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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.155 OF 2005
Cuttack this the 3rd day of January, 2008

M. Sanyasi Rao Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

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


(GAUTAM RAY)
MEMBER(A)


(G. SHANTHAPPA)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.155/2005

DATED THE 3rd January, 2008

HON'BLE SHRI G. SHANTHAPPA

...MEMBER(J)

HON'BLE SHRI GAUTAM RAY

...MEMBER(A)

Shri M. Sanyasi Rao,
aged about 55 years
S/o late Venkat Rao,
Presently working as Depo. Make Supervisor,
Gr. II, 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. Dey. Chief Personal Officer (Con.),
East 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,
East Coast Railway, Waltair,
Andhrapradesh

...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 challenging the order of repatriation vide No.654 dated 27-5-2004 passed by the C.P.O. (Con), Bhubaneswar (Annexure-3) followed by order of reversion vide No.P/25/2005 dated 28-2-2005 passed by the Chief Engineer (Con), VSKP (Annexure 5) on the ground that those are illegal, arbitrary and contrary to law.

3. Briefly stated the facts of the case of the applicant are as follows:-

(a) The applicant was initially appointed as a Shed Khalasi under the Divisional Mech. Engineer, S.E.Railway, Waltair in the year 1980 and was confirmed as a Diesel Cleaner in 1982. While continuing as such in the Open Line, the applicant, vide letter No.WDE/05/89 dated 6-12-1982, a copy of which is enclosed as Annexure-I to this OA, was transferred to Construction Organisation to work under Dy.Chief Engineer (Con), Koraput. There he was appointed to the post of Junior Clerk and thereafter to the post of Senior Clerk and vide order No.E/11/91 dated 25-7-1991 to the post of Head Clerk in the scale of Rs.1400-2300 (RSRD). A copy of the order dated 25-7-1991 is enclosed as Annexure-2 to this OA. The applicant submits that in the order of promotion it was stated that the appointment is purely adhoc.

(b) The applicant submits that the authorities of the Mechanical Department of Waltair Division, where the applicant was maintaining his lien,

decided to make trade test from amongst the lien holders for promotion to the post of Technician Gr.III and though the applicant passed the said trade test he was not released from the Construction Organisation to join the Open Line. It is the further submission of the applicant that although he is eligible, qualified and suitable but his case has never been considered for confirmation in PCR cadre terminating his lien in Open Line as has been done in case of other employees.

(c) The applicant states that by virtue of impugned letter No.654 dated 27-5-2004 it was decided to transfer the lien holders including the applicant. A copy of the said letter dated 27-5-2004 is enclosed as Annexure-3 to this OA. The applicant further states that the applicant was not released and he was given posting in the Stores Department as Depo. Material Supervisor (DMS Gr.III) vide order No.AXEN/VSKP/E-I/Spl. dated 18-2-2005, a copy of which is enclosed as Annexure-4 to this OA.

(d) The applicant submits that by virtue of the impugned office order No.P/25/2005 dated 28-2-2005 the applicant has been reverted to the post of Sr.Clerk. Although the order was issued, the applicant was never allowed to join as Sr. Clerk and he is still continuing as DMS Gr.III. A copy of the said office order dated 28-2-2005 is enclosed as Annexure-5 to this OA.

4. Being aggrieved, the applicant has filed the instant Original Application seeking for the following reliefs:-

"i) The order of repatriation under Annexure-3, dtd.27.5.04 so far as it relates to the applicant from the post of DMS Gr-III to Open Line and the order of reversion under Annexure-5 dated 28.02.05 be quashed;

ii) Direction and/or directions be issued to the respondents to regularise the applicant as Head Clerk w.e.f. 25.07.91 in PCR Cadre.

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

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 Divl. Mechanical Engineer/WAT, was drafted to Construction Organisation to the Office of Dy.C.E./C/Koraput vide C.E./S&C/WAT's O.O.No.CE/S&C/WAT/E-5/1083 dated 1-12-82 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

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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 5 to the OA. 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 OA 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 OA 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 maintained 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. In para 4.12 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 4.12 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

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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.

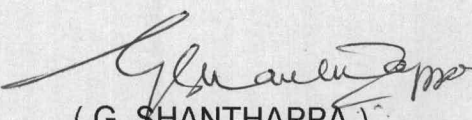
9. Similar question was considered by the Hyderabad Bench of the Central Administrative Tribunal, as referred to by the learned counsel for the respondents, in the case of B.Appa Rao & Ors. Vs. General Manager, South Eastern Railways & Ors. (OA No.566 of 2001) where the Hyderabad Bench has held that 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:-

'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.' "

10. 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)

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