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OA No.76 of 2009

Pradeep Kumar Behera Applicant
Versus
Union of India & Others Respondents

Order dated: 24/02/2010

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

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Fact of the matter is that for posting of Lineman (Stores) option was called from the employees of all the cadres in the same grades such as Lineman/SI/Line Inspector/Telecom Mechanic. From among employees who applied for the post, in question, the Committee recommended the name of the applicant for the post of Lineman Store, Burla, which is a non technical post. Meanwhile Applicant was promoted to the post of Telecom Mechanic and has taken the training of the post. Taking into consideration the necessity to post the applicant to Teleibani Exchange under SDO (T), Deogarh, the selection and posting of the Applicant to the post of Lineman (Stores), Burla was cancelled and he was posted to Teleibani Exchange under SDO (T), Deogarh. Thereafter fresh option from the eligible Group C employees was called for. Pursuant to the notification, three persons including one Shri R.N.Behera has opted for the post of Lineman (Stores) Burla and the fact remains that the selection process for filling up of the said post has not yet been started. Being aggrieved by the said action of the Respondents, Applicant approached before the Hon'ble High Court of Orissa in W.P (C) No.4672 of 2008. The Hon'ble High Court of Orissa disposed of the matter with direction to the CGMT, Orissa to take a decision on the representation of the Applicant. Alleging non-disposal of the representation timely, Applicant filed CP. Meanwhile the representation of the Applicant was disposed of in a reasoned order and communicated to the applicant thereby rendering the CP filed by the applicant

infructuous. Being aggrieved by the order of rejection under Annexure-9 dated 30th January, 2009, the applicant has approached this Tribunal in the present Original Application seeking to quash the order of rejection under Annexure-9 dated 30.01.2009 and direct the Respondents to restore and post the applicant in the existing vacancy in the Divisional Store, Burla against which the applicant was selected and appointed on promotion. His main ground of challenge is that to accommodate Shri R.N.Behera, though the post in question was a promotional post, such clandestine step was taken by the Respondents.

2. Factual aspects stated above are not in dispute in the counter filed by the Respondents. But they have opposed the contention of the Applicant by stating that there was no illegality in canceling the selection of the applicant and posting him to Teleibani Exchange under SDO (T), Deogarh in public interest. Although his selection was much prior to promotion to the post of TM, but before he could finally be relieved since his hands were required at Teleibani Exchange rather than the post to which he was selected the selection was cancelled and he was posted at Teleibani. They have also denied the mala fide attributed by the Applicant. They have also denied that the post of Store Lineman at Divisional Store, Bula is a promotional post. They have also stated that pursuant to the fresh notification, three applications were received but the selection process is yet to start.

3. Heard Learned Counsel for both sides and perused the materials placed on record. No material has been produced by the Applicant that the post of Lineman Stores is a promotional post nor is it the case of the Applicant that he has a right to hold the post in accordance with his seniority etc. Mere selection to the post does not confer any right on him to claim the post especially when according to the Respondents the hands of the applicant in public interest, were very much necessitated at the Teleibani Exchange for

which his selection was cancelled and he was posted to Teleibani Exchange.

The above view that mere empanelment/selection does not confer any indefeasible right even if vacancy exists is fortified by the decisions of the Hon'ble Apex Court in the cases of All India SC & ST employees association and another v. A.Arthur Jeen and others [2007] 2 SCC (L&S) 362 and Jitendra Kumar and others v State of Harayana and Anr, 2008 (3) SLR 139 (SC). It is also trite law that who should be transferred where and at what point of time is a matter to be decided by the employer and Tribunal has no power to interfere in it unless such exercise of power is proved mala fide/colourable. The allegation of favoritism has been raised by the applicant without any basis even without making Shri Behera as a party to this case. Selection is yet to start. Applicant has also not challenged the subsequent option called for by the Respondents. It was also admitted by the Learned Counsel for the Applicant that the applicant has not opted pursuant to the second option called for by the Respondents. In view of the above, I find no merit in this Original Application which is accordingly dismissed. However, it was submitted by Learned Counsel for the Applicant that he may be given an opportunity to make his option for selection to the post in question as according to the Respondents selection is yet to start. This was not resisted by Learned Counsel appearing for the Respondents. As such, the Respondents are hereby directed in case the applicant exercises his option within a period of fifteen days, they may consider the same along with others, in accordance with Rules.


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