

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No. 86 of 2009
Cuttack, this the 05th day of September, 2011

Purna Chandra Satpathy Applicant

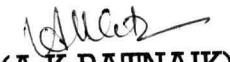
-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

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


(A.K. PATNAIK)
Member (Judl)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.86 OF 2009

Cuttack this the 05th day of September, 2011

CORAM:

THE HON'BLE MR C.R.MOHAPATRA, MEMBER(A)
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Purna Chandra Satpathy, aged about 47 years, S/o. Mr.Prahallad Satpathy, at present working as Asst. Finance Accounts in the office of the Financial Advisor and Chief Accounts Officer, East Coast Railway, Rail Sadan, At-Samanta Vihar, Chandrasekharpur, Bhubanesswar, District-Khurda

...Applicant

By the Advocates: M/s.S.B.Jena & S.Behera

-VERSUS-

1. Union of India represented through its Secretary, Government of India, Ministry of Railways, Rail Bhawan, New Delhi-110 001
2. Executive Director (Accounts) Room No.428, Rail Bhawan, Railway Board, New Delhi-110 001
3. General Manager, South eastern Railway, Garden Reach, Kolkata-43
4. General manager, East Coast Railway, Rail Sadan, Samanta Vihar, Chandrasekharpur, Bhubaneswar, District-Khurda
5. Financial Advisor and Chief Accounts Officer, East Coast Railway, Samanta Vihar, Chandrasekharpur, Bhubaneswar, District-Khurda
6. Chief Personnel Officer, east Coast Railway, Samanta Vihar, Chandrasekharpur, Bhubaneswar, District-Khurda

...Respondents

By the Advocates: Mr.T.Rath

Mr.N.R.Routray (Intervenors)

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

Applicant is at present working as Asst. Finance

Accounts in the Office of Financial Advisor & Chief Accounts

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Officer (Respondent No.5) under the East Coast Railways, Bhubaneswar. He has moved this Tribunal in the present O.A. being aggrieved by the inaction of the Respondent-Railways in absorbing him in the East Coast Railways by transferring his lien from the South Eastern Railways. In the circumstances, he has sought for the following relief:

"...to direct the Respondents to absorb the applicant in East Coast Railway by transferring his lien from South Eastern Railway;

And to direct the Respondents to allow the applicant to avail the promotion and to continue under East Coast Railway.

2. Brief background of the case is that on being selected through a regular selection process, the applicant was appointed as Junior Accounts Assistant under Nagpur Division of the undivided S.E. Railways. Subsequently, he was promoted to the posts of Accounts Assistant then as Section Officer (Accounts) and ultimately as Asst. Accounts Officer (Group-B) in the years 1990, 1995 and 2003 respectively. In between, based on the decision of the Ministry of Railways, seven new Railway Zones were created and in effect, two more new zonal Railways, viz., South Central Railways and East Coast Railways were carved out of South Eastern Railways. It is needless to mention that East Coast Railways having its headquarters at

Bhubaneswar became operational with effect from 1.4.2003. Keeping in view the creation of new zonal Railways, the Railway Board issued instructions calling for options from the staff to serve in the headquarters of new Railway Zones, fixing the last date for exercising such option to 30.11.2002 and in case of Group B officers to 23.9.2002. It reveals from the record that the applicant submitted his willingness much after the cut-off date vide Annexure-A/3 dated 14.7.2004 seeking his transfer to East Coast Railway in acceptance of bottom seniority. It further reveals from the record that vide Annexure-A/5 dated 25.2.2005, the applicant again submitted his willingness for his transfer to East Coast Railway, inter alia, on the following terms and conditions:

“ ...to consider my case for transfer of my lien to East Coast Rly, BBS keeping my seniority in tact based on the position in Gr.B panel published by undivided S.E.Railway vide O.O.No.I/2003/29 dated 25.3.2003. If, the above is not possible at this stage, I may be transferred to East Coast Railway keeping my lien & seniority at S.E.Railway till the lien can be transferred with seniority in tact”.

3. While the matter relating to options being exercised by the applicant for his transfer to East Coast Railway was wheels within wheel, the applicant, vide Annexure-R/9 dated 6.12.2005 was released from South Eastern Railway. The

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relevant portion leading to his transfer as indicated in Part-A of Annexure-R/9, reads as under:

“Sri P.C.Satpathy, Offg.ADFM/CKP and Sri N.Nanda, Offg.ADFM/KGP are released to East Coast Railway.BBS keeping their lien on S.E.Railway in terms of Railway Board's letter No.E(O)III-2003TR/566 dated 25.5.2005(sic) and Dy.CAO(G)/East Coast Railway's letter No.ECoR/ACCTS/ADMN/GAZ.Option/7395 dated 05.07.2004(sic).

4. In the meantime, the applicant, in anticipation of his empanelment for promotion to Senior Scale by his parent Railways, viz., S.E.Railways, preferred a representation dated 30.9.2008 for absorption in East Coast Railways and to accommodate in Senior Scale in the former Railways also. The applicant having been promoted in the meantime to Senior Scale by his parent Railways vide Annexure-R/16 dated 15.10.2008 and that he having received no response to his representation has moved this Tribunal in the present O.A. seeking relief as aforesaid.

5. It is the case of the applicant that while working in Group C post in S.E.Railway, he had exercised his option on 22.9.2002 much before the trifurcation of the S.E.Railway, with a view to coming to East Coast Railways on inter zonal transfer. According to him, he had been ~~also~~ transferred to E.C.Railway before trifurcation in the post of Section Officer (Accounts) and

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as the panel of Group B officers was on the verge of publication, he did not join East Coast Railway, Bhubaneswar waiting for the panel to be published and of posting of Group B officers. While the matter stood thus, he was posted as ADFM-CKP in the S.E.Railway. According to him, since he had exercised his option for coming to E.Co. Railways and was not given an opportunity to exercise his option as Group B officer after joining S.E.Railways as Group B officer, he applied for his transfer to East Coast Railways. The Railway Board having not acceded to his request for transfer, he was informed that he should opt for acceptance of bottom seniority in case of his transfer to East Coast Railways, in response to which, the applicant so applied. According to the applicant, one Shri B.D.Nayak, the then ADFM/CKP, although junior to him, was considered for transfer to East Coast Railways by the Railway Board with bottom seniority whereas he being a senior one, has been ignored. The applicant has submitted that as the East Coast Railway had already prepared panel for Group B officers had he come on transfer as such, he had no other option but to accept the bottom seniority and that is why he did not feel it proper to come on transfer by that time and therefore, he applied for transfer to ECO Railway, keeping his lien in S.E.Rly which was accepted by Board and both S.E.Rly and East Coast

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Railways. In the circumstances, the applicant has urged that he should be absorbed in East Coast Railway w.e.f. 1.4.2003 and accordingly, he should be accommodated in Senior Scale.

6. Respondent-Railways have filed a detailed counter opposing the prayer of the applicant. They have stated that the O.A. being devoid of merit is liable to be dismissed.

7. Applicant has also filed rejoinder to the counter putting the matter more or less in the same perspective as in the O.A.

8. We have heard Shri S.B.Jena, learned counsel for the applicant, Shri T.Rath, learned counsel for the Respondent-Railways and Shri N.R.Routray, learned counsel for the proposed intervenors and perused the materials on record.

9. Having regard to facts and circumstances as stated above, the point to be decided is whether the applicant is entitled to relief sought for.

10. With a view to decide the above point; it would be proper to at first deal with the Railway Board's instructions dealing with the scheme for such transfer. In this connection R.B.E.No.117/2002 dated 19.7.2002(Annexure-R/13) sets out the modus operandi in connection with transfer of staff including Group B officers to the new zonal Railway Headquarters, viz., (i) exercising option for such transfer before the cut off date and



(ii) after the cut off date so fixed. Admittedly, the applicant has come on transfer to East Coast Railway as Group B officer much after the cut off date fixed for exercising option for such transfer. In this connection Paragraph-4(iii) of Annexure-R/13, which is germane to the issue reads as under:

"Any transfer to the headquarter offices of these five new zonal Railways **on or after 1.4.2003** will be treated as **transfer on request on bottom seniority in recruitment grades** subject to usual conditions governing such transfers being fulfilled".

11. Having regard to the above scheme governing such transfer, the inescapable conclusion that could only be drawn is that if at all the applicant is absorbed as Group B officer, he is bound to accept the bottom seniority in that grade notwithstanding whatsoever conditional option he had exercised for such transfer, because if the transfer is effected with reference to option exercised before the cut off date, then the seniority of the transferees will be determined as per rules and instructions issued in that behalf whereas transfer after the cut off date has to be **treated as transfer on own request on bottom seniority in the recruitment grades subject to usual conditions governing such transfer being fulfilled** and thereby the apprehension of the applicant that he has been transferred in acceptance of conditions in the option exercised

by him vide Annexure-A/5 dated 25.2.2005 and accordingly he is entitled to seniority in as Group B Officer as if he were transferred at par with the persons who had exercised their options before the cut off date holds no water, there being no ~~medium~~ course to take care of his seniority.

12. It is the case of the applicant that the ratio in O.A.No.448/2005 as decided by the Jabalpur Bench of Central Administrative Tribunal is applicable to his case and therefore, he is entitled to relief sought for.

13. We have gone through the said order passed by the Jabalpur Bench of C.A.T. in O.A.No.448/2005. The applicants in that O.A, while holding the Group C posts in the South Eastern Railways had exercised their option for transfer to newly carved out Railway Zone, viz., South East Central Railways before the cut off date fixed for exercising option for such transfer and accordingly, their transfer to new Zonal Railways had been effected. While continuing as such in the new Railways, the benefit of their promotion to Group B officer on account of LDCE which they had appeared during the course of their service as Group C employees in the S.E.Railway/Parent Railways before trifurcation having been denied in the South East Central Railways on the grounds that they had not exercised their option as Group B employees, C.A.T., Jabalpur Bench, having regard

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to circular dated 17.5.2002 and circular dated 25.9.2002 recorded a finding as under:

★ “Our attention has been drawn to the circular dated 17.5.2002 (Annexure-A/5 by which the LDCE was announced by the SE Railway. This was done much before the trifurcation and naturally it does not contain any reference to post trifurcation situation. But another circular, which was issued on 25.9.2002(Annexure-A/21) dealt with panels for selection/LDCE for promotion to Group-B which are already under process. It has been specifically mentioned therein that such panels may be finalized and declared with reference to the original number of vacancies for which the selection/LDCE was notified. Since the process for LDCE for promotion to Group B post in the instant case had already started with the issuance of notification dated 17.5.2002, there is no doubt in our mind that this circular would be applicable in the instant case....”

14. Having regard to the above, we are of the view that the facts and circumstances in the instant case are not in a similar footing with the facts and circumstances of the O.A.No.448/2005 filed before the C.A.T., Jabalpur Bench and the context in which Jabalpur Bench arrived at a decision in favour of the applicants therein are not akin to the case in hand, primarily, by the reason that the applicant herein has not come on transfer to East Coast Railway having exercised his option for such transfer before the cut off date whereas the applicants before Jabalpur Bench had so exercised before the cut off date while working as Group C employees. In this view of the matter we are of the view that the context in which Jabalpur Bench

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came to the aid of the applicants therein being not the same herein, the reliance placed by the applicant on the ratio decided by C.A.T. Jabalpur Bench (supra) is of no help.

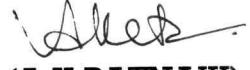
15. For the foregoing reasons, we are of the view that if at all the applicant could be absorbed in East Coast Railways as Group-B officer, he could only be so absorbed within the scope and ambit of Railway Board's instructions (supra) and in effect, he having been transferred to East Coast Railway based on the option exercised by him after the cut off date is bound to accept the bottom seniority in that grade as the said Railway Board instructions take care of absorption under two circumstances, i.e., based on the option exercised before the cut off date and option exercised after the cut off date which are independent of each other and in disregard thereof absorption of any employee in newly carved out Zonal Headquarters of the Railways is inconceivable.

16. In so far as the other relief, i.e., to direct the Respondents to allow the applicant to avail the promotion and to continue under East Coast Railway is concerned, it is to be noted that promotion of the applicant to Senior Scale, if any, is in respect of his parent Railways, i.e., South Eastern Railway and not in the East Coast Railways. Since the applicant's absorption as Group B officer in the East Coast Railways is yet to take place,

our propensity of considering and issuing any such direction in this regard would amount to preempt the decision, if any, to be taken by the Respondent-Railways.

17. With the above observation and direction, this Original Application is disposed of. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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