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OA No.452 of 2008
S.R.Pal ... Applicant
Versus
Union of India & Others Respondents

1. ORDER DATED: 26th March, 2010

CORAM
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

The case of the applicant falls in a short compass. The CPO, S.E.Railway, Kolkata vide Annexure-A/1 dated 8.8.2002 issued a circular inviting option from the existing staff to serve in any of the three newly carved out Railways viz S.E.Railway, E.Co.Railway and S.E.C. Railway. Applicant along with three others applied under Annexure-A/2 dated 12.09.2003 to the Chief Bridge Engineer, S.E.Railway, Kolkata to accommodate them in their opted Zone and maintain their seniority. They submitted application under Annexure-A/3 dated 29.12.2003 to the General Manager, S.E.Railway, Kolkata reiterating their grievance as in Annexure-A/2. The Principal Chief Engineer, S.E.Railway, Kolkata wrote a letter under Annexure-A/4 dated 10.02.2004 to the Principal Chief Engineer E.Co.Railway, Bhubaneswar to release the Applicant who had reportedly opted for S.E.Railway. One Shri S.C.Ram, SSE (Br.)/Cuttack who opted for S.E.C.Railway and had represented along with the applicant to relieve him was relieved vide order under Annexure-A/5 dated 02.08.2004. But no action so far as applicant's relieve is concerned was taken. Hence, he represented under Annexure-A/6 dated 24.09.2008 to the Chief Bridge Engineer, E.Co.Railway, Bhubaneswar requesting to relieve him on transfer, according to his option to join in S.E.Railway. According to the Applicant, the Chief Bridge Engineer, E.Co.Railway, Bhubaneswar misunderstood his representation thereby asking him to explain in Annexure-A/7 dated 06.10.2008. However, under Annexure-

A/8 dated 29.10.2008, the Divisional Engineer (Bridge), E.CO.Railway, Khurda Road informed the Applicant that no office order has been issued from the Headquarters till date to relieve him. In the circumstances, by filing this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant prays for direction to the authorities of the ECoRly to release him forthwith with further direction to the S.E.Railway to accept and allow the applicant to join under its administrative control as per his option.

2. Although Railway Board, authorities of the S.E.Railway and E.Co.Railway have been made as parties in this OA and notices have been served on them no counter has been filed by any of them separately except one counter by the GM, and CPO, ECoRailway (Respondents 2 & 4) respectively. It is the stand of the Respondent Nos.2 and 4 that during the creation of New Zonal Head quarter, options were invited from the staff working in the then different existing Zonal Head Quarters of Indian Railways for the purpose of manning of posts in the New Zonal Head Quarters. The last date of exercising options was 30.11.2002. The Appilcant (working as Sr.Section Engineer/Bridge/KUR) exercised his option to go on transfer from ECoRailway (New Zone) to the existing S.E.Railway. The Chief Bridge Engineer, the cadre controlling officer of SSE/SE/JE (Bridge cadre) did not consider his case of transfer and explained the probable causes for not considering his transfer to S.E.Railway. The Applicant being a field staff cannot claim to work in Zonal HQ as Bridge cadre basically involves effective maintenance and supervision on the Railway Line. So far as acceptance of the option of SCRam and sparing him to join in S.E.Railway from the new zonal head quarters of ECoRly, it is the stand of the Respondents 2 and 3 that as per the administrative requirement he was relieved but the applicant has been

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working in Khurda Road Division which is not at all affected in any way in its jurisdiction or otherwise, except that it was attached to new ECoRailway.

3. Applicant filed rejoinder to the counter filed by the Respondents 2&4. In the rejoinder it has been averred by the Applicant that in the event of trifurcation of the S.E.Railway, to man the posts notification was issued by the Railway Board on 02.12.1996 inviting option from the existing employees either to stay at the places where they are or to go to any of the other two Railways. Applicant submitted his option. While the process was on the Railway Board having experienced the highhandedness and apathetic attitude to accede to such request of the employees to go on option transfer from one Railway to the other issued another notification dated 30.10.2003 directing all authorities to 'honour' such request transfer of the staff and to spare them by 31.10.2003. As such, according to the Applicant, non acceptance of the request of the applicant and acceptance of request of similarly situated employees is nothing but arbitrary and discriminatory exercise of power which is contrary to the directive issued by Railway Board as also protection available in Article 14 and 16 of the Constitution of India. Applicant has also questioned the jurisdiction of the Deputy Chief Personnel Officer (IR & W)/BBS in signing the counter stating that he has been authorized by the 'Respondents'. It has also been stated by him that the Respondents 2 and 4 without due application of mind took the help of the provision of RBE No.100/2002 although it deals with regard to East Central Railway, Hajipur carved out of North Eastern Railway and Eastern Railway; North Western Railway, Jaipur, carved out of Northern Railway and Western Railway whereas the present case relates to East Coast Railway carve out of S.E.Railway for which the relevant provision is RBE No.117. In support of his claim, the applicant has also relied on the letter of the Chief Engineer,

S.E.Railway, Kolkata dated 10.02.2004 directing release of the applicant and others named therein. He has, therefore, requested grant of the relief claimed in this OA.

4. Learned Counsel appearing for the Respondents has filed a written note of submission for and on behalf of Respondents 2&3 to which the Learned Counsel for the Applicant has filed a Memo enclosing thereto the relevant instructions of the Railway Board.

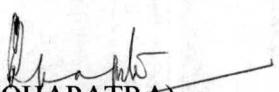
5. Ld. Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and after giving deep consideration to such arguments, perused the materials placed on record. It is seen that in the emerging situation i.e. bifurcation of one Railway by creation of two other New Zonal Headquarters, as a matter of policy, Railway Board took a decision to invite application from the existing personnel either to remain in the existing Railway in which employees are working or to go to the new two other Railways created. Accordingly, option was called for. It is an admitted fact that the applicant opted to go to S.E.Railway within the stipulated period along with others especially along with Shri Ram. But, as is seen from the record, in spite of representation and in spite of relieve of Shri Ram, for no reason, the present applicant could not be spared from his place of posting. In the counter the Respondents have come forward with the stand that the applicant could not be relieved due to administrative requirement. But what are such administrative requirements which compelled the authorities not to relieve him while reliving others especially Shri Ram are not forthcoming in any of the orders or in even in the counter itself. None can be permitted to do certain thing according to their own sweet will or mercy ignoring the directive of the higher authority issued as a matter of policy or in violation of the protections given in the Constitution and in this case the action of the

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Respondents cannot be approved on the plea of so called administrative requirement and the administrative requirement cannot be taken as a magic word under which an action which is not sustainable can be approved in court of law. Respondents on the option released Mr.Ram who was working as SSE(Br.)/Cuttack whereas at the time of releasing the applicant administrative constraints came to the field, which is incomprehensible. However, RBE 187/2003 clearly mandates that the option of the employees should be honoured and the staff concerned spared and there is no competence, authority or jurisdiction of the subordinate authority in the Railways to dishonour the directive issued by Railway Board.

6. In view of the above, while disapproving the manner of dealing with the grievance of the applicant; especially in the counter, the Respondents; especially the General Manager, E.Co.Railway, Rail Vihar, Chandrasekhaprur, Dist. Khurda (Respondent No.2) is hereby directed to pass appropriate order transferring/releasing the applicant from his present place of posting within a period of 30(thirty) days and the General Manager, S.E.Railway, Garden Reach, Kolkata (Respondent No.3) is hereby directed to accept the joining report of the applicant and allow him to join in duty in S.E.Railway.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


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