

4

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.161 OF 2010

Cuttack this the 29th day of February, 2012


Sri Aurobinda Barik ... Applicant


Versus

Union of India & Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Tribunal or not?


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


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

12

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ORIGINAL APPLICATION NO.161 OF 2010

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

AND

THE HON'BLE SHRI A.K.PATNAIK, MEMBER (J)

.....

Sri Aurobinda Barik, aged about 43 years, S/o. late Dhaneswar Barik, permanent resident of Village-R\Arisol, PO- Dandi, Chhatabar, Dist-Khurda – at present working as Senior Clerk under the Work Shop Personnel Officer, East Coast Railway, Mancheswar Carriage Repair Workshop, At/PO-Mancheswar Colony, Dist-Khurda

...Applicant

By the Advocates: M/s. B.S. Tripathy, M.K. Rath, J. Pati,
Mrs. M. Bhagat, Counsel

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, At/PO-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. The Chief Personnel Officer, East Coast Railway, Rail Vihar, At/PO-Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. The Chief Workshop Manager, East Coast Railway, Carriage Repair Workshop, Mancheswar, Bhubaneswar, Dist-Khurda
4. The Workshop Personnel Officer, East Coast Railway, Carriage Repair Workshop, Mancheswar, Bhubaneswar, Dist-Khurda
5. Shri Manoj Kanta Barisal, at present working as Head Clerk under the Work Shop Personnel Officer, East Coast Railway, Carriage Repair workshop, Mancheswar, Bhubaneswar, Dist-Khurda

12

6. Shri Gourange Charan Rout, at present working as Senior Clerk under the Workshop Personnel Officer, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, Dist-Khurda

...Responden

By the Advocates: Mr. D.K. Behera (Railways) M/s. R.R. Dash & G.K. Nanda (Res. 5 & 6)

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O R D E R

A.K. PATNAIK, MEMBER(J):

Challenging the legality and validity of Annexure-A/7 letter dated 7/9.5.2008 by virtue of which his prayer for assignment of seniority as Junior Clerk above Private Respondent Nos. 5 and 6 has been turned down, the applicant, who is at present working as Senior Clerk under the Respondent-Railways has moved this Tribunal in the instant Original Application seeking the following relief.

- i) To pass appropriate orders quashing the order dtd. 7/9.5.2008 in Annexure-A/7.
 - ii) To pass appropriate orders directing the Respondents-Railways to correct the seniority position of the applicant placing him above Respondent Nos. 5 and 6 and to extend all other service and consequential benefits, to which he is entitled; and
 - iii) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this O.A. with cost.
2. The back drop of the matter, in brief, is that the applicant, while working as Junior Clerk in Chakradharpur Railway Division, on his own request came on inter Divisional

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transfer and joined the Carriage Repair Workshop at Mancheswar on 10.07.2000. His grievance is that the services of Private Respondent Nos. 5 and 6 who were then working as Junior Clerk on ad hoc basis having been regularized with effect from 30.6.2000 vide Annexure-A/5, he has been prejudiced. Hence, this Original Application.

3. In response to notice issued by this Tribunal, the Respondent-Railways including Private Respondent Nos. 5 and 6 have filed their respective counters opposing the relief claimed by the applicant.

4. We have heard Shri B.S.Tripathy, learned counsel for the applicant, Shri D.K.Behera, learned counsel for the Respondent-Railways and Shri R.R.Dash, learned counsel appearing on behalf of the Private Respondent Nos. 5 and 6 and perused the materials on record.

5. Shri Tripathy, learned counsel for the applicant submitted that earlier the Private Respondent Nos. 5 and 6 along with others moved this Tribunal in O.A.No.543/1988 for regularization of their services as Junior Clerk. The said O.A. having been dismissed by this Tribunal vide order dated 24.11.1999, the subsequent regularization of services of Private

14

Respondent Nos. 5 and 6 as Junior Clerk is in violation of the order of this Tribunal in the aforesaid O.A. Secondly, it has been contended by Shri Tripathy that as per Para-312 of IREM on own request transfer, the seniority would be assigned below that of the existing, confirmed, temporary and officiating Railway servants in the relevant grade in the new establishment. According to Shri Tripathy there being no stipulation for fixing seniority below ad- hoc Railway servant under such contingency, the seniority so assigned upon regularization of services of private Respondents de hors the Rules.

On the other hand, Shri D.K.Behera, learned counsel for the Respondent-Railways, relying on averments made in the counter, submitted that the Private Respondent Nos. 5 and 6 having been appointed on ad hoc basis against Direct Recruitment Quota through a regular process of selection, their subsequent regularization cannot be called in question. According to Shri Behera, services rendered by Private Respondent Nos. 5 and 6 on stop gap arrangement on ad hoc basis amounts to services rendered on officiating or temporary basis and therefore, there has been no violation of the provisions

15/11/20

of IREM while regularizing the services of Private Respondents Nos. 5 and 6. According to Shri Behera, there being no merit in the O.A. the same deserves to be dismissed.

6. Learned counsel for Private Respondent Nos. 5 and 6 also reiterated and maintained the same plea as noted above.

7. We have considered the submissions made by the learned counsel for the respective parties and perused the materials on record. We have also gone through the rejoinder and written note of submission filed by the applicant, date chart submitted by the Respondent-Railways and note of argument submitted by Private Respondent Nos. 5 and 6.

8. From the emerging arguments, the short point to be decided is whether regularization of services of Private Respondent Nos. 5 and 6 as Junior Clerk and consequent assignment of seniority to them with effect from 30.6.2000 is correct. For determining the above point in issue, it would be conducive to at first take note of the order dated 24.11.1999 of this Tribunal in O.A.No.543 of 1998. Although the said O.A. was dismissed, but, in the last but one paragraph of the order, the observation made by the Tribunal cannot be lost sight of. For the sake of clarity, the relevant portion is quoted hereunder.

16

“...The applicants’ contention that along with the promotion in the technical line they are also entitled to be promoted the post of Junior Clerk is valid to the extent that for such promotion they have to qualify in a selection test and also such promotion can be given only to the posts meant for promotion quota”.

9. Having regard to what has been observed by this Tribunal as quoted above, the plea of Shri Tripathy that the Respondent-Railways regularized the services of Respondent Nos. 5 and 6 is violative of the order of this Tribunal in the aforementioned O.A. is rejected. The next point urged by Shri Tripathy is that there being no provision in the IREM for fixing seniority of the inter-divisional transferee below the ad hoc appointee in the new Establishment, seniority so fixed is out of place. In order to consider this point in line with the decision of this Tribunal as referred to above, it would be worth-mentioning that since Private Respondent Nos.5 and 6 could not be regularized against Direct Recruitment Quota notwithstanding the fact that they were selected through a regular process of selection and in the circumstances, there being no posts vacant against DPQ quota, as observed by this Tribunal for being promoted, they continued against the DRQ as the posts falling under DRQ could not be filled. It was due to issuance of

22


Memorandum dated 24.3.2000 (Vide date chart submitted by Respondent-Railways) six vacant posts of Jr.Clerk attached to Personnel Branch of Hd.Qrs. Office/GRC could be transferred permanently to the office of Chief Workshop Manager(P), Mancheswar. While the matter stood thus, the matter being referred to by the Chief Workshop Manager(P), Mancheswar vide letter dated 9.12.2000, the latter was communicated with letter dated 12.12.2000 conveying the approval of Competent Authority as one time exemption for utilizing the DRQ by promotees (DPQ) and to carry forward the DRQ, as desired in the said letter under reference. From the above, it is clear that the six posts of Jr.Clerks which were permanently transferred to Chief Workshop Manager's office were meant for DRQ. Therefore, the inescapable conclusion that only could be drawn is that those six posts of Jr.Clerks transferred to the Office of Chief Workshop Manager, Carriage Repair Workshop, Mancheswar came under the **banner of DPQ with effect from 12.12.2000 only**, but not prior to that and in the circumstances, regularization of services of Private Respondent Nos. 5 and 6 as Jr.Clerk **could not have been made with effect from 30.6.2000 when posts under DPQ were not available to be filled up.**

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10. For the reasons discussed above, we have no hesitation to hold that the regularization of services of Private Respondent Nos. 5 and 6 as Junior Clerk and consequent assignment of seniority to them with effect from 30.6.2000 is not correct and therefore, the impugned order under Annexures-7 dated 07/09.05.2008 is liable to be quashed and accordingly, the same is hereby quashed and resultantly the Respondent-Railways are hereby directed to correct the seniority position of the applicant placing him above Respondent Nos. 5 and 6 and to extend all other service and consequential benefits, to which he is entitled to under Rules and pass appropriate orders to the above extent within a period of 90(ninety) days from the date of receipt of copy of this order.

11. In the result, the O.A. is allowed to the extent indicated above. No costs.


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


(A.K. PATNAIK)
Member (Judicial)