letter dated 30.10.2003. By the said letter, Railway Board notified to all the General Managers of the Zonal Railways that the Headquarters offices of the new zones which came into being, would close on 31.10.2003 and since some administrative difficulties were being faced by the General Managers of the new Zonal Railways to accommodate the staff to be transferred there in one go by 31.10.2003, "the paper lien of staff as on 31.10.2003 to be transferred and the GMs of the new Zonal Railways of the old (parent) Railways should mutually come to an understanding to this effect and fix a target date not later than 30.04.2004 for physical transfer of these staff as per seniority". The Railway Board's instruction further directed by this letter that the staff whose paper lien is so

[Signature]

transferred for selection/promotion in the Headquarters offices of the new Zonal Railways, they would not be considered for selection /promotion including for cadre restructuring in the old/parent Railways. According to the applicants, in view of these instructions, the lien of the respondent no.5 in the Divisional office is to be terminated with effect from 31.10.2003 and his repatriation back to the Divisional office after one year's service in the Zonal Headquarters office, on his own request, would entitle him to the bottom seniority as per the rules. If it is so, the respondent no.5 would become junior to these applicants and cannot be promoted to the post of OS-II. They have filed some documents in support of their contention. The applicants have claimed that their seniority should be re-fixed vis-à-vis the respondent no.5 and they should be considered for promotion to the post of OS-II.

5. In the counter replies filed by the respondents to these O.As., which are identical, the respondents have rebutted the allegation of the applicants that respondent no.5 was absorbed in Zonal Headquarters office or his lien was terminated in the Divisional office with effect from 31.10.2003. It is submitted that none of the cadres at the Head office of the East Coast Railways was crystallized before 30.04.2004 and so the respondent no.5, although had exercised his option for being posted to Headquarters submitted a representation for his repatriation to the parent cadre, which was examined by the competent authority and taking into consideration Rule 228 of IREC, Vol.1 and the instruction of the Railway Board for keeping the cadre open till 30.04.2004, ordered the repatriation of Respondent No.5 from East Coast Railways Headquarters to Sambalpur Division with protection of seniority and pay. Accordingly, the respondent no.5 was absorbed in the Sambalpur Division with protection of seniority



and pay. It was also stated that though initially the cut off date for fixing seniority in East Coast Railways' Headquarters office was fixed to 31.10.2003, but the same was not closed due to the process of paper lien period extended to 30.04.2004. So the cadre was not closed till 30.04.2004 for all the categories of staff of East Coast Railways Headquarters and no order of final absorption of those employees, who had given their option for transfer to Headquarters office, was issued till 30.04.2004. When respondent no.5 requested for his re-transfer to his lien unit, he was allowed to revert to his Division before 30.04.2004, only when the East Coast Railways' Headquarters cadres were formally closed.

6. We have heard the Ld. Counsel for both the parties and have perused the records.

7. Despite our request, the parties have not been able to produce before us the complete record to decide the matter finally. Though the applicants have laid a great deal of emphasis on the Railway Board's letter dated 30.10.2003, referred to above, they have not been able to produce before us the initial Railway Board's instructions whereby options were invited from the employees for their transfer to the newly created Zonal Headquarters of the East Coast Railways. At a glance, the Railway Board's letter dated 30.10.2003 (Annexure-4) would show that lien of all those employees who had opted for their transfer to the Zonal Headquarters office would stand terminated with effect from 31.10.2003, though physically they will go to join in Zonal Headquarters office only, as decided by the General Managers, up to 30.04.2004. But the lien cannot be terminated unilaterally without consent of the employee. Further the lien can be terminated only in accordance with the rules. No documentary evidence has been produced before us, which may assist us in holding that the respondent no.5 had given

18

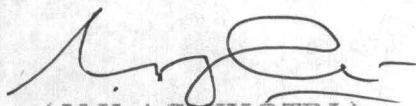
his consent for termination of his lien with effect from 31.10.2003 on his being transferred from the Divisional Office to the Zonal Headquarters office. Moreover, unless the respondent no.5 would be absorbed in substantive capacity in a post in Zonal Headquarters office, his lien would not be terminated to leave him in vacuum. If he holds the lien to a substantive post either at the Divisional office or at the Zonal office, he cannot hold it at both the places. But, at the same time, his lien cannot be terminated from Divisional office unless his lien to a permanent vacancy has been created in the Zonal Headquarters office. Rule 228 of I.R.E.C. has also provided that " the lien of a permanent staff transferred to another railway will be retained by the transferring railway till he is finally absorbed on the other railway". Therefore, it is necessary that the lien of respondent no.5 be created first in Zonal Railway Headquarters office before his lien is terminated in the Divisional office. The various documents which have been submitted by the applicants in these O.As. do not help us in reaching a definite finding on this question. The question raised in the present O.As. is pretty serious and requires due application of mind by the competent authority. The question whether the respondent no.5 should be relegated back to the seniority position which he was holding before transfer or he should get the bottom seniority in the list as per the existing rule will also depend on the answer of the above question.

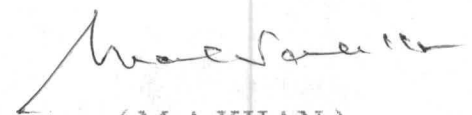
8. Since serious dispute has been raised by the applicants, in this matter, we dispose of the present O.A. with following directions.

The O.As. shall be treated as the representations made by the applicants to the Divisional Railway Manager of East Coast Railways (respondent no.2 to this O.A.) who shall consider these representations and decide them by a speaking and reasoned order within a period of three

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months from the date this copy is received by him. He shall give an opportunity of hearing to the applicants as well as to the respondent no.5 before deciding this question. The applicants may seek redressal of their grievances against the final order which is to be passed by the Divisional Railway Manager on the aforesaid representations, if necessary, in accordance with the law. Parties shall bear their own costs.


(V.K.AGNIHOTRI)
MEMBER (ADMN.)


(M.A.KHAN)
VICE-CHAIRMAN