

15

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Date of order: 04/03/2008


O.A. No.1285/2004

Sukumar Singh ... Applicant


versus

Union of India & Ors. ... Respondents

(FOR INSTRUCTIONS)

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

  
(C.R. MOHAPATRA)  
MEMBER(A)

  
(DR. K.B.S. RAJAN)  
MEMBER(J)

24  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Date of order: 04/03/2008

PRESENT:

THE HON'BLE DR.K.B.S.RAJAN, MEMBER(J)  
A N D  
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

In the Matter of

O.A. No.1285/2004

Sukumar Singh ... Applicant

versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

For Applicant: : M/s.P.K.Chand, D.Satpathy, Counsel.

For Respondents: M/s.Ashok Mohanty, Sr. Counsel & M/s.  
S.K.Ojha & A.K.Sahoo (For Res.No.1,  
Counsel)

O R D E R

Per DR.K.B.S.RAJAN, MEMBER(J):

The applicant joined the Railways as Junior Draftsman in 1995. In 1997, on inter Railway transfer posted to Bhubaneswar, Annexure-A/1 order dated 23.09.1997 refers. By order dated 21.09.1999, he was promoted as Sr. Draftsman (JE-II/Drg.) in the scale of 5000-8000/- on ad hoc basis. In the said post he was regularized on 09.10.2002. In November, 2002, the

12

Railways were considering trifurcation of S.E. Railways as S.E.Rly, E.Co.Rly. and S.E. Central Rly. The applicant's option was for E.Co.Rly at Bhubaneswar. However, he did not received any communication in response to his option.

2. On 31.08.2004, the applicant was given the benefit of upgradation/promotion to the post of Jr. Engineer, Gr.I (Drg.) under restructuring of the cadre. In October 2004, the Chief Administrative officer gave effect to such promotions and the applicant has been serving in that post since then. However, on 09.11.2004, vide Annexure-A/6, impugned order, E.C.Rly. through Chief Personnel Officer effected cancellations of a number of promotions made on restructuring and the applicants name figures in Sl.12. The said letter reads as under:-

"Several staff working in Project Organizations of ECOR like ECOR Construction, RB, RRB etc. have been given lien in ECOR Headquarters on option transfer basis. A list of such staff is enclosed in Annexure-1. This staffs were reflected in the various seniority lists of Hqrs office issued by this office, and copies of the same were marked from to time for information.


All such staffs were given lien in ECOR Hqrs. w.e.f. 1.11.2003, the date from the ECOR Hqrs. cadre has officially come into existence. The divisions of ECOR have been advised that staff who have been given lien in ECOR Hqrs. should not be considered for any promotions w.e.f. 1.11.2003 on the basis of their erstwhile lien/seniority in the divisions/foreign railways from that date. No employee can have lien in

more than one seniority units. Therefore once lien was given to these staff w.e.f. 1.11.2003 in ECoR Hqrs. offices, their lien has been automatically cut off from their erstwhile lien/seniority units and they are not eligible for any promotions in those units from that date."

3. The effected individuals moved representations vide Annexure-A/7.

4. The applicant is aggrieved over Annexure-A/6 order and has sought for quashing of the said order.

5. Respondents have contested the O.A. According to them in respect of various staff members in the RE Organization and Construction Organization on 31.10.2003, paper liens were provided in ECoR Hqrs to those who have exercised their options to move to ECoR, Annexure-R/1 and R/2 refer. The name of the applicant figured in the seniority list of JE-II (Drg.) category first issued on 26.3.2004 and corrected on 16.05.2004 and 01.11.2004. This seniority list has been circulated through the ECoR Construction Organization and the applicant did not make any objection to the lien or seniority list. Impugned order vide Annexure-A/6, dated 09.11.2004 is with a view to ensure that no one is permitted to take dual advantage. According to the Respondents everyone who come to the new zone is fully aware of the fact that such persons working in projects within the jurisdiction of new zonal Railways on exercise of their option would have lost lien without being recalled from deputation at the project. From



31.10.2003, the future career proportion of the applicant will be on the basis of his position in the headquarters of his seniority list and their position in the division seniority list, and the length of service is not a matter for consideration.

6. Initially, the applicant was employed with the seniority in Khurda Road Division. He applied for option of transfer to EcoR and his lien was fixed at EcoR headquarters on 31.10.2003. As such from 01.11.2003, he is no longer an employee of Khurda Road Division. The promotion order dated 15.09.2004 and 22.11.2004 reveal that the promotion orders were issued by Khurda Road division on a date when the applicant was no longer in that division. The impugned order is a corrective letter.

7. Applicant has filed the rejoinder. He has questioned the legal validity of cancellation of his promotion. According to him a move to another Railway cannot be complete accept actual movement. Thus the paper lien, according to the applicant, is illegal, arbitrary and is violation of principles of natural justice. He has referred to Annexure-A/9 order dated 02.06.2003 which reads as under:

"2. For the purpose of manning of posts in the New Zones at their headquarters offices, the board desire that options may be called for from the staff as follows:

i) From non-gazetted staff working at the headquarters offices of the existing



20  
-5-  
zonal Railways from whose jurisdiction the new zones have been carved out, for being transferred to the headquarters offices of the respective New Zonal Railway.

ii) From the non-gazetted staff working in the affected Divisions of existing zonal Railways as follows:-

1. whether they would like to continue to work wherever they are working at present; or
2. Proceed to the headquarters offices of the respective New Zonal Railways..”

8. Annexure-A/11 is an order whereby the optees were asked to move out. Annexure-A/12 is the order by the Secretary Railway Board (Fax) for release of those whose options have been accepted. Similarly, the applicant relied upon Annexure-A/13 order dated 30.11.2003 of the Railway Board regarding transfer of staff to headquarters office. The said order is specific in that staff members whose paper lien is transferred will be considered for selection/promotion etc. in the headquarters office of new zonal Railways though they will not be physically available there. Such staff cannot be considered for selection/promotion including for cadre restructuring in the old (parent) Railways. The applicant has further submitted that by Annexure-A/14, he was asked to participate in suitability test for promotion as JE-I and on qualifying in the same he was called for viva-voce vide Order dated 24.10.2003. It was on the basis of the combined result that he was found suitable vide Annexure-A/16. On the basis of this result, the

Executive Engineer/C/HQ, E. Co. Railway, Bhubaneswar has addressed a communication to the Deputy Chief Personnel Officer, EcoR vide Annexure-A/17. The applicant therefore submits that his promotion cannot be cancelled.

9. Arguments were heard and documents perused. The fact remains that the applicant was originally borne Khurda Road Division and his seniority was maintained in that Division. At that time the said Khurda Road Division was a part of S.E. Railway. When this Railway was trifurcated as S.E. Railway, S.E.C. Railway and E.Co. Railway, options were asked. As Khurda Road Division fell under E.Co. Railway, the applicant opted for E.Co. Railway. For, if he opts to remain in S.E. Railway, he may be disturbed from the present place of posting. As such, his intention has been to move with Khurda Road Division, wherever the Division is attached. It would have been a different matter if the applicant's seniority was maintained by S.E. Railway at the HQ unit, in which on the trifurcation, the applicant's lien would have been transferred to the HQ unit of East Coast Railway. This is not the case here. The attachment of Khurda Road Division with East Coast Railway cannot make any change in so far as the lien of the applicant in the Khurda Road Division is concerned. It may be that when a person is promoted to a higher grade whereby, from the divisional seniority, he moves to the zonal seniority,

such seniority would be transferred to the zonal seniority. Presumably, seniority of JE I is maintained at the zonal level. In so far as the applicant is concerned, his promotion has been on the basis of test conducted by the DRM, Khurda Road Division, vide Annexure A-14, A-15, and A-16 and on his qualifying and being promoted to the post of JE (I) if the seniority has to be maintained Zonal wise, Annexure A-17 is in conformity of the same, whereby the seniority of the applicant has been transferred to East Coast Headquarters. As such, there is no question of the applicant being reverted on the ground that his lien has been transferred to Hqrs. If, however, JE I is a grade coming within the divisional level, then the move of applicant's seniority to zonal Headquarters becomes inappropriate and the same is behind the back of the applicant. From that point of view, the applicant is entitled to retain the lien at Khurda Road.

10. Thus, viewed from any angle, the applicant has made out a cast iron case in his favour. The impugned order dated 19-11-2004 (Annexure A-6) is quashed and set aside, in so far as it relates to the applicant. Respondents are directed not to disturb the applicant from the present post of J.E. Gr. I.

11. No cost.

  
(C.R. MOHAPATRA)  
MEMBER(A)

  
(DR. K.B.S. RAJAN)  
MEMBER(J)