

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 225 OF 2005
CUTTACK, THIS THE ~~04th~~ DAY OF ~~February~~, 2008
~~MARCH~~

Sri R.C.Panigrahi Applicant

VS

Union of India & Others 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 of not ?

(C.R.Mohapatra)
MEMBER (A)

(K.B.S.Rajan)
MEMBER (J)

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ORIGINAL APPLICATION NO. 225 OF 2005
CUTTACK, THIS THE ~~04~~¹⁰ DAY OF ~~February~~, 2008
~~MARCH~~,

CORAM :

HON'BLE Dr.K.B.S.RAJAN, MEMBER (J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

Sri R.C.Panigrahi, aged about 33 years, S/o. Brajabandhu Panigrahi, At present working as Section Engineer (P.Way) Office of the Dy.Chief Engineer©, East Coast Raiway, Khurda Road, Jatni, Dist. Khurda.

.....Applicant

Advocate(s) for the Applicant- M/s. P.K.Chand, D.Satpathy

VERSUS

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda
2. Divisional Railway Manager(P),East Coast Railway, Khurda Road, Jatni, District- Khurda.
3. Chief Administrative Officer©, East Coast Railway, Chandrasekharpur, Bhubaneswar, Khurda.
4. Chief Personnel Officer, East Coast Railway, Chandrasekhrpur, Bhubaneswar, Dist. Khurda.

..... Respondents

Advocates for the Respondents – M/s S.K.Ojha, A.K.Sahoo

ORDER

Hon'ble Dr. K.B.S.Rajan, Member(J)

The applicant was recruited as regular staff on Khurda Road Division and his lien was maintained at Khurda Road Division. He has been working in the Construction Organization on deputation. He got his promotions to higher grades in his parent division, i.e. Khurda Road Division, the last of his promotion being to the post of Section Engineer/P.Way in the pay scale of Rs. 6500-10,500/- w.e.f. 15.09.2004.

Khurda Road was earlier a Division under South Eastern Railways. The Railways had decided to trifurcate S.E.Rlys. into (a) South Eastern Railways (b) East Coast Railways and (c) South East Central Railways. Options were called for change of zones and the applicant opted for E.Co.Rlys. vide Annexure-A/6. It was after such exercise of option that the applicant was promoted, as stated above, to the post of Section Engineer. Now, by order dated 09.11.2004, Respondents seek to cancel the promotion granted to the applicant. The applicant has come before the Tribunal challenging the aforesaid cancellation order.

Respondents have contested the O.A. According to them, applicant's lien was fixed on the basis of option. After giving lien to the applicant in E.Co.Rlys. headquarters, his lien at the Khurda Road Division stands automatically cancelled. After publication of the seniority list the applicant is no longer the staff of Khurda Road Division and hence that Division was incompetent to pass any order promoting the applicant. Since such an order has been passed, the same is sought to be withdrawn. The contention of the Respondents is also that having voluntarily applied for option transfer and having got the lien transferred to E.Co.Rlys. headquarters w.e.f. 31.10.2003, the lien should be terminated from the same date at

Khurda Road Division and all the future promotions could be guided by on the basis of his seniority position in the E.Co.Rlys. headquarters.

The applicant has filed his rejoinder reiterating all the contents and grounds as in the O.A. and also met the objections made by the Respondents.

Counsel for the applicant submitted that no communication with regard to acceptance of the offer to the applicant for posting at headquarters has been given to the applicant. Even if the option for posting at E.Co.Rlys. headquarters is accepted, the same should be effected by actual relieving from the parent division and in posting in the E.Co.Rlys. headquarters as per the strict guidelines issued by the Railway Board vide letter dated 03.10.2003 (Annexure-A/13) and 11.03.2003 (Annexure-A/12), which stipulates in terms of Hours (72 hours) for being relieved. In the case of the applicant no such happening has taken place. It has also been argued by the counsel that for the first time the transfer by paper lien has been introduced and there is no authority for the same. Para-19 of the guidelines for restructuring can be an embargo only with respect of double benefit of restructuring and it does not restrict promotion of the employee under restructuring. The action of the Respondents is violative of Article 14 and 16 of the Constitution of India and also there is a failure of principles of natural justice.

Counsel for the Respondents reiterated the contention of the counter.

Arguments were heard and documents perused. The applicant earlier was in the undivided S.E.Rlys. and was posted to a Construction Unit. At that time he was serving under Khurda Road Division. Without effecting any change of his position he had opted for E.Co.Rlys. which accommodates Khurda Road Division. His purpose is very clear, with the formation of E.Co.Rlys. which comprises Khurda Road Division, he could

ensure his posting within the same division or at best within the same E.Co.Rlys. His interest is that far and no further. There has been no incling in any of the communication that in the event of option being exercised there will be a change in the lien from Khurda Road Division to E.Co.Rlys. headquarters. Perhaps the applicant would have had his own reservation had there been any such indication. All of a sudden by change of lien the Respondents have not only cancelled his earlier promotion but have changed the term and conditions of employment without prior notice. It is trite law that the terms and conditions of any employee cannot be varied to his disadvantage save with a prior notice and opportunity to make representations. From this point of view also, action taken by the Respondents in cancellation of applicant's promotion already granted is illegal. As such Annexure-A/7 order, in so far as it relates to the applicant, is liable to be quashed and set aside.

In view of the above discussions, the O.A. is allowed. Order dated 19.11.2004 vide Annexure-A/7 is hereby quashed and set aside in so far as it relates to the cancellation of the promotion of the applicant. The applicant shall be retained in Khurda Road Division in his capacity as Section Engineer.

Under the above circumstances, there shall be no order as to costs.

~~(C.R.Mohapatra)~~
MEMBER (A)


(K.B.S.Rajan)
MEMBER (J)