

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 56 of 2012
Cuttack this the 19th day of March, 2015

Sri Manoranjan Mishra.....Applicant

-VS.-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT,PB, New Delhi for being circulated to various Benches of the Tribunal or not ?

(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

35

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Manoranjan Mishra, aged about 47 years, Son of late Mrutyunjaya Mishra working for gains as Office Superintendent in the Railway Claims Tribunal, Bhubaneswar Branch permanent resident of Village-Ichhapur, PO/Dist-Kendrapara, PIN-754 211

...Applicant
By the Advocate(s)-M/s.G.Rath
S.Rath
B.K.Nayak-3
D.K.Mohanty

-VS.-

Union of India represented through

1. The Secretary, Ministry of Railways, New Delhi, PIN-110 001
2. The Chairman, Rail Claims Tribunal, 13/15, Mall Road, Delhi-110 054
3. General Manager, ECRLy, Rail Bhawan, Chandrasekharpur, Bhubaneswar, Dist-Khurda
4. The Member(Technical) Railway Claims Tribunal, OFDC Building(Second Floor), A/84, Kharvel Nager, Bhubaneswar, PIN-751 001
5. The Additional Registrar, Railway Claims Tribunal, OFDC Building(Second Floor), A/84, Kharvel Nager, Bhubaneswar, PIN-751 001
6. The Divisional Railway Manager(P), ECoRly, Khurda Division, Jatni



7. The Senior Divisional Personnel officer, ECoRly, Khurda Road, Jatni, Dist-Khurda
8. The Additional Registrar, Railway Claims Tribunal(Principal Bench), 13/15, Mall Road, Delhi-110 054

...Respondents
By the Advocate(s)-M/s.N.Patra

A.K.Patra
B.Shadangi
(Res.No.2,4, 5 & 8)
Mr.S.K.Ojha
(Res.1,3, 6 & 7)

ORDER

A.K.PATNAIK, MEMBER(J)

Being aggrieved by the order dated 08. 12.2011 in which the decision of the Chairman, Railway Claims Tribunal to repatriate the applicant to his parent department was conveyed by the Additional Registrar of the said Railway Claims Tribunal (in short 'RCT'), the applicant, at present working as Office Superintendent in the Railway Claims Tribunal, Bhubaneswar Branch has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying to quash the said order being illegal, arbitrary and not in accordance with the earlier order of this Tribunal dated 12th November, 2008 passed in OA No. 148 of 2005.

2. For the sake of clarity, it is necessary to reiterate, in short, the backdrop of the matter which is that the applicant

while working as Senior Clerk in Khurda Road Division exercised his option to join as Upper Division Clerk in the Railway Claims Tribunal, Bhubaneswar. Having been screened and adjudged suitable, he was issued with the offer of appointment as UDC on 02.04.1990. While working as such, he having been found suitable by a process of selection and based on the recommendation of the Member (Technical), RCT, Bhubaneswar was approved for promotion on ad hoc basis to the post of Chief Clerk with the condition that as and when the regular incumbent would join the applicant would be reverted to his former post and that such ad hoc promotion would not confer any right/title on him for seniority, confirmation and future promotion as the case may be. Thereafter, vide order dated 30.10.1995, the service of the applicant along with one D.Khillar as Chief Clerk was regularised with effect from 27.05.1993. While the matter stood thus, the Divisional Railway Manager (P), Khurda Road called upon the applicant to appear at the test for the post of Head Clerk that was scheduled to be held on 27.12.1995. However, the applicant was not spared by the RCT for the purpose of appearing at the said examination. However,

38

while the applicant was continuing as such, the Additional Registrar, RCT issued an order dated 07.04.2005 whereby and where under the applicant was relieved and repatriated with direction to report to his parent Railway. He preferred representation and there being no response on the same, he approached this Tribunal in OA No. 148 of 2005 with prayer to quash the said order dated 07.04.2005. The Respondent-Railway by filing counter contested the matter and after hearing learned counsel appearing for both sides, this Tribunal vide order dated 12th November, 2008 quashed the order dated 07.04.2005 and remanded the matter to the RCT for reconsideration in the light of the discussions made in the order. Relevant portion of the order is reproduced herein below:

“With regard to the question raised by the learned counsel for the applicant that the impugned Annexure-A/14 being not a reasoned order is not sustainable, we are at one with the applicant’s counsel that Annexure-A/14 does not contain any reason for repatriation as the applicant was appointed by transfer and that after having gone through a selection test, was promoted on ad hoc basis to the grade of Chief Clerk. The cause of repatriation of the applicant to his parent department after lapse of 18 years, which is an elementary factor of service jurisprudence, being latent in the instant case, and considering the fact that the

39

order of repatriation has been passed without the matter having been brought to the notice of Respondent No.3, who is competent to deal with the matter and the fact that Respondent No.3 is in communication with the Chairman, as has been averred in his counter, it is only proper for the authorities to consider whether it is necessary to repatriate the applicant at this distant point of time, especially when in response to Annexure-A/8, RCT intimated the Divisional Railway Manager, vide its letter dated 26.12.1995 that the applicant having been regularly absorbed in RCT, he was not directed to appear for the suitability test for promotion to the post of Head Clerk in the Khurda Road Division. In this context, it has also to be borne in mind that the period of deputation has not been specifically mentioned in the order of appointment issued to the applicant. The only condition mentioned in the circular was that appointment on transfer would be for two years, but that was neither extended nor terminated. In the fitness of things, it is only proper for the Respondents to reconsider the matter as per the existing rules governing the service of the applicant. In the above circumstances, we quash the impugned repatriation order at Annexure-A/14 being not tenable in law”.

3. Thereafter, on the application of the applicant under RTI Act, 2005, he was informed by the Divisional Personnel Officer, ECoRly, KUR, vide letter dated 29.09.2010 that “the lien of Shri Mishra was maintained in the Personnel Department of this Division. Shri Mishra



40

was screened for the post of UDC/Sr. Typist in RCT/BBS and found suitable. Accordingly he joined in RCT/BBS and as per Office order No. RCT/BBS/11/95 dated 30.10.1995 and letter No. RCT/BBS/15/422/95 dated 26.12.1995 of Addl. Registrar RCT/BBS he was regularly absorbed in RCT, BBS. As such his lien has ceased". Subsequently thereto, vide letter dated 08.12.2011, the Additional Registrar, RCT, Delhi communicated the order of Chairman, RCT to repatriate the applicant to his parent Department. Hence he has filed this OA praying for the aforesaid relief on the grounds that the order dated 08.12.2011 is in contravention of the order of this Tribunal dated 12th November, 2008 passed in OA No. 148 of 2005 as the same is bereft of any reason. He has already completed 21 years in the RCT and in the meantime, as his lien in the parent unit has ceased, he will put to unnecessary harassment and humiliation in case of his repatriation. The Chairman, RCT acted on the basis of the letter of the Member (Technical), RCT, Bhubaneswar without giving him any opportunity in compliance of the natural justice by way of supplying him copy of the said letter of the Member (Technical), RCT, Bhubaneswar. The



order dated 08.12.2011 repatriating him to his parent department has been issued without obtaining his consent.

Many of his juniors have in the meantime been promoted and at one hand he was not spared by the RCT and on the other hand without deciding his fate he has been repatriated to his parent department. There is no provision for restoration of lien of an employee. Therefore, if he is allowed to repatriate it will have cascading effect on his service career thereby resulting miscarriage of justice in the decision making process of the matter. Further it has been stated that there were/are employees came on deputation at the first instance and subsequently absorbed in RCT and as such repatriation at such a long distance will create hindrance to his service prosperity.

4. Respondent Nos. 1, 3, 6 & 7 have filed their counter in which it has been stated that as the Railway Claims Tribunal do not have its own cadre, no employee working in the RCT can claim to be the regular employee of the RCT. Therefore the applicant cannot claim to be the regular employee of the RCT. The staff of Railway Claims Tribunal is brought on deputation basis from Open Line i.e. Divisions and the Lien of such staff are maintained by



42

the Divisions only. Since the applicant was sent to Railway Claims Tribunal on deputation basis his lien is still with the Khurda Road Division and he will have to be taken back to Khrda Road Division. Thus, the order dated 08.12.2011 is bona fide. The applicant will be entitled to financial up gradation under MACP and other consequential benefits, if he is found eligible soon after his joining on repatriation from RCT, in Khurda Road Division. This OA is not maintainable being hit by the principle of *res judicata* as applicant's repatriation to Khurda Road has already been adjudicated in OA No. 148 of 2005 disposed of on 12.11.2008 wherein this Tribunal held to reconsider the case of the applicant in so far as his repatriation is concerned. The applicant is a regular employee of the Railway and was working as Sr. Clerk under Khurda Road Division. He was on deputation to RTC and a deputed employee has no right to claim absorption in the borrowing department and similarly his repatriation is wholly dependent on the sweet will of the parent and borrowing department. All the Gr. C posts in RCT are to be filled up by way of transfer and/or on deputation basis as enumerated in Railway Board's letter No. 89/TC/RCT/4/5

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dated 05.07.1989 which provides that the said posts being ex cadre posts were to be filled up by way of transfer of the eligible and willing employees from different railways only. The claim of the applicant that he was permanently absorbed in railway claims tribunal is not correct being de hors the Rules and the letter of absorption issued by the RCT as relied on by the applicant is of no consequence as the authority issuing such letter has no competency, jurisdiction and authority. At the cost of repetition it has been stated that the lien of the applicant is still maintained in the post of Sr. Clerk (UDC) in Khurda Road Division which is the parent department of the applicant. Accordingly, they have prayed for dismissal of this OA.

5. Respondent Nos.4&5, besides the points raised by Respondent Nos. 1,3,6&7 in their counter, have stated in their counter that the letter dated 30.10.1995 communicating the approval of the Member (Tech.)/RCT/BBS for permanent absorption in RCT with effect from 27.03.1993 is without jurisdiction, competence and authority and, as such, the applicant has hardly any right on the basis of the said letter to claim that as he was regularly absorbed in RCT his repatriation at this stage is



uncalled for/unwarranted. The applicant had earlier questioned his repatriation in OA No. 148 of 2005. This Tribunal did not interfere as will be evident from the order dated 12.11.2008 and as such the present OA being filed with self same grievance is not maintainable. As regards the employees coming on deputation like the applicant and subsequently, absorbed in RCT, it has been stated that Shri A.K. Singh came on '**deputation**' and subsequently absorbed in the RCT by the order of the Railway Board whereas, the applicant joined the RCT on '**transfer**' basis. In the meantime, Shri A.K.Singh retired from service and got all his retiral dues from '**Railway**' and not from '**RCT**'. Accordingly, they have also prayed for dismissal of this OA.

6. Applicant has also filed rejoinder to the counter filed by the Respondents more or less reiterating the stand taken in his OA.

7. Mr. G.Rath, Learned Senior Counsel appearing for the Applicant assisted by Mr.D.K.Mohanty, Mr. S.Patra, Learned Senior Counsel appearing for the RCT assisted by Mr.A.K.Patra and Mr.S.K.Ojha, Learned panel counsel for the Railway-Department have mostly reiterated the stand



45

taken in the respective pleadings. After closure of the hearing, they have also filed written note of submissions which have been taken note of. Mr.Rath has also enclosed copy of the letter dated 30.05.2014 of the Assistant Personnel Officer (C&S) I, ECoRly and we have also perused the same.

8. We find that the prayer of the applicant in this OA is to quash the order dated 08. 12.2011 (conveying the approval of the Chairman, RCT, New Delhi) of his repatriation to parent department is concerned. The said order reads as under:

“With reference to your office letter cited above, I am directed to inform you that Hon’ble Chairman is pleased to pass following orders:-

1. Sh. Manoranjan Mishra, OS, RCT, Bhubaneswar may please be repatriated to his parent department.

XXXX XXX
xxx”

9. We also find that the applicant earlier approached this Tribunal in OA No. 148 of 2005 challenging the order issued by the Additional Registrar, RCT, Bhubaneswar repatriating him to his parent department and after taking note of the arguments now advanced by Mr.Rath this

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Tribunal vide order dated 12th November, 2008, in so far as his absorption is concerned have held as under:

“In the light of the above constitutional provisions, we are of the view that unless law is amended and rules made specific to the effect that the Chairman or the Vice Chairman of the RCT has got powers to make appointment to the post or service of staff or officers of the Tribunal, it is not proper to hold that the Chairman has got the powers as that of a General Manager of a Railway Administration to fill up the posts in the RCT, and thus the appointment and promotion of the applicant, as ordered by the Chairman, to the post of Chief Clerk suffer from legal infirmity In the above circumstances, we see no ground to hold that the applicant is entitled to be declared to have been absorbed by the Railway Board as an employee of the RCT”.

10. The letter dated 30.05.2014 copy of which has been enclosed to the written note of submission by the applicant reads as under:

EAST COAST RAILWAY

Office of the
Divl.Railway Manager(P)/KUR
Dt. 30.05.2014

No.P3/20/Pers/MACP/MRM/14

To

The Additional Register
Railway Claims Tribunal
Bhubaneswar

Sub: Fixation of MACP in favour of Sri
Monoranjan Mishra, IS, RCT/BBS

Ref: Your letter No.RCT/BBS/15/130 Dt.
28.04.2014



47

With reference to your letter cited above it is informed that the lien of Sri Monoranjan Mishra, OS/RCT/BBS has been cut off from this division as per Addl.Register, RCT/BBS's letter No.RCT/BBS/15/442/95 Dt. 26.12.95. However, it has been decided by the competent authority that Sri Monoranjan Mishra, OS(ad hoc) whose lien is to be continued in Personnel branch of KUR division will have to returned back to KUR division and the benefit of MACP and other consequential benefits should be extended to him, if found eligible on par with his immediate junior.

As such it is requested to release Shri Monoranjan Mishra to join to this office so that further service benefits can be extended to him. Till such time, the service record along with ACRs for the year 12-13, 11-12, 08-09 & 09-10 of Sri Mishra is returned herewith which may please acknowledged.

Sd/-

R.N.A.Panda

Asst.Personnel Officer(C&S)I

For Divl.Railway Manager(P)/KUR

11. From the above, it appears that the lien of the applicant which was ceased earlier was subsequently revised. However, it is not in dispute that the order passed by this Tribunal in the earlier OA has attained its finality and the same is binding on us. Hence it becomes unworthy

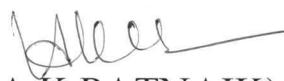


48

to express any opinion in so far as the absorption of the applicant in the RCT is concerned. But certainly we cannot close our eyes in so far as the observation made in Paragraph 13 of the order quoted above vis-à-vis the impugned order. The order passed by this Tribunal in the earlier OA is binding on both the parties. On examination of the impugned order keeping in mind the observation of this Tribunal in Paragraph 13 of the earlier order, we are constrained to hold that the impugned order is without due application of mind of the authority. Hence, the impugned order, in so far as the applicant is concerned is hereby quashed/set aside and the matter is remitted back to the Chairman, CRT, New Delhi for reconsideration of the entire matter keeping in mind the observation of this Tribunal in paragraph 13 of the order dated 12th November, 2008 in O.A.No.148 of 2005.

12. With the observation and direction as aforesaid, this OA is disposed of. There shall be no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)