

40

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.887 of 2011

Cuttack this the 23rd day of December, 2015

Swapan Kumar Mishra.....Applicant

-VERSUS-

Union of India &Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

41

CENTRAL ADMINISTRATIVE TRIBUNAL
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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Swapan Kumar Mishra, aged about 46 years, S/o Late Mirganka Sekhar Mishra,
At – Town Hall Road, Manikghosh Bazar, Dist.-Cuttack.

...Applicant

By the Advocate- M/s. S.B.Jena, S. Behera

Union of India represented through

1. General Manager, East Coast Railway, Rail Bhawan, Chandrasekharpur, Bhubaneswar, District Khurda.
2. Principal Chief Engineer, East Coast Railway, Rail Bhawan, Chandrasekharpur, Bhubaneswar, District Khurda.
3. Chief Personnel Officer, East Coast Railway, Rail Bhawan, Chandrasekharpur, Bhubaneswar, District Khurda.
4. Chief Personnel Officer (A), East Coast Railway, Rail Bhawan, Chandrasekharpur, Bhubaneswar, District Khurda.
5. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Jatani, District- Khurda.
6. Assistant General Manager, East Coast Railway, Rail Bhawan, Chandrasekharpur, Bhubaneswar, District Khurda.

...Respondents

By the Advocate- Mr.T.Rath

ORDER

PER SH. A.K. PATNAIK, MEMBER(J):

This OA has been filed seeking the following reliefs:

“Your Lordship may be graciously pleased to quash the order dated 17.10.2011 passed by the Respondent No.1 under Annexure-A/14.

Be further pleased to direct the Respondent No.1 to refer the application for re appointment of the applicant dated 20.7.2009 vide Annexure-A/5 to the Railway Board for kind consideration;

And be further pleased to pass any orders(s)/direction(s) and relief(s) as the Hon'ble Tribunal deems fit and proper in the circumstances of the case;

And such kind acts, the applicant, as is duty bound, shall ever pray.”

W.A.L

2. For the purpose of clarity and convenience, the impugned order dated 17.10.2011 (A/14) is reproduced hereunder:

"The Hon'ble CAT/CTC, vide Order dated 08.08.11 has passed an order in OA No.512/2011 directing the undersigned, the Respondent No.1 dated Nil to examine the representation made by Shri S.K. Mishra ex-Hd.Clerk/ECOR.

On perusal of the records it is revealed that Shri S.K. Mishra submitted an application dt.03.05.2008 (Folio No.68) for voluntary retirement due to health ground and family trouble. Again in his application dt.20.07.2009 (Folio No.10), has requested for reappointment in Railway Service. I find in terms of Railway Board's Order No.E(NG)/1/91/RG1/1/dt.27.12.91 (RBE: 223/91) (Folio-149), a person who has resigned or retired prematurely can be reappointed as a fresh entrant on bottom seniority with the personal approval of the concerned co-ordinating Head of the Deptt. I also find from the proceedings on this file (NS-9) that PCE has considered the request and has since regretted.

Based on this information, there appears to be no further justification to consider his case of reappointment and refer the matter Railway Board.

Accordingly, his representation is hereby not acceded to and Shri Mishra may be advised suitably."

3. Heard Mr. S.B.Jena, the Learned Counsel for the applicant and Mr. T.Rath, the Learned Standing counsel appearing for Respondent-Railway and perused the records.

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4. Mr.Jena, placing reliance on the averments in the OA as well as the circular dated 31.01.2006 issued by the Railway Board submitted that the circular dated 31.1.2006 supersedes all previous orders on the issue in which there is a provision that the cases of re appointment after voluntary retirement of pensionable employees are to be referred to the Railway Board, and therefore, the case of the applicant should have been referred to the Railway Board instead of rejecting the same at the threshold. Hence, he prayed for allowing this OA whereas, Mr. Rath's contention is that the applicant is not entitled to the relief claimed in this OA as the provisions made under RBE No. 223/1991 is binding and the General Manager or any other functionaries of the railway cannot surpass the said provision. In the instant case, the concerned coordinating Head of the Department having refused to approve the case of the applicant for re-appointment, the question of sending the same to the Railway Board does not arise at all. Further it was submitted that the schedule of powers as per Annexure-A/7 dated 31.01.2006 has no statutory force. As such, rejection of the request of the applicant cannot be faulted with.

5. Indubitably, the applicant while working as Head Clerk under the DW/Cuttack applied on 03.05.2008 to go on voluntary retirement



on health ground as well as family problem. The said request of the applicant was accepted by the competent authority and ultimately, the applicant was allowed to retire voluntarily from service w.e.f. 31.07.2008. Alleging non consideration of his request for re-appointment as per the existing rules, the applicant filed OA No. 512 of 2011 which was disposed of on 08.08.2010 directing the authorities concerned to consider the representation of the applicant which was pending consideration. In compliance of the order of this Tribunal, the respondent authority considered the representation and disposed of the same vide order dated 17.10.2011, cited supra. Challenging the said order, the applicant once again moved this Tribunal in the present OA with the aforesaid prayer.

6. The short point for consideration is as to whether rejection of his request for re appointment at the hands of the coordinating Head of the Department without sending the same to the Railway Board was in accordance with the provision of the Railway Board.

7. In the instant case, we find that the Railway Board's letter dated 27.12.1991 (RBE No. 223/1991 and dated 30.04.1992 (RBE No. 66/1992 specifically deal with regard to re appointment in Gr. C

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categories of the employees in which power has been vested with the concerned co coordinating Head of the Department to take a decision on such request of the employee concerned whereas the circular dated 31.01.2006 at Annexure-A/7 deals with regard to the schedule of powers on establishment matters of the ECoRly in which it has been provided as under:

“ The first Schedule of Powers on Establishment Matters of East Coast Railway is attached herewith for your information, guidance and further necessary action.

This supersedes all other previous orders on this issue.

This is the concurrence of FA& CAO and approval of General Manager.”

8. On a harmonious reading of the Railway Board's circulars, cited supra and the schedule of power on establishment matters of the ECoRly dated 31.01.2006 it gives no room of doubt that subject to fulfilment of the conditions, in case it is decided that the individual case deserves consideration for re appointment then that can only be done with the approval of the Railway Board. In other words, the circular dated 31.01.2006 does not ex facie provides that in each and every request for reappointment irrespective of fulfilment of the conditions and requirement shall have to be referred to railway board for

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46

-6-

O.A. No.887 of 2011
S.K. Mishra -Vers.- UOI

consideration. In view of the above, we find substantial force on the submission of the learned standing counsel for the Respondents and accordingly, refrain from interfering in the impugned order issued by the authority concerned.

9. In the result this OA is dismissed. There shall be no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

K.B.