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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.622of 2009

Cuttack, this the 20th day of March, 2012

B.K.SahooApplicant


-Versus-

Union of India & Ors. ...Respondents

FOR INSTRUCTIONS

1. ***Whether it be referred to reporters or not ?^x***
2. ***Whether it be referred to CAT, PB, New Delhi or not ?^x***

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


(A.K.PATNAIK)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.622of 2009

Cuttack, this the 28th day of March, 2012

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

And

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

.....

B.K.Sahoo, aged about 31 years, Son of Nabaghana Sahoo, Ex Technician-III/TM resident of At/Po.Barimunda, Dist. Khurda, PIN 754 001.

....Applicant

By legal Practitioner -Mr. Achintya Das. Counsel

-Versus-

1. Union of India service through General Manager, ECoRailway, Chandrasekharpur, Bhubaneswar, PIN 751 017.
2. Secretary, Railway Board, Rail Bhavan, New Delhi, PIN 110 001.
3. Chief Personnel Officer, ECoRailway, Chandrasekharpur, Bhubaneswar, PIN 751 017.
4. Chief Engineer TM, ECoRailway, Chandrasekharpur, Bhubaneswar, PIN 751 017.
5. Divisional Railway Manager, Waltair Division, Dondaparthi, Visakhapatnam, PIN 530 004.
6. Chairman, Railway Recruitment Board, South Lallaguda, Secunderabad, PIN 500 017.
7. Shri V.K.Singh, the then Dy. Chief Engineer TM, ECoRailway, Chandrasekharpur, Bhubaneswar now Sr. Divisional Engineer, ECoRailway, Waltair, Po.Dondaparthi, Visakhapatnam, PIN- 530 004.

....Respondents

By Legal Practitioner - Mr.M.K.Das, Counsel.

O R D E R

A.K.PATNAIK, MEMBER (JUDICIAL):

The case of the Applicant, in brief is that while he was working as Technician Gr.III/TM in E.Co.Railway, applied, through proper channel for recruitment to JE-II/Diesel/Mech; JE-II/Diesel/Elect;

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JE-II/Carriage and Wagon in the scale of Rs.5000-8000/- in pursuance of an advertisement No.1/2008 dated 22.02.2008, issued by the Railway Recruitment Board, Secunderabad besides making an advanced application for consideration of his candidature along with others. After getting the call letter from the concerned authority, by availing leave, applicant attended the test conducted on 22-06-2008. The applicant was intimated vide letter dated 07-07-2008 the refusal of the competent authority to issue 'No Objection Certificate' due to shortage of staff in Track Machine Organization. Thereafter Applicant vide representation dated 28.8.2008 requested for sympathetic consideration of his request for issuance of 'NOC'. The Applicant was also intimated by the RRB, Secunderabad about his success in the written test and, therefore, he has to attend the office on 11.09.2008 for verification of documents. Thereafter, the applicant received letter dated 15.09.2008 wherein he was intimated by the RRB, Secunderabad to submit the NOC on or before 29.9.2008 failing which his candidature for the post will be canceled. Immediately on receipt of the letter, the Applicant was intimated about the rejection of his request for issuance of 'NOC' by the competent authority vide letter dated 18.09.2008. Thereafter, he preferred appeal dated 19.9.2008 before the GM, E.Co.Railway, BBS seeking his interference in the matter. The appeal did not yield any fruitful result and on the other hand, the stipulation for cancellation of the candidature

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given by the RRB, Secunderabad compelled him to tender technical resignation so to accept the new assignment which he did vide application dated 13.10.2008. The said request of the applicant was accepted which was intimated to him vide letter dated 17.10.2008. His grievance is that he had put in more than two years and six months of service by the time he was relieved from the E.Co.Railway on acceptance his technical resignation. Due to non-issuance of the 'NOC' he will be deprived of counting the past service for the purpose of pension etc. in the new Railway. Hence by filing the instant Original Application he has sought for the following reliefs:

- "(i) To quash the letter of rejection dated 18.9.2008 under Annexure-A/10;
- (ii) To direct the Respondents to issue NOC in favour of the Applicant forthwith;
- (iii) To pass any other order/orders as deemed fit and proper."

2. The Respondents filed their counter in which besides on the point of limitation, they have also opposed the instant O.A on merit. It has been stated that the applicant joined in the Track Machine Organization in Civil Engineering Department of E.Co Railway as Tech-III (TM) on 21-03-2006. While continuing as such, he submitted an application dated 14.3.2008 requesting to forward the same to the RRB, Secunderabad. The competent authority, due to shortage of staff, did not agree to forward the application of the applicant and this fact was

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intimated to the applicant. Thereafter with reference to the applicant's letter dated 17.7.2008, the competent authority issued 'NOC' to the applicant for applying to the post of JE-II/TM (Cat.No.14) in RRB/BBS with the condition that there should be no interference with the efficiency of official work and the applicant would not be entitled to leave. It has been stated that as the application of the applicant was not forwarded through proper channel due to shortage of staff, his request for issuance of 'NOC' was rejected. However, after being selected by the RRB, Secunderabad, the applicant vide application, dated 13.10.2008 requested acceptance of his technical resignation but the competent authority vide letter dated 17.10.2008 refused to accept such request of the applicant because by that time the applicant did not complete 3 years of service so as to be eligible to tender his technical resignation and his technical resignation was only accepted subject to condition of accepting a fresh bond with S.C.Railway to reserve the balance period and in case he fails to serve the balance period then his training cost will be recovered with interest @12.5% on the payment drawn by him. In stating so, the Respondents have prayed that this OA being devoid of merit is liable to be dismissed.

3. Besides reiterating, more or less, the stand taken in the OA, the Applicant in his rejoinder has stated that to avoid the rejection of his

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application, if it reaches after the cut off date, while submitting application through proper channel, an advance copy was submitted by him to the RRB, Secunderabad. The RRB, Secunderabad, in pursuance of that application submitted by him in advance, called him to appear at the test and after taking leave he had appeared at the test conducted on 22.06.2008 but on 07.07.2008 the applicant was intimated that due to shortage of staff no 'NOC' will be issued to the applicant whereas 'NOC' was granted to another similarly situated Technician Gr.III/TM for appearing at the test for the post of Assistant Loco Pilot conducted by the RRB, Kolkata. Therefore, there being no other way, he tendered his technical resignation which having been accepted he took up his new assignment.

4. At the out set Learned Counsel for the Applicant Mr. Achintya Das, brought to our notice the Master Circular No. 30 issued vide No. E (NG) 1/90/AP/3 dated 15.7.1991 issued by the Ministry of Railways/Rail Mantralaya (Railway Board), New Delhi in which it has been provided as under:

"2.1. Railway employees whether permanent or temporary, may be given four opportunities in a year to apply for posts in Government Departments/Public Sector Undertakings/Autonomous Bodies wholly or substantially financed and controlled by Central or State Government. However, the General Managers/Head of Departments may withhold applications if they feel that in the public interest, it

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is not possible to release the Railway servant concerned for a post outside the Railways.....

2.2. While it is not feasible to define "public interest" the authorities should interpret the term strictly and subject to the condition that forwarding of applications should be the rule rather than the exception and the decision should be taken at appropriate level. In taking the decision to withhold the application, the authority, has to balance the interests of the State against the necessity of causing hardship to the individual....."

5. By placing reliance on the above instructions of the Railway Board it was contended by Mr. Das, Learned Counsel for the Applicant that the advertisement was issued by the RRB, Secunderabad for appointment to a post under Indian Railways which is coming under the definition of Departments/Public Sector Undertakings/Autonomous Bodies wholly or substantially financed and controlled by Central or State Government. It is not the case of the Respondents that the applicant had applied four times in a year. As such, there is no justifiable reason to withhold his application or to refuse issuance of 'NOC' when he was selected by a regular process of selection. Further contention of Mr. Das is that when 'NOC' was not issued by the E.Co.Rly, he requested the RRB, Secunderabad to extend the time and accordingly, RRB, Secunderabad extended the time till 17.10.2008. Similarly by drawing our attention to the Railway Board's instruction No. E (NG) II/70/AP/1 dated 22-2-1971 filed as Annexure-C, it was contended by Mr. Das, that the very imposition of condition that training cost will be

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recovered with 12.5% interest being bad in law is not sustainable. Secondly Mr.Das contended that the technical resignation of the applicant having been accepted, as per the provisions under para 1410 of IREM Volume I (1989) edition, off late the railway administration cannot take a stand that it was not a technical resignation and as such the decision of the authorities that his past service cannot be counted is not sustainable in the eye of law and, accordingly reiterated the prayer made in this OA.

6. Mr. M.K.Das, Learned Counsel appearing for the Respondents Railways, on the other hand, contested the case by stating that the request of the applicant for issuance of 'NOC' was rejected and intimated to the applicant in letter dated 18th September, 2008 and being aggrieved by the said refusal he preferred appeal on 19.9.2008 whereas he filed this OA on 24th December, 2009 and, therefore, this OA is liable to be dismissed being barred by time.

7. In so far as the merit of the matter, it was contended by Mr. Das, Learned Counsel appearing for the Respondents-Railways that the employer has a right to withhold such application of the applicant . The request of the applicant was withhold due to shortage of staff in public interest. Similarly, it was contended by Mr. Das submitted that as the applicant did not complete three years of service he should not have sought technical resignation. As such, it was contended by him that in

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view of the above, the applicant cannot take advantage of the acceptance of his technical resignation which he was not entitled to under the Rules. On the above grounds, he has strenuously insisted for dismissal of this OA.

8. Heard the submissions made by the counsel for the respective parties and perused the materials placed on record.

9. The order dated 17th October, 2008 under Annexure-A/13 where under the technical resignation of the applicant was accepted reads as under:

"Approval of the competent authority is hereby communicated for the acceptance of resignation of Shri B.K.Sahoo, Tech.III (TM) of E.Co.Rly with immediate effect.

1. His resignation order is issued on the basis of his letter of resignation preferred vide his application dated 13.10.2008;

2. In view of his execution of a bond on 14.02.2006 to serve Railway administration for minimum period of 5 years w.e.f. 21.3.2006, a fresh bond should be executed by him and taken by the employer to ensure that he should serve with the new employer for the balance of the original bond period. In case of exemption from bond as obligation in S.C.Rly, the proportionate bond money i.e. 12 ½ per cent of the training cost should be released from him and refunded to the Railway Administration;

3. He has been relieved by East Coast Railway on 17.10.2008;

4. His technical resignation is issued in conformity with para 1410 of IREM Volume-I (1989 edition);

5. He has no SPE/Vig. Cases pending as per GM (Vigilance)/ECoR/BBS's letter No. GM/V/ECoR/Vig Clearance/Non-Gaz/25/7737 dated 17.10.2008;

6. He has no D&A cases pending in terms of PCE/ECoR/BBS's letter No. W.7/637/TM/&A/3253 dated 16.10.2008;

7. He has admitted all the materials to Rly administration under his custody vide PCE/ECoR/BBS's letter No. W.7/637/TM/Staff Matter/3293 dated 17.10.2008;

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8. If he is in occupation of Rly. Quarters at present, he should vacate the same before moving out from ECoR or he may be permitted to retain the railway quarters for a period of one month only on payment of normal rent/flat rate of licence fee."

The provision at para 1410 of IREM Volume-I (1989 edition) reads as under:

"....1405. Continuity of service on technical resignation:- A permanent railway servant appointed in another Central Government Department/Office has to resign from his parent department unless he reverts to that department within a period of 2 years or 3 years in exceptional cases. Such resignations shall not be deemed to be resignation within the meaning of Rule 41(2) of Railway Services (Pension) Rules, 1993 for the purpose of pension. As a consequence, continuity of service benefits should be allowed to such employees in the matter of leave also i.e. the railway employee will be allowed to carry forward the leave earned by him, not only on the Railway but that earned during the temporary service or probation in the Civil Department also...."

10. It is not in dispute that in pursuance of the employment notice issued by the RRB, Secunderabad, the applicant who by that time has completed only two years and six months of service in E.Co.Railway applied through proper channel and sent an advanced copy to avoid delay. On the basis of the application sent by the applicant in advance, he was called by the RRB, Secunderabad to appear at the test based on which by availing leave the applicant attended the test; after which he was intimated that the competent authority at E.Co.Railway has refused to issue 'NOC' due to shortage of staff. Master Circular No. 30 issued vide No. E (NG) 1/90/AP/3 dated 15.7.1991 by the Ministry of Railways/Rail Mantralaya (Railway Board), New Delhi clearly provides

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that Railway employees whether permanent or temporary, may be given **four opportunities in a year** to apply for posts in Government Departments/Public Sector Undertakings/Autonomous Bodies wholly or substantially financed and controlled by Central or State Government. However, the General Managers/Head of Departments **may withhold** applications if they feel that in the public interest, it is not possible to release the Railway servant concerned for a **post outside the Railways...** In the instant case the applicant has not applied to go **outside the Railway. Besides, only the** General Managers/Head of Departments has been empowered under the Rules to withhold the application in public interest if the employee concerned desires to go outside the railway whereas the letter of refusal does not show that the same was issued with the approval of the GM/HOD. In view of the above, we find no justifiable reason in any of the stands taken by the Respondents in the counter, reply filed to the counter and submissions made in course of hearing. Similarly we do not find any justification to hold that this OA is liable to be dismissed being barred by limitation. After the letter of refusal dated 18.9.2008 the Applicant has submitted an appeal to the GM, E.Co.Rly on 19.89.2008 and thereafter approached this Tribunal on 24.12.2009 which is within the period prescribed in section 21 of the A.T. Act, 1985. Corollary to the discussions made above, we quash the letter of refusal dated 19.9.2008 under Annexure-


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A/10 and direct the Respondent No.3 to issue 'NOC' in favour of the Applicant within thirty days from the date of receipt of the copy of this order with due intimation to the Respondent No.6 and on receipt of 'NOC', the Respondent No.6 should grant the applicant consequential benefits as per the Rules.

11. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.


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


(A.K. PATNAIK)
Member (Judicial)