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OA No.505/2009

Ashok Kumar Singh Deo .... Applicant  
-Versus-  
Union of India & Ors. .... Respondents  
.....

1. Order dated: the 23rd July, 2010.

C O R A M

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

The facts, in nut shell, according to the Applicant are that he was a regular Assistant Accounts Officer of the South Eastern Railway. After trifurcation of the S.E. Railway, he opted to come to the newly created East Coast Railway under Annexure-A/1. The matter was examined at various level and finally on the basis of the consent of both the Railways i.e. S.E.Ralway & E.Co.Railway, under Annexures-A/2 to A/5, on the approval of the President as communicated by the Ministry of Railway under Annexure-A/6 dated 24.09.2009 the applicant was released keeping his lien in South Eastern Railway with direction to report to SDGM, East Coast Railway and accordingly on being relieved he reported to duty in the ECoRly on 24.09.2009. Copy of the joining report has been placed by him at Annexure-A/7. After his joining in the ECoRly, by writing letter under Annexure-A/8 dated 28.10.2009 to the FA&CAO,SERly,Garden Reach, Kolkata the Appilcant was sent back to the SERly on the ground that there are a number of eligible Group B officers available in ECoRly itself for consideration against the post in which the applicant joined and the transfer of the applicant was not made following the procedures of inter-Railway transfer and without involving the cadre control authorities of ECoRly (FA&CAO & CPO). It was further informed that the period from 24.9.2009(AN) to 28.10.2009(AN) may be treated

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as 'waiting for orders' in favour of the applicant. By making representation under Annexure-A/10 he sought the intervention of the Secretary (Establishment, Railway Board, New Delhi and during the pendency of the said representation he has approached this Tribunal in the present Original Application seeking to quash the order of repatriation under Annexure-A/8 and to direct the Respondents to allow him to continue at East Coast Railway. His main ground of challenge is that he came and joined in ECoRly on inter Railway Transfer with the approval of the President duly communicated by the Railway Board that too on the consent furnished by both the Railway. As such, GM,ECoRly has no competence or jurisdiction to rescind, defy or nullify/disobey the said order.

2. On the other hand by filing counter the Respondents have stated that GM, ECoRly alone is empowered to convey the approval for inter railway transfer of an employee. No other authority has any competence or jurisdiction to do so. As the consent/willingness was offered by an authority below the GM,ECoRly and the transfer of the applicant has created resentment among the existing employees of the ECoRly, it was decided to repatriate back the applicant to SERly where his lien is still maintained.

3. By filing rejoinder the Applicant has more or less reiterated his stand taken in the OA.

4. Learned Counsel for both sides reiterated with emphasis on the points taken in the respective pleadings and having heard them at length, perused the materials placed on record. That the matter has been sent to the Railway Board and no reply has been received on the said reference has not been disputed by the Learned Counsel for the

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Respondents. It was also brought to the notice of this Tribunal that by filing OA No. 70/09 applicant sought direction to the Respondents for transfer of his lien from SERly to ECoRly which is still pending consideration. It was contended by the Learned Counsel appearing for the Respondents that in view of the letter under Annexure-A/8 though the applicant has been relieved from his duty in ECoRly, by virtue of the stay order of this Tribunal, the Applicant is getting salary without discharging any work. As the applicant's transfer was against the Rules and procedure, irrespective of the pending reference made to the Railway Board, the applicant needs to release the post in ECoRly and, therefore, the stay order granted by this Tribunal needs to be vacated. I have considered various submissions made by the parties with reference to the materials placed on record. But I am not inclined to express any opinion on the merit of the matter at this stage as it would be prejudicial in the decision making process of the Railway Board on the reference which is still pending as also in deciding the OA No.70/09 filed by the applicant seeking his lien transfer from SERly to ECoRly. At the same time I do not agree with the Learned Counsel for the Respondents to vacate the stay order pending receipt of the reply on the reference made to the Railway Board nor can I hold, on the face of the presidential order under Annexure-A/6 dated 24.08.2009, the letter under Annexure-A/8 dated 28.10.2009 is justified in any manner. It also reveals from Annexure-R/5 of the counter that the Chief Personnel Officer of the ECoRly has taken up the matter with the Respondent No.5 [Secretary (Establishment), Railway Board, New Delhi] to cancel their earlier order on the basis of which the applicant was posted in ECoRly. No cancellation has yet been communicated.

Hence, the Railway Board being the higher formation, its order still prevails. Accordingly, it is held that till receipt of the reply on the reference in regard to the repatriation/continuance of the Applicant in ECoRly from Railway Board, the letter under Annexure-A/8 dated 28.10.2009 is bound to be kept in abeyance thereby allowing the Applicant to continue in the ECoRly in the post in which he joined.

Ordered accordingly.

5. In the result, this OA stands allowed to the extent stated above. No costs.

  
(C.R. Mohapatra)  
Member (Admn.)