

16

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No. 312 of 2009

Cuttack, this the 24th day of October, 2011

Tapas Ranjan Barik & Ors Applicants

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A.No. 312 of 2009

Cuttack, this the 24th day of October, 2011

C O R A M:

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

AND

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

.....

1. Tapas Ranjan Barik, Aged about 35 years, Son of Arakhita Barik working as JE-I (Telecom), Headquarter, East Coast Railway, Bhubaneswar residing at MIG-313, Arya Vihar, PO. Sailashree Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Nirupama Sahu, aged about 32 years, Daughter of Madhabananda Sahu, working as JE I (Telecom), East Coast Railway, Khurda Road residing at Jatni, PO/PS Jatni, Dist. Khurda.
3. Pradip Chakrabarty, aged about 45 years, Son of Uma Charan Chakrabarty working as Junior Engineer I (Telecom), Office of the wireless ECoRailway Khurda Road, residing at Jatni, PO/PS. Jatni, Dist. Khurda.

..... Applicants

By legal practitioner: M/s.G.C.Swain, S.Patnaik, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, ECoR Sadan, Samant Vihar, PO. Mancheswar, Dist.Khurda.
2. Chairman, Railway Board, Rail Bhavan, New Delhi-110 001.
3. Chief Personnel Officer, East Coast Railway, ECoR Sadan, Samanta Vihar, PO. Mancheswar, Dist. Khurda-751 017.
4. Chief Signal & Telecom Engineer, ECoRailway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.

....Respondents,

By legal practitioner: Mr.R.S.Behera, ASC

O R D E R

MR.C.R.MOHAPATRA, MEMBER(ADMN.):-

According to the Applicants, they initially entered to the service of the Railway as JE II and subsequently, promoted to JE I. The total cadre strength of SE in ECoRly is 23 of which 80%

L

are meant to be filled up through Departmental Examination and 20% are meant to be filled up by way of direct recruitment to be conducted by RRB. In support of the above contention, the Applicants have placed reliance on the information which they have obtained under RTI Act placed at Annexure-A/2 to the OA. Their stand is that according to the above ratio as in the year 2006, 18 posts are meant for DPQ and 5 posts are meant for DRQ. The Respondents held Departmental Examination on 22-07-2006 for promotion to the post of SE meant for DPQ in which Applicants along with others appeared at the examination. All the three Applicants came out successful being placed at Sl.Nos.11, 14&15 of the merit list/panel published by the Respondents at Annexure-A/1. Further case of the Applicants is that candidates upto Sl.No.10 in the list at Annexure-A/1 were meanwhile promoted to the post of SE and though vacancies under DPQ were available, instead of filling up of the said posts by the Applicants, Respondents, illegally and arbitrary, vide order under Annexure-A/3 posted DR candidates against the vacancies of DPQ. Again the Applicants appeared at the selection conducted in the year 2008 for promotion to the post of SE and having come out successful in the said test were placed at Sl.Nos. 4, 5 and 8 of the merit list published by the Respondents on 22.9.2008 at Annexure-A/4. While the matter

L

stood thus, Railway Board vide RB Estt.No.127, E (NG)I-2008/PM1/15 dated 23.09.2008 (Annexure-A/5) issued instruction stating *inter alia*, as under:

"Sub:-Implementation of recommendations of 6th CPC merger of grades- promotion within the same grade pay.

As a result of acceptance of recommendations of 6th CPC in many case two existing grades have been merged into one grade pay of posts have been upgraded & merged with higher grade thereby affecting the existing channel of promotion of the staff. Accordingly, the matter of promotion of non-gazetted staff within such merged or upgraded & merged within same grade pay posts has been considered and it has been decided that promotions within the merged grades (i.e. from the lower grade to next higher grade of 5th CPC scales) or within upgraded & merged in higher grade pay should not be made hereinafter till further orders.

2. However, this will not apply to the cases of promotion of running categories viz. Loco Pilots and Guards as well as horizontal promotions, wherein the existing channel of promotion will continue till further orders."

2. It is the case of the Applicants that despite the above Railway Board's instruction at Annexure-A/5, whereas West Central Railway vide order at Annexure-A/6 promoted 9(nine) JE I to the posts of SE, the ECoRly, vide order under Annexure-A/7 posted three candidates who came out successful in the Direct Recruitment conducted by the RRB but did not allow promotion to the Applicants in spite of their coming out successful in the Departmental Examination conducted by the Respondents, on the basis of the letter under Annexure-A/5. They have made representations at Annexure-A/8 and, thereafter, being aggrieved by the action of the Respondents, three Applicants, who are working as JE-I (Telecom) and whose

name appeared at the successful list at Annexure-A/4, have jointly approached this Tribunal in the present OA seeking to declare the RB Estt.No.127, E (NG)I-2008/PM1/15 dated 23.09.2008 (Annexure-A/5) as unconstitutional and to direct the Respondents to promote them to the post of SE out of the successful list under Annexure-A/4, dated 22-09-2008.

3. Respondent-Department has filed their counter objecting to the prayer of the Applicant in which it as been stated that in view of the recommendation of the 6th CPC and its acceptance the post of JE II to JE I and SE to SSE have been merged. The Respondents have denied the assertion of the applicant that there were 18 posts existing under DPQ as on the notification dated 15.5.2006. In the notification dated 15.5.2006, 10 posts (UR-8 and SC-02 of SE (Telcom) were advertised against which candidates were called from JE I (Telecom) in the ratio 1:3. The Section Engineer (SE)/Tele is a zonal controlled post and its total cadre strength in open line of ECoRly is 23. The provision for 20% DRQ and 80% DPQ in SE (Tele) in S&T Department has scrupulously been followed by the Respondents. No DRQ candidates have been appointed against DPQ vacancy. For filling up of 20% DRQ vacancies indents were placed with RRB and for filling up of 80% vacancies departmental selection was conducted. Candidates sponsored

by the RRB were under training before issue of the Annexure-A/5. Therefore, it was obligatory on the part of the Railway Administration to post them against working post on completion of their training as has been done in Annexure-A/7. While the process of selection was under way RBE No. 127/2008 and 70/2009 came into force. Meanwhile SE (Tele) post has been upgraded and merged with SSE (Tele) into a single grade pay Rs.4600/-. In terms of RBE No. 127/2008 promotion orders should not be issued in respect of these upgraded/merged grades. However, Railway Board vide RBE No. 161/2009 ordered to initiate selection/suitability to fill up all the vacancies existing as on 31-08-2009 on modified procedure as one time exception. As such, promotion of the selected candidates could not be effected earlier. Applicants were provisionally empanelled for the post of SE (Tele) in scasle of Rs.6500-10500/- in S&T Department vide Office order dated 22.09.2008. But as per the Srl.No.127/2008 posting order could not be issued to them. Avenue of promotion from JE I to SE is no more in existence. Accordingly, Respondents have prayed for dismissal of this OA. By filing rejoinder, the Applicants have more or less reiterated the stand taken in the OA.

4. By way of reiteration, it was contended by Applicants' Counsel that the action of the Respondents is not

sustainable in the eyes of law as promotion was given to the selected candidates upto Sl.No.10 but the same was denied to the applicants though vacancies were existing against which the applicants could have been promoted. Applicants' Counsel contended that despite the instruction under Annexure-A/5 persons empanelled like the Applicants were promoted in West Central Railway having zonal office at Jabalpur but the applicants were deprived of the said benefit thereby causing discrimination between one homogenous group of employees. This apart, by reiterating the points raised by him in the pleadings, Applicants' Counsel has sincerely prayed for grant of the relief claimed in this OA. However, by reiterating the stand taken in the OA, the Respondents have opposed the contention of the Applicants and prayed to dismiss this OA.

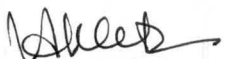
5. While giving our thoughtful consideration to the rival submissions of the parties we have perused the pleadings and materials relied in support thereof. In this Original Application the prayer of the Applicants is to quash the RB's order under Annexure-A/5 and to direct the Respondents to appoint them out of the provisional empanelment made vide Office Order No. 415/2008 dated 22-09-2008. Therefore, we are not concerned with regard to the contentions of the Applicants about the selection and empanelment made in the year 2006. It is the

contention of the applicant that since promotion was given to the similarly situated employees of West Central Railway despite the instruction under Annexure-A/5 gross discrimination was caused to them by the ECoRly. In this connection we may state that neither the Western Central Railway nor the persons promoted has/have been made as party to this OA. Obviously the present Respondents could not have expected to answer in this regard and, therefore, we are unable to express any opinion on the same. The stand of the Applicants that DP quota vacancies meant for them has been utilized by the DR candidates but the Respondents have denied the same. Here also we are constrained to express any positive view as one of such DR candidates who, according to the Applicants, have benefited from their quota has been made as a party in this OA. Similarly, Annexure-A/5 is a policy decision and as it appears such decision was taken on the merger of the pay scale in two cadres. However, it has been stated by the Respondents that as one time exception the Railway Board vide RBE No. 161/2009 ordered to initiate selection/suitability to fill up all the vacancies existing as on 31.08.2008. Further as it appears meanwhile vide order dated 29.11.2010 Applicant No.1 has been promoted to SSE/Tele/TIG against the existing vacancy.

L

6. In view of the above while declining to interfere in the matter, we direct the Respondents to ascertain whether promotion has been given to the posts of S.E. in another carved out Railway i.e. West Central Railway despite imposition of restriction under Annexure-A/5 and if so, then there should be no impediment to extend the same benefit to the Applicants especially when they were selected through a due process of selection against the notified vacancy. We hope & trust that the Respondents shall strike a fair deal with the employees of the East Coast Railway as in the West Central Railway both being under the same Railway Board and communicate their decisions in a well reasoned order to the Applicants within a period of 120 days What is sauce for the goose is sauce for the gander too,

7. In the result, with the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)