

10
O.A. No. 792 of 2006

Kailash Chandra Sahoo.....Applicant

Vs

Union of India & Ors.Respondents

Order dated: the 27th April, 2010

CORAM:


Hon'ble Mr. B.V.Rao, Member(Judl.)

&

Hon'ble Mr. C.R.Mohapatra, Member (Admn.)

The applicant, at present, is working as Junior Engineer Electrical-II/GS in the Office of Chief Electrical Engineer, East Coast Railways, Bhubaneswar. He has filed this O.A. impugning the Annexure-A/10, A/13 and A/15 dated 2.2.2005, 16.6.2006 and 27.09.2006 respectively.

2. It is the case of the applicant that while continuing as Junior Engineer-II in the borrowing organization, i.e. under Respondents 3 to 5 as an optee transferee, he was promoted as Junior Engineer-I in his parent organization, i.e., S.E.Railways under Respondent Nos. 6 to 8 vide order dated 10.06.2004. According to him, despite the said order of promotion and his making representation dated 26.07.2004, Respondent Nos. 3 to 5, in an arbitrary manner, have not given the benefit of said



promotion accorded in the parent department on the ground that his lien in parent department has been cut off w.e.f. 31.10.2003. In this background, he has moved this Tribunal seeking the following reliefs:

“(i) To quash orders under Annexures-A/10 and A/15 terminating applicant's lien with his parent unit, i.e. Workshop, “SER”, Kharagpur under respondent no.7 and Annexure-A/13 to the extent applicant's placement in the Gradation List dated 16.06.2006 in the post of “JE-II” under GS category;

(ii) To direct the respondents, particularly the respondent Nos. 3 to 5 to hold that the applicant's lien with his parent unit, i.e., Workshop “SER”, Kharagpur under Respondent no.7 is subsisting and provide him the benefit of promotion to the posts of “JE-I” with effect from 1.11.2003 and Section Engineer Electrical forthwith in the “ECoR”, pursuant to orders of the respondent no.7 passed under Annexures-A/6, and A/8 read with A/11, respectively.

(iii) To direct the respondents, particularly the respondent nos. 3 to 5 to revise the Gradation List dated 16.6.2006 of the GS category published under Annexure-A/13 to the extent; (a) declaring applicant as senior than Shri Narandra Kumar Behera in the post of “JE-II” as per their placement in the merit list drawn by the Railway Recruitment Board, Bhubaneswar pursuant to Employment Notice No. 1/96 in respect of “JE-II” category; and (b) placing the applicant as “JE-I” with effect from 1.11.2003 in the “ECoR” as per orders of the respondent no.7 under Annexure-A/6, and as Section Engineer Electrical forthwith in the “ECoR” as per orders of the respondent no.7

- 3 - 12

under Annexures-A/8 read with A/11 whereunder his junior Shri A.N.Sarkar continued in his lending unit under the "SER" has already been empanelled for the said promotion to the post of Section Engineer Electrical;"

3. Respondents have filed their counter opposing the prayer of the applicant. According to Respondents, the applicant has been informed as per Annexure-A/10 dated 2.2.2005 that his lien had been fixed in E.Co.Railways w.e.f. 31.10.2003 and as such he was no longer holding lien in KGP(W) SER by that date. In this connection the main stay of authority by the Respondent at Annexure-A/15 dated 27.9.2006, the relevant portion of which is quoted hereunder:

- "i. You have been accepted as JE-II in Electrical department of ECoR/HQs/BBS w.e.f. 01.08.2003 subject to maintenance of lien in parent category/division/railway till such time the cadre of ECoR HQs is finally formed.
 - ii. The cadre of newly created ECoR zone is finally formed w.e.f. 01.11.2003 thus you were not an employee of KGP (W/S) on 01.11.2003.
 - iii. Your promotion as JE-I w.e.f. 01.11.2003 under the restructuring scheme and alert notice to appear selection of SE against an existing vacancy vide Dy. CEE(W)/KGP's
- 13

-49- 13


letter Dtd. 10.06.2004 and 12.1.2005
is not in conformity with rules."

On these grounds, Respondents have submitted
that the O.A. devoid of merit is liable to be dismissed.

4. We have heard Shri N. Lenka, Ld. Counsel for
the applicant and Shri G. Singh, Ld. Counsel appearing for
the Respondents and perused the materials available on
record.

5. The short point to be decided in this O.A. is as
to whether by the effective date of promotion as JE-I,
i.e., 1.11.2003, the applicant was holding lien in his parent
department. In this connection, we would at first say that
Annexure-A/10 dated 2.2.2005 stands contrary to Annexure-
A/15 dated 27.09.2006 inasmuch as the newly created
E.Co.Railway zone had been finally formed w.e.f. 1.11.2003
and as per condition of maintenance of lien of the applicant
in parent dept., his lien could not be cut off by 31.10.2003.

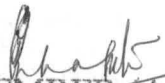
6. Then comes the question as to whether
promotion of the applicant as well as formation of
E.Co.Railways on 1.11.2003 by coincidence, the applicant
could be said to have been not the holder of lien in his parent
department. Since this synchronization, one of which stands

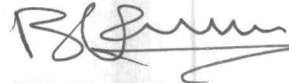


beneficial to the applicant and the other baneful to the applicant too, the administration of justice would be best met if the benediction is granted to the applicant.

7. In the circumstances, without expressing any opinion on the point in issue, we leave aside the matter to the Respondents to take a holistic view in the matter, keeping in view the observations made above and pass appropriate orders and communicate the same to the applicant within 60 days from the date of receipt of this order.

8. The O.A. is thus disposed of. No costs.


MEMBER (A)


MEMBER (J)

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