

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 698 OF 2010
CUTTACK, THIS THE 28th DAY OF March, 2012


B. Rama Mohan Rao 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 ? ✓


(A.K. PATNAIK)
MEMBER (JUDL.)


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

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 698 OF 2010
CUTTACK, THIS THE ~~28th~~ DAY OF March, 2012

CORAM :

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

&

HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

B. Rama Mohan Rao, aged about 50 years, Son of Late Radha Krishna Murty, presently working as Assistant Commercial Manager, East Coast Railway, Khurda Road, Jatni-752050.

.....Applicant

Advocate(s) for the Applicant- M/s. J. Sengupta, G. Sinha,
D.K. Panda, A. Mishra.

VERSUS

1. Union of India represented through General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-751017.
2. Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-751017.
3. Chief Commercial Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-751017.
4. Sr. Deputy General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-751017.

..... Respondents

Advocate(s) for the Respondents - Mr. S.K. Ojha.

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2

ORDER

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

Applicant, who was initially appointed in the Railways as Law Assistant and got promoted to the post of Chief Law Assistant on regular basis in the South Eastern Railway, Kolkata w.e.f. 05.06.1995, applied for selection test of Assistant Commercial Manager against 70% quota and was selected to the post, which is a Group-B Gazetted post carrying pay scale of Rs. 9300-34800/- G.P. 4800/-. Having submitted his option for joining the post of Assistant Commercial Manager, he joined the post on 02.08.2010. Subsequently, he had sought reversion to the cadre of Chief Law Assistant carrying the pay scale of Rs. 9300-34800 G.P. 4600 so as to appear at the examination for the selection of Law Officer. The selection test for post of Law Officer was to be conducted on 13.11.2010. Since, he had been denied reversion and was thus deprived of being eligible to appear at the test, he has approached this Tribunal by filing the present O.A. seeking the following relief:

"I. To allow the applicant to go on reversion to the post of Chief Law Assistant duly protecting/restoring the seniority in the Cadre of Chief Law Assistant.

II. to allow the applicant to appear for the selection to the post of Law Officer in Group-B.

III. To quash and set aside the order dated 24.09.2010 (Annexure-A/7), 5.10.2010 (Annexure A/8) and 29.10.2010 (Annexure-A/12) as the said orders are illegal, arbitrary and contra view to law and rules and to publish revised orders duly incorporating the name of the applicant in the wiling and eligible candidates list.

IV. To grant such other relief...."

2 As an interim measure, the applicant sought the selection proceedings for the post of Law Officer to be stayed till the case of reversion is decided by the Respondent Nos. 1, 2 and 3 or in alternate to direct the Respondents to allow him to appear at the selection for the post of Law Officer Group-B to be held on 13.11.2010.

3. When the matter was placed before this Tribunal on 12.11.2010, the Respondents were directed as an interim measure to allow the applicant to participate at the test scheduled to be held on 13.11.2010 for the post of Law Officer and also ordered that the result of the applicant in the said test shall not be declared without the leave of this Tribunal. It was further directed that the applicant shall not claim any equity in appearing/qualifying at the test by virtue of the interim order of this Tribunal if, ultimately, it is held that the applicant lacks eligibility for being considered for the post of Law Officer.

14

Accordingly, the applicant was allowed to appear at the test and his result has not been published.

4. By filing counter, Respondents have opposed the prayer of the applicant. They have stated that for the formation of Group-B, Law Panel of 02 (UR) Ty. work charged posts of the Law Officer in the scale of Rs. 7500-12000/- (5th CPC) in Law Department of E.Co.Railway, BBS for the assessment period 2007-08, 08 eligible senior-most candidates/Chief Law Assistants in the Main List along with 6 more candidates as Additional List from integrated seniority list were asked to exercise option for taking selection test. Accordingly, willing and eligible candidates were advised to be in readiness for the written test vide letter dated 17.11.2009 and applicant who was a Chief Law Assistant/WAT but working at Sardar Vallabhbhai Patel National Police Academy/Hyderabad on deputation was one of them.

The applicant who had opted both for the post of Asst. Commercial Manager & Law Officer was provisionally empanelled as Assistant Commercial Manager/Gr. B against 70% vacancy vide OM dated 01.12.2009. Then in term of Para 6.4 of the Master Circular No. 68/07, the applicant was informed to exercise as to whether he would remain in the cadre of ACM or otherwise. After protracted correspondence and long prevarication in this regard, the applicant vide letter dated 31.12.2009 informed to join the post of Group B/Commnl as ACM and at the same time a request was made to retain

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his lien in the cadre of Chief Law Asst. Thereafter vide letter dated 18.01.2010 the applicant was informed that if he fails to report as ACM/KUR by 26.02.2010 it would be presumed that he is not interested to carryout the Gr. B promotion as ACM and the same would be treated as his refusal to the promotion to the post of Gr. B/ACM. He was further intimated that as he has opted for the post of ACM in Gr. B cadre he is not eligible in accordance with rules to appear at the selection for the post of Law Officer. However, time so given to the applicant to join was extended and finally the applicant joined as ACMKUR on 02.08.2010.

5. The Respondents have further submitted that a revised provisional integrated seniority list dated 15.04.2010 has been published reflecting the names of 13 eligible candidates for calling for options for selection to the post of Group-B, Law Officer but the name of the applicant was eliminated from the said list in terms of Para 6.4 of the Master Circular No. 68/07. Applicant submitted representation requesting to repatriate him to his parent cadre of CLA and to protect his seniority in the cadre of CLA so that he would be eligible to appear in the written test scheduled to be held for the post of Group-B, Law Officer. Representation of the applicant was examined by the competent authority and the same was rejected as not being permissible under the existing rules. Respondents further contend that the persons declared eligible and allowed to participate in the selection

18
have not been made parties to the present O.A. Hence, while opposing on the merit of the matter, the Respondents have also opposed the maintainability of this O.A. on the ground of non-joinder/mis-joinder of parties.

6. The applicant has filed a rejoinder contending that if the Master Circular 68/07 is the stumbling block in the reversion of the applicant then the Respondents ought not to have allowed the applicant to join the post of Assistant Commercial Manager. His contention is that option exercised in terms of the Master Circular 68/07 is different from seeking reversion to the former post of Chief Law Assistant.

7. We have heard Ld. Counsel for both the sides and also perused the materials placed on record.

8. We find from Annexure-A/5 that there are two separate cadres; one is cadre of Assistant Commercial Manager, Group-B on the commercial side and the other is Law Officer cadre in the Law Department of East Coast Railways. On the selection of the applicant, specific option was called for in terms of Para 6.4 of Master Circular No. 68/07 as to whether the applicant would remain in the cadre of the ACM or otherwise and the applicant after a long prevarication joined the post of ACM on 02.08.2010 without any precondition. It would appear from Annexure-A/9 that the applicant

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had sought to avail the first opportunity to become a Gazetted Officer and as such he joined the post of ACM, Khurda. As stated in paragraph 5 of the counter in Para-6.4 of the Master Circular No. 68/07 the following provision has been made:

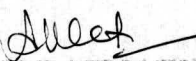
"Law Asst./Chief Law Asst. are eligible for promotion to the post of APO or ACM in addition to their normal avenue of promotion to the post of ALO/Estate Officer etc. depending upon the option they exercise. The option can be exercised after an employee gets selected to any of the gazetted cadre. Such an option should be exercised within 30 days of the result of the selection/LDCE by the employee in writing and option once exercised should be treated as final".

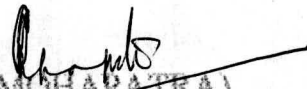
9. Applicant's conditional option having been rejected and on acquiescence he joined the post of ACM on 02.08.2010. Thus for all intents and purposes he switched over to the cadre of ACM. Hence, we are of the view that he is deemed to have accepted the provisions of Master Circular No. 68/07 inasmuch as he has never questioned or challenged in the O.A. the provisions of this Master Circular. The applicant ought to have realized that in the event of his reversion in the post of CLA, the persons who were waiting for their chance to be considered for the post of Group-B, L.O., would be deprived of their legitimate expectation/claim. But he never arrayed these persons as party to this O.A. We find, this is a case of an

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employee, who seeks best of both the worlds and after capturing one he targets another with the hope of a greener pasture in the future.

10. With these observations, we dismiss this O.A. being devoid of merit. Parties to bear their own costs.


(A.K. PATNAIK)
MEMBER (JUDL.)


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

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