

13

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.154 OF 2005
Cuttack this the 12th day of December, 2007

G.T. Rao

....

Applicant

Vs.


Union of India & Others

....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*


(GAUTAM RAY)
MEMBER(A)


(G SHANTHAPPA)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.154/2005

DATED THE 12TH DECEMBER, 2007

HON'BLE SHRI G. SHANTHAPPA

...MEMBER(J)

HON'BLE SHRI GAUTAM RAY

...MEMBER(A)

Shri G.Tirupati Rao,
aged about 56 years
S/o late Appalaswamy,
Presently working as Head Clerk,
Office of the Dy.C.E.(Con),
East Coast Railway, Waltair,

..Applicant

(By Advocate Shri S.R.Mishra of M/s.S.Mishra)

Vs.

1. Union of India,
represented through its General Manager,
East Coast Railway, Rail Vihar,
Chandrashekarapur, Bhubaneswar,
2. Deputy Chief Personal Officer (Con.),
East Coast Railway,
Rail Coast Railway,
Rail Vihar, Chandrasekharpur,
Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer (Con),
East Coast Railway,
Chandrasekharpur,
Bhubaneswar,
4. Chief Engineer (Con),
East Coast Railway,
Waltair,
Andhrapradesh.
5. Divisional Railway Manager,
South Eastern Railway,
Adra West Bengal.

...Respondents

(By Standing Counsel for Railways Miss S.L.Patnaik)

ORDER**SHRI GAUTAM RAY, MEMBER(A)**

None present for the applicant even on the second call. Therefore, we invoke Rule 15(1) of the CAT (Procedure) Rules, 1987 and proceed to decide the matter on merits and pleadings available on record and hearing Mr. Ashok Mohanty, learned Sr. Standing Counsel, Railways and Ms. S.L. Patnaik, learned Standing Counsel, Railways appearing for the respondents.

2. This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed assailing the order No.09/2005 dated 19-1-2005 passed by the Chief Administrative Officer (Con), East Coast Railway, Bhubaneswar (Annexure 3) and Order No.P/29/2005 dated 3-3-2005 by the Chief Engineer (Con), East Coast Railway, Visakhapatnam (Annexure 4) on the ground that the same are illegal, arbitrary and contrary to law. The applicant who is continuing in the Construction Organisation since 1984 has not been regularised in the PCR post and although his option exercised to remain in the Construction Organisation is yet to be disposed of, the order of repatriation at the fag end of his service career is illegal.

3. The facts of the case of the applicant are thus:

(a) The applicant was appointed as Khalasi in 1972 under the DRM, Waltair in the then S.E.Railway. He passed the trade test conducted by the Railway Service Commission and was posted as a Junior Clerk under the AEN/ADRA in 1983. While continuing in the Open Line, the applicant was transferred to the Construction Organisation under the Chief Engineer (S&C), S.E.Railway, Waltair vide Order No.E/OS/Misc/999 Adra dated 13-1-1984 a copy of which is enclosed as 'Annexure-1' to this OA.

(b) The applicant submits that the applicant appeared for trade test before the DRM(P), S.E.Railway, Adra, where his lien was maintained for higher

promotions, and after passing the trade test he was promoted to the post of Sr. Clerk on 20.7.1990 and to the post of Head Clerk in 1996. It is the contention of the applicant that he was not released from the Construction Organisation to the Open Line and he continued to work as Head Clerk in the Construction Organisation. The applicant further states that the applicant was never considered for confirmation in PCR Cadre terminating his lien in the Open Line.

(c) The applicant submits that in the meantime S.E.Railway was bifurcated and East Coast Railway came into existence. Options were invited from incumbents to serve in the Headquarters of the new Zonal Railway and the applicant submitted his option to serve in the East Coast Railway. The Chief Engineer (Con) Waltair forwarded the option of the applicant to the Deputy CPO (Con), Bhubaneswar for necessary action vide his letter No.E/5-1/ECOR dated 2.12.2002, a copy of which is enclosed as 'Annexure-2' to this OA.

(d) The applicant states that by virtue of the impugned order No.9/2005 dated 19-1-2005 it was decided to transfer the lien holders including the applicant and in pursuance thereto, vide impugned order No.P/29/2005 dated 3-3-2005 the Chief Engineer (Con), VSKP ordered for repatriation of the applicant and some others to the lien department. Copies of the Orders dated 19-1-2005 and 3-3-2005 are enclosed as Annexures 3 and 4 respectively to this OA.

(e) The applicant further states that while many employees having lien in Open Line have been confirmed in Construction Organisation in PCR posts, the applicant has been ordered repatriation from the post of Head Clerk (Construction Organisation) to Open Line.

4. Being aggrieved, the applicant has filed this OA seeking the following reliefs:-

"i) The illegal and arbitrary order of repatriation under Annexure - 3 & 4, so far as it relates to the applicant

from the post of Head Clerk (Construction Organisation) to Open Line be quashed.

ii) Direction and/or directions be issued to the respondents to regularise him in PCR Cadre in the Construction Organisation as Sr. Clerk w.e.f. 16.11.87 and in the post of Head Clerk w.e.f. 21.8.1996, taking into consideration his efficiency, seniority and long service:

iii) Any other direction and/or directions be issued as it would deem fit and proper by this Hon'ble Court."

5. The respondents have contested the OA by filing a counter reply. It is the contention of the respondents that the Railways comprise of two wings, namely, (i) Open Line Organisation which is a permanent Organisation, and (ii) Construction Organisation, which is a purely temporary Organisation depending on the sanction of project works and allotment of funds on yearly basis. The source of employment in the Construction Organisation, being temporary, is mainly from three ways:

- (i) drafting staff from Open Line i.e., lien holders;
- (ii) Permanent Construction Reserve staff i.e., P.C.R.; and
- (iii) Casual Labour.

The applicant, while working in Open Line under ARS/BKSC, was transferred to Construction Organisation at his request to work under Chief Engineer/S&C/S.E.Railway/ WAT in the year 1984 on deputation basis by maintaining lien in his parent division i.e., Open Line. The applicant's working in Construction Organisation is purely on temporary measure in terms of CPO/GRC's Estt. Srl.Nos.41/62, 144/88 and policy circular No.P/R/17/TR-CR/IV dated 17-3-1989, copies of which are enclosed as Annexures 'R-1', 'R-2' and 'R-3' respectively. According to CPO/GRC's policy circular dated 17-3-1989, the lien holders are not eligible for confirmation against PCR posts of Construction Organisation. It is the further submission of the respondents that the

confirmation/promotion for assignment of seniority etc. of the applicant having lien in Open Line is regulated in his parent cadre in Open Line. Since the applicant belongs to Open Line, his existence in Construction Organisation depends upon the sanction of works and allocation of funds in the budgetary allotment on yearly basis. As the works in the Construction Organisation have been completed, the applicant has become surplus to the requirement and being a lien holder, the applicant has been repatriated to his parent organisation as per extant rules vide impugned orders at Annexures - 3 and 4 to the O.A. However, the applicant could not be repatriated in obedience of the Orders of this Tribunal dated 25-4-2005 to maintain status quo until further orders. The respondents also submit that O.A. No.403/2004 has been dismissed by this Tribunal by its order dated 25-7-2005, a copy of which is enclosed as Annexure 'R-4' to the reply. Lastly, the respondents have referred to the decision of the Hyderabad Bench of this Tribunal in O.A. Nos. 473/2001 and 566/2001 vide its Order dated 7-1-2005 whereby the said Bench has held that the applicants (therein) have no right to continue in the Construction Wing and that the order of the respondents (therein) to repatriate them to the Open Line cannot be assailed.

6 In view of the above facts and circumstances the question that falls for consideration is as to whether the applicant has any right to be absorbed in PCR post.

7. It is not in dispute that the applicant maintains his lien in the Open Line or in other words he has a permanent status in the Open Line. It is therefore, indisputed that he has been drafted to the Construction Organisation from Open Line.

8. The impugned Office Order No.09/2005 dated 19-1-2005, which is enclosed as Annexure-3 to the OA, shows that the applicant alongwith two others have been declared surplus. The respondents have stated in their

19

counter reply filed in April, 2006 that because of completion of works in the Construction Organisation, the applicant has become surplus. The contention of the respondents has not been denied by the applicant by way of filing rejoinder.

9. In para 4.18 of the OA the applicant has stated that many employees having lien in the Open Line have been confirmed in the Construction Organisation's PCR posts. However, the applicant has not made mention of any such name. The respondents, however, while replying to paragraph 4.18 have explained the position by stating that PCR posts are meant for confirming locally recruited personnel in Construction Organisation who have no lien or permanent status. Since the applicant is holding lien against permanent post in Open Line Organisation, he cannot be confirmed in PCR posts. It is reiterated that the applicant has not refuted the contentions of the respondents by way of filing rejoinder.


10. Similar question was considered by the Hyderabad Bench of the Central Administrative Tribunal, as referred to by the learned counsel for the respondents, in the case of B.Appa Rao & Ors. Vs. General Manager, South Eastern Railways & Ors. (OA No.566 of 2001) where the Hyderabad Bench has held that the applicants therein having been absorbed in the Open Line and confirmed in the Group D cadre and working in the Construction Organisation for a long time, have no right to continue in the Construction Wing and that the order of the respondents therein to repatriate them to the Open Line, cannot be assailed. The said OA was accordingly dismissed. The Hyderabad Bench in the said case while considering the claim of the applicants therein to be confirmed in the Construction Wing in the PCR Cadre has said as under:-

"This question is no longer res integra in the light of Railway Board's letter dated 11-7-2003 issued in terms of the Hon'ble Supreme Court Judgement dated 13-1-2003, as follows:-

2/

'Lien of construction staff working/posted in the Construction and other projects would continue to be in the Open Line in the relevant cadre of Headquarters/Divisional/Extra-Divisional unit wherein they would continue to be considered for selection/promotion in their turn.' "

11. In view of the above legal position and above discussion we find nothing wrong in the action taken by the respondents. The applicant is therefore, not entitled to get the relief prayed for. The Original Application being devoid of merit is dismissed accordingly with no order as to costs.


(GAUTAM RAY)
MEMBER(A)


(G. SHANTHAPPA)
MEMBER(J)

sd./ua