

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 257 OF 2006
CUTTACK, THIS THE 23rd DAY OF JULY, 2008


K.Ganesh Kumar 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 or not ?


(K.THANKAPPAN)
MEMBER (JUDL.)


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

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CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 257 OF 2006
CUTTACK, THIS THE 23rd DAY OF JULY, 2008

CORAM :

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER (J)
HON'BLE MR. C.R. MOHAPATRA, MEMBER (A)

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K. Ganesh Kumar, aged about 45 years, son of K. Nageswar Rao, residing at B-27, Rail Vihar, Chandrasekharapur, Bhubaneswar-23, Dist. Khurda, presently working as Senior Transportation Manager (H.Q), East Coast Railway, Bhubaneswar.

.....Applicant

Advocate(s) for the Applicant- M/s. M.R. Mohapatra, R.P. Kar,
S. Prusty, S.K. Routray.

VERSUS

1. Union of India represented through its General Manager, East Coast Railways, Rail Vihar, Chandrasekharapur, Bhubaneswar.
2. Ministry of Railway (Railway Board), represented through Director (Establishment), Railway Board, New Delhi.
3. South Eastern Railway (Personnel Branch), represented through its General Manager(P), Garden Reach, Kolkata-43.
4. Additional Divisional Railway Manager, Waltair Division, East Coast Railway, Waltair, A.P.

..... Respondents

Advocates for the Respondents – Mr. S.K. Ojha, A.K. Sahoo.

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ORDER

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

In the present O.A. filed under Section 19 of the Administrative Tribunals Act, the grievance of the applicant is that he was not considered for permanent absorption in East Coast Railways, Bhubaneswar consequent to the reorganization of the Zonal Railways of the Ministry of Railways. During June/July, 2002, seven new Railway zones were constituted and for the new zones options were invited vide Railway Board's Letter dated 20.08.2002 from Group-B officers of various department including the officers working in Senior Scale on ad hoc basis and also those persons working in the Divisions, Workshops etc. who are regularly appointed to Group-B service for absorption in the same department in the new Railways. The last date of exercising options by the Group-B officers was fixed as 23.09.2002. It was also made clear that any transfer to the zones on or after 1.4.2003 will be treated as transfer on request on bottom seniority in recruitment grades subject to fulfillment of usual conditions.

2. The applicant, while working in the South Eastern Railways exercised his option for coming over to East Coast Railways, Bhubaneswar on 20.09.2002. In support of this, he has filed Annexure-2 whereunder the DRM(P) has forwarded his option to the C.P.O.(Gaz) GRC. In spite of this, he has been denied the permanent absorption in the new zonal railways i.e. East Coast Railways, Bhubaneswar and the consequential benefits and, therefore, he has sought the following relief:

"8(a) Quash the letter No.E(O)-III-2003/Opt/36 dated 14.11.2005 rejecting the

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applicant's permanent absorption in East Coast Railway, Bhubaneswar.

(b) Respondents be directed to confirm permanent absorption of the applicant in East Coast Railway, Bhubaneswar on the basis of option opted in time."

3. The applicant had, as an interim measure, prayed for restraining the authorities to transfer him from East Coast Railways, Bhubaneswar zone to any other Railway zone.

4. In the counter, filed by the Respondents, while it has been admitted that consequent to the reorganization of zonal railways options were invited from Group-B officers of various department by 23.09.2002, it was also made clear that any request after 01.04.2003 i.e. beyond the cut off date will be treated as transfer on request and such transfer will be considered only according to bottom seniority principle. It is the case of the Respondents that the applicant has never exercised his option by the cut off date as fixed by the Railway Board. They have further pointed out that Annexure-A/2 of the O.A. is not the copy of option form, which is supposed to have been filed by the applicant but was an undated note from DRM/Waltair to Chief Personnel Officer (Gaz), South Eastern Railways forwarding the revised option of the applicant for absorption in East Coast Railways. Respondents further submit that there was no documentary evidence to substantiate the contention that the applicant had exercised his option for East Coast Railways within the cut off date. While referring to Annexure-A/6, the Respondents in paragraph 10 of their counter have stated "in reply to the letter dt. 11.8.2005(Annexure-R/2), COM/East Coast Railway wrote another letter dt. 28.9.2005(Annexure-A/10 of the O.A.), enclosing letter dt. 1.6.2004 from ADRM/Waltair as proof of

the contention that the applicant had opted for East Coast Railway within the cut off date. A perusal of this letter (Annexure-A/6) will show that the ADRM has stated that the applicant had 'repeatedly' submitted his option for East Coast Railway before the cut off date and "it appears" that the same was "misplaced". Therefore, above letter of the ADRM can not be accepted as conclusive proof regarding exercise of option by the applicant within the prescribed period. However, having regard to the fact that the applicant is keen to get absorbed in East Coast Railway, the matter was considered in the office of Respondent No.2. It was decided that if the applicant is really keen to get absorbed in E.Co.Rly, he can submit his application for inter-railway transfer on bottom seniority as per Rly Board's letter dated 19.07.2002 and as has been done in many other cases".

5. The Respondents have further pointed out that in case his request is acceded to, it will tantamount to deviation of the Railway Board policy and will cause hardship to other persons. Hence, they have prayed for dismissal of the O.A.


6. In the absence of the applicant as well as the counsel for the applicant, the matter was taken up for hearing and during the course of hearing, the Ld. Standing Counsel for the Railways pleaded that they do not have any documentary evidence to substantiate that the applicant had exercised his option by the prescribed date for permanent absorption in the new Railway Zone i.e. East Coast Railways. However, the ld. Counsel for the Railways could not convince us about the assertion made by ADRM/Waltair vide Annexure-A/6 that the applicant made and submitted his option for East Coast Railways in the prescribed form and that the same seems to


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have been 'misplaced' and it was not received in time in South Eastern Railways (HQ).

7. Having heard the Ld. Counsel for the Railways and having perused the relevant documents, we are of the view that the applicant is deemed to have exercised his option within the cut off date and hence was entitled for consideration for permanent absorption in the East Coast Railways along with others. It would not be proper to ask him to seek transfer to East Coast Railways on bottom seniority. Hence, letter No. E(O)III-2003/Opt/36 dated 14.11.2005, in so far as the applicant is concerned shall not be acted upon. We direct Respondent No.2 to consider the case of the applicant for permanent absorption in the East Coast Railways on the premise that the applicant had submitted his option within the stipulated period. While doing so, the other officers who may be affected may be put on notice so as to enable them to protect their interest. Respondent No.2 is further directed to complete the exercise and pass reasoned order within a period of three months from the date of receipt of a copy of this order.

8. With the above observations/directions, the O.A. stands allowed. No costs.


(K.THANKAPPAN)
MEMBER (JUDL.)


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