

20


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


Original Application No. 108 of 2005  
Cuttack, this the 3<sup>rd</sup> day of March, 2009

Kunja Behari Rath .... 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?

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.108 of 2005

Cuttack, this the 30<sup>th</sup> day of March, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Kunja Behari Rath, Aged about 43 years, Son of Shri Kulamani Rath, at present working as Head Clerk in Railway Recruitment Board, D-79/80, Rail Vihar, Chandrasekharapur, Bhubaneswar-751 023, Dist. Khurda, Orissa & at present residing at Qrs.No.E-15/F,Rail Vihar, Chandrasekharapur, Bhubaneswar-751 023, Dist. Khurda.  
.....Applicant

By Advocate : M/s.R.K.Kar, Mrs.Meeras Bhanja  
- Versus -

1. Union of India represented through General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar-751 023, Dist. Khurda.
2. Secretary, Railway Board, Rail Bhavan, New Delhi-110 001.
3. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar-751023, Dist. Khurda.
4. General Manager, South Eastern Railway, Garden Reach, Kolkata-43
5. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43.
6. Pravat Kumar Rout, Aged about 36 years, at present working as OS-I in the office of the General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar-751023, Dist. Khurda.
7. A.K.Pradhan, Record Officer of Electronic Mechanical Engineering, Records (Civil-1), Secunderabad-21.
8. Digamber Padhee, aged about 33 years, at present working as OS-I in the office of Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar-751 023, Dist. Khurda.
9. Krushna Chandra Panda, aged about 41 years, at present working as OS-I in the office of Chairman, Railway Recruitment Board, Rail Vihar, Chandrasekharapur, Bhubaneswar-751 023, Dist. Khurda.
10. A.Banerjee, aged about 30 years, at present working as OS in the office of Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar-751 023, Dist. Khurda.
11. Sanzaya Patel, aged about 27 years, at present working as OS II in the office of Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar-751 023, Dist. Khurda.
12. Mihir Kumar Pattnaik, aged about 44 years, at present working as OS I in the office of Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar-751 023, Dist. Khurda.  
....Respondents

L

22

- 2 -

By Advocate

:Mr.R.C.Rath  
M/s.Mahendra Ku. Das, S.Mallick,  
L.D.Dash, Mrs. Minarani Das (For  
Respondent Nos. 6 to 11).

---

O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

The case of the Applicant (both in pleadings as also during hearing) is that upon bifurcation of S.E. Railway into three zones, options were called from the existing personnel to be absorbed in a particular Railway. As the Applicant was working in the erstwhile S.E. Railway, he opted to be absorbed in the E.Co. Railway. In term of his option he was transferred and posted as Head Clerk in the Personnel Branch of headquarters office of East Coast Railway on 30.09.2003. On 01.10.2003, he was sent temporarily to the office of the RRB, Bhubaneswar to work as Head Clerk by keeping his lien in the later department. On 07.04.2004 a provisional seniority list of all cadres was published by the Respondent No.3 in which the applicant was placed at Sl.No.10 of the list of Headquarters. As per the Rules, Head Clerks are to be promoted to the post of OS II and thereafter to the post of OS I. Under the Rules, there is no element of direct recruitment to the post of OS II & I and the said posts are to be filled up from among the eligible employees working in the feeder grades. Whereas, while the Respondent No.6 was working in the office of Research Design and Standards Organization, Lucknow and Respondent Nos. 7 to 11 in the Secretariat of the Railway Board, New Delhi they were directly brought into the grade of OS II of the E. Co. Railway in gross violation of all



norms and rules of the railway thereby jeopardizing the future chances of promotion of the Applicant like others to the grade of OS II. By submitting representation, the Applicant objected to the inclusion of the non-railway employees within the grade of OS II and requested for their immediate repatriation to their parent department and consideration of his case for promotion to the said grade OS II. In response to the representation submitted by the applicant, Respondent No.3 intimated to the applicant and others vide letter dated 12.08.2002 that as per the policy decision of the Railway Board, Railway Board employees so also the employees of RDSO were given options for posting in the headquarters offices of new zonal railways and in pursuance thereof, Respondent Nos. 6 to 11 were brought to the cadre of OS II of the newly created headquarters office of E. Co. Railway. Further case of the applicant is that although his name was under consideration for promotion to OS II in the wake of restructuring of cadre, the Respondent Nos.1 to 3 without finalizing the seniority list, allowed further promotion to Respondent Nos.6 to 11 to the next higher grade of OS I under Annexures-10 & 11 and representation made by him against such promotion of Respondent Nos.6 to 11 to the grade of OS I did not yield any result. According to the Applicant, Respondent Nos.6 to 11 not coming under the definition of 'Railway employees', inclusion of their names in the OS II thereby further promotion to OS I is not sustainable. It has been pointed out that Chapter-I of Rule 106 of Indian Railway Establishment Code, Volume-I of 2003 provide the

24

classification of service of Indian Railways w.e.f. 01.04.1976. According to Rule 106 the railway servants are mainly divided into gazetted and non-gazetted employees. Gazetted employees are divided into Group A and Group B and non-gazetted are divided into Group C and Group D categories. Besides that, the staff working in workshops constitutes both group C and D. Alternatively non gazetted cadre in Indian Railways does not include Group B employees. Respondent Nos. 6 to 11 are Group B category of staff working as Assistant in the Railway Board Secretariat and RDSO. The option transfers after division of SE Railway is only confined to ministerial staff that fall under non gazetted cadre of Group C and Gr. D railway employees. Since the status of Respondent Nos. 6 to 11 does not fall under Rule 106 of Indian Railway Establishment Code, Volume 1, 2003 at no stretch of imagination they can be said to be railway servants serving in Indian Railways. Therefore, their inclusion in Annexure-5 provisional seniority list of OS II is not sustainable. His further case is that since the manner and agency of recruitment of Group C post and Assistant in the railways are different, the Respondents 6 to 11 being the assistants in their parent unit ought not to have been brought into the new zones along with the applicant. The next contention of the applicant is that the so called policy decision of the Railway Board being contrary to the statutory rules and provisions is per se illegal and *ab initio* void and, as such based on such order, the Respondent Nos. 6 to 11 ought not to have been brought into the post of OS II thereby blocking the future promotion of the Applicant. For the above



reason, the Applicant has approached this Tribunal in the present Original Application filed u/s.19 of the A.T. Act, 1985 seeking the following relief:

- “(a) The original application be allowed;
- (b) The provisional seniority list of OS-II in Annexure-5 be quashed;
- (c) The names of respondent Nos.6 to 11 in OS II seniority list be quashed and consequential promotion of Respondent Nos.6 to 10 to the post of OS-I also be quashed. So also the respondent No.12 be directed to be retransferred to his original place, quashing the order of transfer and joining vide Annexure-13 and Annexure-14 respectively. The Respondent Nos.6 to 11 be directed to be reported in their original place, i.e. Railway Board;
- (d) The applicant be promoted to the post of OS-II under restructuring order;
- (e) Any other relief, the applicant is entitled to.”

2. It is the case of the Respondents 1 to 3 (both in pleadings as also during course of hearing) that three New Zones having been carved out, various circulars, by way of policy were issued by the Railway Board in regard to operating the news zones and the circular dated 12<sup>th</sup> August, 2002 was one of such policy decision calling options from existing personnel of S.E.Railway to be transferred to any of the newly created three Railway Zones. In the said circular option was also called from the employees working under the Ministry of Railway as also RDSO and other wings of the Railways. On consideration of the options of the Applicant and others including Respondent 6 to 11 to be transferred to the headquarters office of E. Co. Railway, they were transferred to the headquarters office of E. Co. Railway. Normally, transfer in existing grades like Head clerk, OS Gr. II, OS Gr.I, Chief Office Superintendent are not

allowed as they being the promotional grades. Accordingly, the applicant could not have been transferred as Head Clerk but in view of the policy decision of the Railway Board, he was transferred in the same grade of Head Clerk instead of Jr. Clerk so also the Respondent Nos. 6 to 11. It has been stated by the Respondents 1 to 3 that though confidential reports of the applicant were called for by the office of CPO from the Railway Recruitment Board, as he was not coming within the zone of consideration of the number of vacancies available in the grade of OS II, he could not be promoted. They have also raised very many ancillary or consequential points raised and noted above in support of the stand that this OA is liable to be dismissed but we refrain from recording all those points as the grounds noted above are adequate enough to take a view on this O.A.

3. We have given our thoughtful consideration to various points raised by the parties and perused the materials placed on record. On the specific allegation of the applicant that although the Respondents 6 to 11 are not the railway servants they have been brought into the E. Co. Railway in the grade of OS II thereby jeopardizing the promotional avenues of the applicant and other similarly situated employees, we would like to state that we see no material to hold that they are not the railway employees. Under definition clause (e) of the Railway Servants (Discipline and Appeals) Rules, 1968 it has been provided that 'Railway servant' means a Railway servant as defined in clause 43 of Rule 103 of Volume I of the Indian Railway Establishment Code (Fifth Edition-1985)

and includes any such Railway servant on foreign service or whose services are temporarily placed at the disposal of any other department of the Central Government or a State Government or a local or other authority. We also find that the provisions of the aforesaid rules are also made applicable to the employees of Railway Board as also RDSO. Therefore, by no stretch of imagination it can be said that they are not the railway employees. Hence, this argument of the Applicant is hereby over ruled,

4. The next contention of the Applicant is that the decision of the Railway Board extending the zone of consideration of inviting option being contrary to rules is *ab initio* void and as such, any action taken on the basis of such void circular is not sustainable. In this regard, we would like to state that law is well settled and needs no emphasis that instructions/circulars issued by the Railway Board are statutory in force. In the case of **Union of India v Pushparani and others**-(2008)2 SCC (L&S) 851 it has been held by the Apex Court that Railway Board and GM are empowered to frame rule for regulating recruitment and conditions of service of employees. Therefore, the contention of the applicant that the said decision of the Railway Board being contrary to statutory rules is of no help to him; because neither the applicant nor his counsel was able to show us any such specific statutory rule which contradicts the policy decision of the Government. However, it is to be recorded that the applicant was also one of the beneficiary of such policy decision. Therefore, it is too late in the



28

day on the part of the Applicant to take such plea. Further it is noticed that the policy decision extending the zone of invitation of application from the employees of the Railway Board or RDSO is not under challenge in this OA. However, we may record that time without number, the Hon'ble Apex Court in a plethora of judicial pronouncements have held that the Courts/Tribunal should not interfere in the policy decision unless it violates constitutional or statutory provisions vide **Basic Education Board, UP v Upendra Rai and others**, (2008) 1 SCC (L&S) 771. In view of the above, we find no force on this contention of the Applicant which is accordingly rejected.

In the absence of any rule it would be an administrative function of the appointing/appropriate authority to take a decision as to which method should be adopted for recruitment to any particular post to accomplish the work so as to run the organization. It may depend on various factors relevant for the purpose e.g. status of the post, its responsibilities and job requirement, the suitable qualifications as well as the age as may be desirable may also be taken into consideration while making such an administrative decision. There is no right in any employee of the Government to claim that rules governing conditions of his service should be forever the same. Employee has no right to challenge the authority of the employer to take decision as to how to fill up the post through which means merely because that will deprive the promotional avenues of the existing employees.

2

29

-9-

5. In the above conspectus, we find no force in any of the contentions made by the Applicant in this OA. We therefore, hold that this OA sans any merit and is accordingly, dismissed. No costs.

Kappan

(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

Mohapatra

(C.R. MOHAPATRA)  
MEMBER (ADMN.)

Knm,ps