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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 394 of 2007
Cuttack, this the 17th day of December 2009

Abdul Hai

..... Applicant

Vrs.

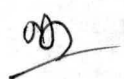
Union of India and others

..... Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ?
- 2) Whether it be sent to the P.B., CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

HON'BLE MR.C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

.....

Abdul Hai, aged about 60 years, son of late Abdul Aziz, Asst.Divisional Mechanical Engineer, Waltair under Chief Mechanical Engineer, East Coast Railway, Chandrasekharpur, Bhubaneswar..... Applicant

Advocates for applicant

- M/s P.K.Mohapatra &
S.K.Nath

Vrs.

1. Union of India, represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar.
3. Chief Mechanical Engineer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. General Manager, South Eastern Railway, Garden Reach, Kolkata 43, West Bengal.
5. Secretary, Railway Board, Rail Bhawan, New Delhi

..... Respondents

Advocate for Respondents

- Mr.S.K.Ojha,
S.C.(Railways)

.....



ORDER
JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

In this Original Application, the applicant, who is at present working as Assistant Divisional Mechanical Engineer, East Coast Railway, has prayed for the following:

- “i) direct/order the respondents to fix his seniority in E.Co. Rly. Just below Sri C.Sahoo/ADME in terms of the recommendations of respondent no.3 and to treat him as the employee of E.Co.Rly. w.e.f. 31.7.03 for all purposes and thereby quashing Annexure-A/14;
- ii) pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of Justice;”

2. Earlier, the applicant had moved this Tribunal in O.A.No. 800 of 2006 regarding fixation of his seniority in Gr.B/Mech. Cadre. The Tribunal disposed of the said O.A. in order dated 24.11.2006 directing respondent No.1 to dispose of representation dated 18.9.2006 (Annexure A/9) within a stipulated time. In compliance with the above direction, respondent No.1 disposed of the said representation as per order dated 8.6.2007 (Annexure A/14), the result of which being not palatable, the applicant has approached this Tribunal in the present O.A. seeking the relief, as quoted above.



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3. It is the case of the applicant that he entered into Railway service on 7.2.1964, whereafter he was promoted to Group B as Assistant Divisional Mechanical Engineer on 8.1.2003 and joined Waltair Division under East Coast Railway. According to him, the South Eastern Railway was trifurcated w.e.f. 1.4.2003 by the creation of two new Zones, viz., East Coast Railway with its headquarters at Bhubaneswar and South Central Railway with its headquarters at Bilaspur. It is in this background that the staff working under S.E.Railways were called upon to exercise their options either to stay in the former zone or latter zone, as per letter dated 22.8.2002. The applicant having worked under the territorial jurisdiction of the E.Co.Railway, exercised his option for permanent absorption in E.Co.Railway as per his option letter dated 31.7.2003 (Annexure A/1). However, no action having been taken on his option so exercised, the applicant went on filing representation after representation and ultimately, as per letter dated 24.4.2006 (Annexure A/7) of the Railway Board, followed by letter dated 1.5.2006 (Annexure A/8) the applicant was transferred to E.Co.Railway, without having regard to the position of his seniority to be fixed in the latter Railway zone. In the circumstances, the applicant preferred representation to the General



Manager, E.Co.Railway praying for fixation of his seniority in Mechanical Department of E.Co.Railway as per Annexure A/9 dated 18.9.2006 and at the same time moved this Tribunal in OA No.800/06, as referred to above.

3.1 The grievance of the applicant is that he having submitted his option on 31.7.2003 should be treated to have been in the E.Co.Railway with effect from that date and he is in no way responsible for delay in acting on his option by the Administration.

4. Per contra, the Respondent-Railways by filing a detailed counter, have opposed the prayer of the applicant. They have stated in particular that consequent upon Board's decision a notification was issued on 22.8.2002 calling for options from regularly appointed Group B officers for absorption in the new Railway Zones and the options were to be exercised by 23.9.2002. It is further stated that the officers regularly selected in Group B before 23.9.2002 were only eligible. The Group B cadre of new Railway zones was finalized by the issue of permanent absorption orders of Group B officers after approval of the Board on 29.8.2003, and it was one time exercise and officers on roll as on 23.9.2002 were only eligible to exercise such options.



5. We have heard Shri P.K.Mohapatra, learned counsel for the applicant and Shri S.K.Ojha, the learned Standing Counsel for the Respondent-Railways and perused the materials on record.

6. From the above, the point that emerges to be considered is whether the applicant was on roll as on 23.9.2002 in Group B cadre and/or the option stated to have been exercised was in public interest.

7. Admittedly, the applicant, while working as Group C staff, was promoted to Group B Cadre on which post he joined in Waltair Division under E.Co.Railway w.e.f. 8.1.2003, on the basis of selection conducted by the South Eastern Railway. This by itself is quite enough to hold that the applicant was not on the roll as on 23.9.2002 in Group B Cadre making him eligible to exercise his option. This apart, on a reference being made to Annexure A/2 it reveals that the applicant had exercised his option on 31.7.2003, which was much after the cutoff date, i.e., 23.9.2002. It further reveals that the option so exercised by the applicant on 31.7.2003 was not in response to or with reference to any notification issued by the Railways inviting options from eligible candidates for absorption in E.Co.Railway. Therefore, the conclusion that could



only be inevitable is that Annexure A/2 option is nothing but an option exercised by the applicant in his own interest.

8. From the foregoing discussions, we hold and conclude that the applicant was neither on the roll as on 23.9.2002 in Group B cadre making him eligible to exercise his option nor the purported option stated to have been exercised as per Annexure A/2 dated 31.7.2003 was in public interest. Accordingly, we answer the point in issue in the negative. Since the applicant has not been able to establish his case on merit, we are not inclined to delve into the matter regarding the applicant not having impleaded persons as party-respondents in the O.A. over whom he is claiming seniority.

9. In the result, the O.A. is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER