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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 05/05/2008

O.A. No.314 of 2006
Braja Sundar Samal and others Applicant
Vs.
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?

(K.V.SACHIDANANDAN)
VICE-CHAIRMAN

(C.R.MOHAPATRA)
MEMBER(A)

I Concur and authorise M/s to issue
the order or ruling of the Bench
Dated 29/4/08

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. No. 314 of 2006
Cuttack, this the 05th day of May, 2008.

PRESENT:

THE HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

.....

1. Braja Sundar Samal, Aged about 36 years, Son of Dibakar Samal, at present working as JE-I (Bridge) under Assistant Executive Engineer (D-II) East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. S.K.Mohanty, aged about 31 years, Son of Bhanu Charan Mohanty, working as JE-I (Bridge) 9Ad-hoc) under Dy. Chief Engineer/II/Construction, Jajpur Road, East Coast Railway, Jajpur Road, Dist. Jajpur.
3. P.K.Nayak, aged about 35 years, Son of Damodar Nayak, working as JE-I (Bridge) under Executive Engineer (D-II), East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Applicants

For the Applicants :M/s.P.K.Chand,D.Satpathy,
J.Mohanty, Counsel.

- v e r s u s -

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The General Manager, South Eastern Railway, Garden Reach, Kolkata-43.



3. The Chief Administrative Officer (Con.), E.Co.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43.
5. The Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
6. Bhaskar Chowdhury, aged about 41 years, So of Shri Satya Narayan Chowdhury at present working as JE I (Bridge), O/o.Secton Engineer (Bridge), Jagdalpur, Chhatisgarh, E.Co.Railway.
7. K.K.Mishra, aged about 35 years, Son of Sri Dasharathi Mishra, at present working as JE I (Bridge), Office of the Section Engineer, E.Co.Railway, At-Araku, Andhra Pradesh.
8. G.K.Nayak, aged about 36 years, son of Sri Bansidhar Nayak, at present working as JE I (bridge) Office of the Chief Engineer, E.Co.Railway, East Annex Building, Rail Vihar, Bhubaneswar.
9. G.K.Pattnaik, aged about 37 years, Son of Sri Prabhakar Pattnaik, at present working as JE I (Bridge), Office of the Chief Engineer, E.Co.Railway, East Annex Building, Rail Vihar, Chandrasekharpur, Bhubaneswar.
10. Soumitra Ghosh, aged about 37 years, Son of Late Saroj Kumar Ghosh, at present working as JE I Office of Section Engineer (Bridge), E.Co.Railway, Bhadrak.

..... Respondents

For the Respondents. :Mr.R.C.Rath, Counsel
M/s.Anil Mohanty, H.S.Sahu,
Counsel,

Mr. S.K.Ojha, Standing Counsel
Railways.



ORDER

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

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicants who are working as Junior Engineer -I (Bridge) in different places under East Coast Railway, Chandrasekharpur, Bhubaneswar have challenged the action of the Respondents in not fixing their seniority in the grade of JE II (bridge) in the newly created zonal Railway (i.e. East Coast Railway, Headquarters at Bhubaneswar) as per the option invited by the competent authority and submitted by them to work on new zonal headquarters and consequently in not giving promotion to JE I (Bridge) under restructuring of cadre with effect from the date their juniors were promoted to the said grade. They have also challenged the action of the Respondents in calling upon the juniors to Applicant No.1 to appear at the written test for promotion to the post of S.E. (Bridge) as illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India.

2. The fact of the matter is that in the year 2003 South Eastern Railway was divided into three zones i.e. South Eastern Railway, having its headquarters at Garden Reach Kolkata, East Coast Railway, having its headquarters at Bhubaneswar and South East Central Railway having its headquarters at Bilashpur. The CPO/GRC and CPO/BBSR issued circulars



inviting option from the existing employees of the South Eastern Railway to work under any other two zones. It was made clear that in the event of exercising their option, their lien and seniority will be maintained in the zone to which option will be exercised. According to the Applicants, in response to such circular, they exercised their option, within the cut off date/30.04.2004 to work under East Coast Railway having its headquarters at Bhubaneswar, because the construction organization in which the applicants were working came under the jurisdiction of E.Co. Railway. It is the case of the Applicants that though name of one Shri B.P. Dash who is junior to Applicant No.1 has been included in the seniority list of Bridge Inspector, E.Co. Railway, his name could not be included in the seniority list as a result of which career progression of applicants have seriously been prejudiced. Although with effect from 13.05.2005 the Respondent No.4 communicated the approval of the competent authority for absorption of applicants in the E.Co. Railway but no benefits so far as seniority and promotion in the E.Co. Railway were given to the Applicants with effect from the date when other similar situated employees got the same. After transfer of paper lien of Shri Biswajit Nanda to E.Co. Railway Headquarters and before finalization of seniority list of JE II (Bridge) in E.Co. Railway headquarters interpolating the names of applicants, the ResopndentNo.5



promoted Shri Nanda to the post of JE I (Bridge) on regular basis with effect from 6.6.2005 and called him to appear in the written test to be held on 4.3.2006 to the promotional post of SE (Bridge). The above action being objected to by Shri P.Satpathy and Shri B.P.Dash who are senior to Shri Nanda, the Respondent No.5 interpolated the seniority list by giving seniority position at 5-A and 5-B in terms of RRB merit position and promoted them to JE I (Bridge) w.e.f. 6.6.05on proforma basis at par with their junior Shri Nanda. But though applicant No.1 was senior to Shri Dash and Nanda in terms of RRB merit list as also seniority list maintained in S.E. Headquarters, he was ignored. Applicants 2 and 3 were also not included in the said seniority list. Although their liens have been cut with effect from 13.5.05, Respondents 1 and 4 have not fixed their paper lien in E.Co. Railway Headquarters for which the applicants were deprived of promotion to the post of JE I (bridge) under restructuring cadre and also for selection to the post of SE (Bridge). According to Applicants, at one hand no action on their repeated representation to undo the wrong committed to them and on the other hand calling upon the juniors to the Applicants to face the test for S.E.(Bridge) on 8.4.2006 are the cause of action for approaching this Tribunal with the following relief:

“to direct the Respondent No.5 to fix up the lien of the applicant in E.Co. Railway Headquarters at



Bhubaneswar in pursuance of the order dated 13.5.205 (Annexure-A/7) and in consequence interpolate the names of the applicants in the seniority list of JE -II (Bridge) at its proper position as has been done in order dt. 24.2.2006 (Annexure-A/10) with all consequential benefits;

And further be pleased to quash the letter dated 23/24.3.2006 as at Annexure-A/12;

And further be pleased to pass any other order/orders as deemed fit and proper in the facts of the case."

3. South Eastern Railway has filed a counter stating therein that as per the guidelines framed by the Railways (in regard to transfer of employees from S.E. Railway to two other Zones) exercising option will not give any right to an employee to be absorbed in the new zone. It is essentially the efficient working of the headquarters offices of the new zones which will have to be kept in view in deciding transfer of staff to the new zonal railways. In the event of their lien not having been transferred before closure of cadre, the staff working in the construction organization of BBSR who were earlier holding lien in the present Divisions/ Headquarters office of S.E. Railway will continue to hold their lien in S.E. Railway and progress accordingly in S.E. Railway in terms of seniority and promotion. However, it has been stated that the Deputy CPO (Con)/BBS in her letter dated 02.07.04 has communicated to the Chief Personnel Officer, S.E. Railway that the present applicants have exercised their option to serve in ECOR Hd.

Y Qrs./BBSR. Considering the request of the applicants, the competent authority has accorded permission for transfer of their lien from S.E. Railway to E. Co. Railway and the same was communicated vide CPO's letter dated 13.5.05. But subsequent actions of the ECOR itself show that the present applicants have been provided with the lien in the Head quarters at BBSR. Therefore the applicants have no grievance against the present Respondents after acceptance of their option for transfer and after being absorbed in the new zonal Railway at BBSR.

4. Respondents 1, 3 and 5 have filed their counter in which it has been stated that Applicants' seniority have not been fixed in ECoR HQs due to non receipt of service particulars and option form from the working unit (through CPO/SER/GRC) in time. As the Applicants position in the seniority list maintained by E.Co.Railway is not yet decided, the allegation of supersession in the matter of promotion is unfounded. According to them, in the high level meeting held on 23.04.1997 it was decided that applicants' lien were to be fixed at South Eastern Railway Head Quarters at Garden Reach Kolkata besides to interpolate the seniority of applicants in the existing seniority list on completion of statutory training period. Since the initial appointment of applicants was in construction organization as per the construction policies they were promoted to JE

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I/Bridge on ad-hoc basis. However, the period of their promotion on ad-hoc basis doesn't vest in them any right or claim for regularization, seniority or confirmation in their lien post. They have disputed the exercising of option to CPO/SER/GRC (i.e. Respondent No.4) as also fixation of paper lien in the ECOR. It has been stated that the Applicants were not eligible for consideration to appear at AXEN Written examination against 70% and later on 30% because their names have not been taken in the HQs seniority list of Bridge staff. As long as applicants are not given paper lien as a result of which fixation of seniority position, question of considering them for AEN selection either against 70% or 30% quota does not arise. They have stated that while seniority and confirmation of S/Shri P.Satpathy and B.P.Dash in ECoR/HQs has been done, the Applicants who claim themselves to be senior to them have not yet been absorbed in ECoR/HQs because of their non-release from S.E. Railway. They have also disputed the exercising option of applicants by the cut off date which was 30.04.2004. They have further stated that the process of formation of cadre in all new zones including ECOR was closed on 30.04.2004 whereas approval of competent authority for absorption of applicants was given only on 13.5.2005 and as such, the claim of interpolation of names of applicant did not arise; as cut off date of 30.04.2004 was ultimately for closure of cadres and all further

absorptions/intake(s) thereafter were to be on bottom seniority, the applicants too were offered the same. Their stand is that the case of Biswajit Nanda and Bishnu Prasad Das stood on a different footing as they were absorbed in ECOR before 30.4.2004 pursuant to acceptance of their options. They have also denied the stand of the applicants that their lien was cut off on 13.5.2005 by stating that one's lien is severed from one's railway only when it is fixed in another unit/department. Names and number of candidates coming under the zone of consideration for the written test conducted for the post of SE (Bridge) on 8.4.2006 was finalized on the basis of existing seniority list. Since the applicants' name did not figure in the seniority list maintained in the ECOR by that time, there was no wrong in the decision making process of the authorities and, therefore, there being no merit in the contention of the applicants, this OA deserves to be dismissed.

5. Respondents 6 to 10 have also filed separate counter in which it has been stated that though the applicants have exercised option to work in ECOR HQs at Bhubaneswar under the option guidelines of the Railway as their seniority has not been maintained in ECOR HQs, it cannot be said that the applicants are senior to Respondent Nos. 6 to 10. As such there was no wrong in calling upon them to appear at the selection for promotion to SE/Bridge being senior in the seniority list maintained in the grade of JE



I/Bridge in ECOR. Accordingly, they have opposed the prayers of the Applicants.

6. In enclosing copies of the letters dated 18.11.2002 and 29.11.2002 in the rejoinder filed on 2.4.2007 in regard to acceptance of option of applicants and furnishing detailed particulars, the Applicants while denying the stand of the Respondents that they have not exercised their option within the cutoff date have also refuted various stand taken by the Respondents in their counter.

7. On request of the Learned Counsel for the Applicants, vide order dated 31.5.2007 passed in MA No. 313 of 2007, this Tribunal directed the Respondents to cause production of the documents pertaining to calling upon options, its acceptance etc. But the Respondents (E.Co.Railway) instead of producing the records have shown their inability to produce the records on the ground of non-availability of records.

8. We have given our anxious consideration to various submissions made by the parties with reference to the averments and materials placed on record.

9. It has been argued by the Learned Counsel for the Applicants that as there has been gross injustice caused to the Applicants in the decision making process while accepting the option and finalizing the seniority list of



employees, drafted to E.Co.Railway. In order to fortify his stand that there was no proper consideration and intentionally the Respondents have kept the applicants out of the seniority list only to show favour to Private Respondents, he took us through the Annexure-A/13 series. By relying on the aforesaid letter, he has further submitted that when other employees were taken as the employees of the E.Co.Railway they ought to have finalized the option of applicants then and there. Keeping silence over the letter and acting contrary to Rules is nothing but amounts to exercising discretion at their sweet will which is not permissible in the touch stone of judicial scrutiny. For non production of records, as directed by this Tribunal, on the ground of non-availability, it has been stated by him that if records were not traceable how the Respondents in their counter disclosed the factual positions, in other words, it was his contention that intentionally and deliberately they have suppressed the documents to see that the applicants are defeated before this Tribunal.

10. On the other hand, Learned Counsel for the Respondents while refuting the arguments advanced by the Learned Counsel for the Applicants has reiterated that the Applicants hardly have any right over his option. Option exercise does not mean to be acceded to because it is for the authorities to decide taking into consideration the administrative

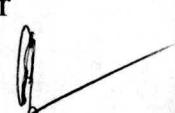


requirements and many other things. He has also argued that it is wrong to say that the Respondents have intentionally and deliberately suppressed the records. Rather the Respondents have made all sincere efforts to locate but as the records are not traceable, after the filing of counter, the same was brought to the notice of this Tribunal.

11. Now the question that needs to be addressed is whether the applicants exercised their options within the cut off date fixed by the competent authorities and if so, as to whether there was proper exercise of discretionary powers in the matter of finalization of option and seniority in E.CO.Railway, Bhubaneswar. On perusal of Annexure-A/13 series , it reveals that name of Applicants 1 & 3 and their batch mate Shri B.P.Das and Shri B.N.Nanda appeared at Sl. Nos. 19, 18, 11 and 52 of the said letter. We find that option forms of Applicants 1 & 3 are at page 19 and 20 of Annexure-A/13 series. Page 21 of the said Annexure contains the letter dated 18.11.2002 written by Respondent No.3 to Respondent No.4 with copy to Respondent No.5 This letter contains names of 52 employees including the name of Applicant No.2 at Sl. No.9. Letter dated 21.4.2004 (Annexure-A/4) contains a list of names in which the name of Applicant and names of B.Nanda and P. Satpathy found place at Sl. Nos.15,16,17,18 and 65 and the same was issued by Respondent No.3 to Respondent No.5



requesting to provide paper lien to E.Co. Railway Headquarters and allowed them to sit in the AXEN selection as because they have exercised option for their absorption long back. From the above it is transparent that the Applicants along with their batch mates who are juniors to the Applicants had exercised their option much prior to 30.04.2004 i.e. cut off date fixed for exercising options by the employees. Annexure-A/5 is the letter dated 16.06.2004 written by CPO/GRC of S.E. Railway to CAO/CON/BBS of E.Co. Railway to know the lien status of 5 JE/Bridge which includes the Applicants and their batch mates working in construction organization of E.Co. Railway. Out of five numbers of JE/Bridge 2 Nos. of JE/Bridge who are batch mates of the applicants were placed in the lien list of E.Co. Railway (Annexure-A/6) without giving any consideration to the case of Applicants. Thereafter on 13.5.05/Annexure-A/7 the CPO/GRC issued an office order regarding absorption of applicants in E.Co. Railway. No material has been placed by the Respondents to show that Shri P.Satpathy and B.P.Dash were released only after being relieved by the S.E. Railway. By filing Annexures-A/10 and A/15 Applicants have shown the name of Shri B.Nanda, who was junior to Applicant No.1 and others who had been taken to E.Co. Railway even after the cut off date i.e. 30.04.2004. These documents have not been denied by the Respondents in their counter nor



produced the records enabling this Tribunal to verify the contentions of the Applicants. In view of the above, the assertions of the applicants that Juniors of the Applicants in the S.E. Railway have become senior by virtue of illegal manner of acceptance of option/in the decision making process of the matter cannot be brushed aside.

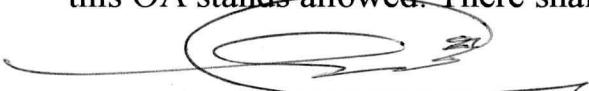
12. Justice not only be done but seen to be done is one of the cardinal principles of Law. Equally, the rulings of the courts are that the power conferred with the authorities must be utilized in free and fair manner equally making applicable to all similarly situated employees. Even if the power is discretionary it is not necessarily discriminatory and the discretion vested in such high official should not be assumed by abuse of power. An administrative decision is impaired by illegality if it contravenes any provision of Rule/law. Such decision is also flawed where it pursues an objective other than that for which the power to take the decision is made. Where such power is exercised according to one's whims and caprice, such exercise of power is vitiated by illegality. Similarly law is well settled that there should be no pick and choose manner of selection and the decision of the administrative authority must be fair to all similarly situated employees.

Also it is trite law that non-arbitrariness is an essential facet of Article 14 of the Constitution pervading the entire realm of state action

governed by Article 14. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment.

13. In the light of the facts and positions of law discussed above, we find substantial force in the contentions of the Applicants that there was gross injustice caused to them in the decision making process of acceptance of options and finalization of seniority list etc.; especially in view of the inability shown by the Respondents to produce the documents. Hence, the Respondent No.5 is hereby directed to fix the lien of Applicants in the E.Co. Railway with reference to the date of the private respondents, thereafter, insert their names at proper place and position, in the seniority list of JE II/Bridge in E.Co. Railway, having its headquarters at Bhubaneswar and grant them all other consequential benefits as a result of their placement in the seniority list of JE-II/Bridge. All such exercises shall be completed within a period of ninety days from the date of receipt of the copy of this order.

14. In the result, with the observations and directions made above, this OA stands allowed. There shall be no order as to costs.


(K.V.SACHIDANANDAN)
VICE-CHAIRMAN


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