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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.424 & 425 of 2009

Cuttack, this the ~~08~~ day of ~~December~~, 2010

CORAM:

THE HON'BLE MR. M.R. MOHANTY, VICE-CHAIRMAN (J)

AND

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

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OA No.424 of 2009

Rajendra Naik, aged about 45 years, son of Late Daitary Naik working as Asst. Divisional Mechanical Engineer, Jatani, East Coast Railway under Khurda Division, Dist. Khurda.**Applicant**

By legal practitioner: M/s.P.K.Mohapatra, S.K.Nath, Counsel

-Versus-

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, Dist. Khurda.
3. Chief Mechanical Engineer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
5. Secretary, Railway Board, Rail Bhawan, New Delhi.
6. S.M.S.Ahmed, Asst. Divisional Mechanical Engineer, East Coast Railway, Khurda, At/Po/Dist. Khurda.
7. A.Dharma Rao, Assistant Divisional Mechanical Engineer, East Coast Railway, Waltair, Visakhapatnam.
8. J.V.Appa Rao, Assistant Divisional Mechanical Engineer, Khurda, At/Po/Dist. Khurda.**Respondents**

By legal practitioner : Mr.T.Rath, Counsel

OA No. 425 of 2009

G.Sankara Reddy, aged about 57 years, son of late G.Appala Reddy, at present working as ADME/Diesel/WAT/under DRM, Assistant Divisional Mechanical Division/Diesel/Waltair under Chief Mechanical Engineer, East Coast Railway, Chandrasekharpur, Bhubaneswar.**Applicant**

By legal practitioner: M/s.P.K.Mohapatra, S.K.Nath, Counsel

-Versus-

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, Dist. Khurda.
 3. Chief Mechanical Engineer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
 4. General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
 5. Secretary, Railway Board, Rail Bhawan, New Delhi.
 6. S.M.S.Ahmed, Asst. Divisional Mechanical Engineer, East Coast Railway, Khurda, At/Po/Dist. Khurda.
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7. A.Dharma Rao, Assistant Divisional Mechanical Engineer, East Coast Railway, Waltair, Visakhapatnam.
8. J.V.Appa Rao, Assistant Divisional Mechanical Engineer, Khurda, At/Po/Dist. Khurda.**Respondents**

By legal practitioner : Mr.R.N.Pal, Counsel

O R D E R

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

Since the issues involved in these Original Applications are one and the same, though these matters were heard one after the other, this common order will govern all these cases. For the sake of convenient recording, the facts of OA No. 425 of 2009 will suffice for the purpose of taking a decision in both the matters. Therefore, we record the facts as stated in OA No. 425 of 2009.

2. Consequent upon Railway Board's decision to form seven more new Railway Zones from existing Nine Railway Zones, a Notification was issued on 22.08.2002 calling for options from the existing regularly appointed Gr.B Officers for absorption in the New Railway Zones with stipulation that options were to be exercised by 23.09.2002 and that Officers who were regularly selected in Gr.B before 23.09.2002 were eligible to exercise their option. The Group B cadre, after issue of permanent absorption of Gr. B Officers, was finalized on the approval of the Railway Board.

3. Similar is the situation in so far as Gr.C cadre is concerned inasmuch as Gr. C staff working in the jurisdiction of the new Railway Zones was absorbed in the new zones on as is where is basis. Those working in the jurisdiction of new Railway zones but not interested to continue in the new Railway zones were to exercise option to continue in the erstwhile zone or to seek absorption in any other new zones. Since Gr.C cadre was not finalized and consolidated seniority list of Gr.C staff was not published by any of the new Railway Zones, Board decided not to allow Gr.B selection in the new Railway till the seniority list of Gr.C staff was finalized and published.

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However, Railway Labour Unions insisted on continuing Gr.B selections by erstwhile old zones. Therefore, Railway Board took a conscious decision vide their Letter No.E(GP) 2002/1/18 dated 13.05.2003 to permit the erstwhile zones to conduct Gr.B selections for the area falling in their jurisdiction as well as their area which has gone to the adjoining new Railway Zone with condition that after formation of Gr.B panel the empanelled candidate may be posted in either Railway (erstwhile or new Railway) depending upon the availability of vacancies but they will have their seniority in Gr.B in the present Railway conducting the selection.

Shri G.S.Reddy (the Applicant), Gr.C staff of South Eastern Railway working in the jurisdiction of East Coast Railway was empanelled in Gr.B by SE Railway in terms of letter dated 13.05.2003 and was posted in East Coast Railway, and, therefore the applicant had his lien and seniority in S.E. Railway. On his application, SE Railway vide their letter dated 20.3.2006 recommended for transfer of applicant to E Co Railway on bottom seniority. The proposal of SE Railway was considered by Board and he was transferred on bottom seniority to East Coast Railway vide Railway Board's Order No.E (O) III-2006/AE/157, dated 24-04-2006. His request for assigning his seniority just below those permanently absorbed in ECoRly was not accepted and being aggrieved by such decision, the Applicant filed OA No.359 of 2007. His prayer in the OA No. 359 of 2007 was to direct the Respondents/Railway to fix his seniority in ECo Railway just below Shri C.Sahoo, ADME in terms of the recommendations of the Respondent No.3 and treat him as the employee of ECo Railway w.e.f. 31.7.2003 for all purposes and thereby quashing the speaking order issued by GM, ECoR. This Tribunal disposed of the OA No.359 of 2007 on 26.11.2008 with direction to the competent authority/Respondent to consider the grievance of applicant as set out in

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Annexure-A/20 to MA No.678/2008 and to pass a reasoned and speaking order within three months. The Respondents considered the grievance of Applicant but rejected for the reasons recorded in the order dated 27.1.2009 and communicated the same to the Applicant. By filing the present Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant challenges the said order of rejection dated 27.1.2009 (Annexure-A/15) with further prayer to direct the Respondents to fix his seniority in ECo Railway just below Shri C.Sahoo/ADME in terms of the recommendations of Respondent No.3 by treating him as the employee of ECoRailway w.e.f. 31.7.2003 for all purposes and accordingly the seniority list may be modified.

4. The contention of the Applicant is that the action of the Respondents is not sustainable in the eyes/touch stone of judicial scrutiny as his placement in the gradation list in the New Railway Zones has been made without due application of mind to the fact of the matter. According to him, he was working as Assistant Divisional Mechanical Engineer in East Coast Railway but he was the employee of South Eastern Railway. The SERailway was trifurcated with creation of two new Zones namely East Coast Railway with headquarters at Bhubaneswar and South East Central Railway with headquarters at Bilaspur. On creation of New Railway Zones, the Railway Board issued Notification dated 22-08-2002 calling for option from Group 'B' employees for absorption in any of the three New Railway Zones and the last date of receipt of option was fixed as 23.09.2002. At that relevant time, the applicant was a Group 'C' employee but by that time his case was pending for promotion to Gr.'B' post. On 07.10.2002 and 28.10.2002 he appeared at the selection test for the post of Gr.'B' and then on 12.12.2002 viva voce test and got selected. The General Manager, SERailway approved the select list on 20.12.2002 and thereafter, he was promoted to the post of ADME, Group 'B'

on 13.01.2003 and posted at Waltair under ECoRailway. The ECoRly became operational w.e.f. 01.04.2003 and by that time the applicant was working under the territorial jurisdiction of ECoRailway as vacancies were available and no other persons have been posted in ECoRailway in Group 'B' post before promotion to Gr.'B'. Pursuant to the notification dated 22.08.2002, Applicant exercised his option on 31.07.2003 for permanent absorption in ECoRailway. His option was transmitted to the CPO, Bhubaneswar on 26.08.2003. But no communication whatsoever was received by the Applicant on his said option. On 17.09.2003, the Railway Board issued a letter instructing the CPO, BBSR to submit the detailed position of the applicant and if he was willing to continue in ECoRailway then advise him to give his willingness. Applicant submitted his willingness which was forwarded to the CPO, ECoRly, BBSR vide letter dated 06.10.2003 and 07.10.2003. But the CPO, ECoRly did not take any action. When seniority list was published and his name did not find place in the said seniority list, he immediately raised his objection. Thereafter, the CPO forwarded his declaration form to the Railway Board at a belated stage and then final order was issued by the Railway Board for his absorption in ECoRly. Due to delay in acting upon the request of the applicant, juniors (Respondent Nos.6 to 8) though were promoted to Gr.B much after the promotion of the applicant were placed above the applicant in the seniority list prepared by the ECoRly.

5. The contention of the Respondents, in the reply, filed in this case is that the New Zone East Coast Railway came into operation independently w.e.f. 01.04.2003. Consequent upon the demand made by the Railway Labour Unions for continuing Gr.B selections by erstwhile old zones, the Railway Board took a conscious decision vide letter No.E (GP) 2002/1/18, dated 13.05.2003 to permit the erstwhile zones to conduct Gr.B selections for

the area falling in their jurisdiction as well as their area which has gone to the adjoining new Railway Zone with stipulation that after formation of Group B panel the empanelled candidate may be posted on either Railway (erstwhile or new Railway) depending upon the availability of vacancies but they will have their seniority in Gr.B in the present Railway conducting the selection. In terms of Railway Board's letter No.E (GP) 2002/1/18 dated 12.01.2004 it was advised to new zones to conduct the Group B selection/LDCE independently for the vacancies in the jurisdiction. However in respect of combined selection already initiated by the parent railway where 70% selection has already been held, the corresponding LDCE should be finalized by the parent Railway. The Gr.B Officers who have not been permanently absorbed in the New Zones but are working in the jurisdiction of the New Zones on administrative ground with retention of their lien and seniority on their parent railway should be retained by the New Zones keeping in view the administrative requirements for a maximum period of one year. Hence the applicant who was empanelled as Gr.B/AME by SE Rly w.e.f. 23.12.2002 and posted as ADME/VSKP w.e.f. 17.01.2003 in terms of the Railway Board's instruction dated 13.5.2003 could not avail the scope of exercising one time option as the cut off date was fixed on 23.09.2002. The applicant submitted the option without any declaration in respect of acceptance of his bottom seniority on transfer of his lien and seniority from SER to ECoR. Consequently, the Railway Board could not consider the same on the ground that the last date of submitting option for retention in new zones as Gr.B Officer was 23.09.2002 which was prior to his appointment in the Group B service cadre. Since the option was one time exercise and officers on roll as on 23.09.2002 were only eligible to exercise option for their permanent absorption in new zones, his option for transfer of his lien and seniority did not come within the purview of consideration by

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Railway Board. Moreover, when the case of the applicant and three others were referred to Railway Board after the cut off date, the Railway Board vide letter dated 17.9.2003 advised the applicant to exercise willingness for transfer from SER to ECoR on acceptance of bottom seniority. The Chief Mechanical Engineer, ECoR, BBSR vide his letter dated 7.10.2003 forwarded the option received from applicant wherein he had not given any declaration for acceptance of bottom seniority despite the advice of Railway Board vide their letter dated 30.09.2003. The applicant submitted his declaration to accept the bottom seniority which was forwarded by the Secretary to CME/ECoR vide his letter dated 27.9.2005(Annexure-R/2). On acceptance of request of the applicant as communicated in letter dated 24.4.2006 applicant was transferred on bottom seniority to ECoRailway. It has further been stated that the delay was not at all attributable to them; because the delay, if any, was caused due to the reason that the applicant has not submitted declaration form along with his transfer option /application; submission of declaration for acceptance of bottom seniority during the moratorium period of discouraging to forward the transfer application without involving the cadre controlling authority i.e. the authority of SERailway. Accordingly, the Respondents have prayed for dismissal of this OA being devoid of any merit.

6. Despite copies of counter filed by Respondents having been received and adequate time taken by the Applicant he has chosen not to file any rejoinder.

6. Though notice was issued from the Registry and was duly served on the Private Respondents for the reasons best known to them, they have chosen not to appear and file their reply.

7. In view of the above, there is no need to record the facts mentioned in OA No. 424 of 2009 except to state that the applicant in this OA

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was absorbed in the ECoRailway by the order of the Railway Board dated 24.4.2006.

8. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings, which we noted above, and having heard them at a considerable length, perused the materials placed on record.

9. Undisputed fact of the matter is that both the Applicants were in South Eastern Railway at the time when they appeared at the Gr.B selection and opted to switch over to ECoRly but were working in the jurisdiction of ECoRly. They were empanelled in Gr.B SE Railway in terms of letter dated 13.05.2003 and were posted in the jurisdiction of ECoRly. On their application, SE Railway recommended for their transfer to ECoRly on bottom seniority. The said proposal of SE Railway was considered by Railway Board and they were transferred on bottom seniority to ECoRly vide letter dated 24.4.2006. This apart it is noticed that the applicant in OA No. 425 of 2009 was promoted to Gr.B much before the promotion of Respondent Nos.6 to 8 whereas there was delay in accepting his request for transfer and absorption in New Railway (ECoRly). According to the Respondents the delay in finalization of the cases of the applicants for permanent absorption occurred due to non-furnishing of the clear cut undertaking by the applicants accepting bottom seniority in the event of their transfer and absorption in the New Railway i.e. ECoRly. This plea of the Respondents is not acceptable as Railway Board instruction clearly envisages that in the event of transfer to new Railway Zones the optees will have to be placed below the employees working in the cadre where the optees will be posted. Be that as it may, similar matter came up for consideration before the Division Bench of the Tribunal at Jabalpur in OA Nos. 7, 8,9,25 & 38 of 2006. The Jabalpur Bench of the Tribunal after considering all aspects of the matter, in its order dated

30th August, 2006 directed absorption of the applicants therein on lien in his parent railway with due seniority and all consequential benefits. Following the said order of the Jabalpur Bench, the Cuttack Bench of the Tribunal in order dated 8th February, 2008 in OA No. 570 of 2005 (Pradip Kumar Pradhan v Union of India and others), in similar situation like the present one, directed the Respondents to restore the seniority of the Applicant therein in the ECoRly over their juniors. We find no new logic, fact or materials to take any view other than the view taken by the Jabalpur and Cuttack Benches of the Tribunal. Accordingly, the order of rejection under Annexure-A/15 dated 27.1.2009 in OA No. 425 of 2009 is quashed. The Respondents are hereby directed to treat the Applicants in both the OAs as the employees of the ECoRly w.e.f. 31.7.2003 and accordingly, assign them ~~at~~ the appropriate place in the seniority list.

10. The entire exercise shall be completed in all respects within a period of ninety days from the date of receipt of copy of this order.

11. In the result, with the aforesaid observation and direction both the OAs stand allowed. There shall be no order as to costs.

Sd/-
vice - chairman

Sd/-
Member (A)