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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.855 of 2012

Cuttack this the 23<sup>rd</sup> day of September, 2015


East Coast Railway Sramik Congress & another ...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? **No**
2. Whether it be referred to CAT, PB, New Delhi for being  
circulated to various Benches of the Tribunal or not ? **No**

  
(R.C.MISRA)  
MEMBER(A)

  
(A.K.PATNAIK)  
MEMBER(J)

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O.A.No.855 of 2012

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

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

1. East Coast Railway Sramik Congress (Registered under Trade Union Act, recognized and affiliated to NFIR, INTUC & TF) at Railway Quarter No.C/31-F, Rail Bihar, Chandrasekharpur, Bhubaneswar-751 023, represented by its General Secretary Ramesh Chandra Sahu, S/o. Baikuntha Nath Sahoo, age about 47 years.
2. Mataluba Khan, aged about 36 years, S/o. late Jabar Khan, At-Retanga Colony, P)-Jatni, Dist-Khurda

...Applicants

By the Advocate(s)-M/s.B.Senapati

S.Mohanty

T.Kamila

B.Dash

C.Mohanta

-VERSUS-

Union of India represented through

1. General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railway, Khurda
3. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
4. Senior Divisional Personal Railway Officer, East Coast Railway, Khurda Road, PO-Jatni, Dist-Khurda
5. Senior Divisional Electrical Engineer(G), East Coast railway, Khurda Road, PO-Jatni, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

**ORDER**

**R.C.MISRA, MEMBER(A):**

Aggrieved with the decision of railway-respondents in  
declaring 156 numbers of employees belonging to Sr.



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Technicians, Technician Grade-I to Grade-III and Helpers of Power Group-A surplus and consequently, transferring them to other Groups, i.e., Train Lighting (Group-B) and Air Conditioning(Group-C) thereby placing them under their juniors in the said Groups, East Coast Sramik Congress, claiming to be a registered Union (herein after referred to as Union), represented by its General Secretary along with one Matabula Khan, an aggrieved person, have approached this Tribunal under Section 19 of the A.T.Act, 1985, inter alia questioning the legality and validity of Office Order dated 2.11.2012(A/4) and Office order dated 30.12.2011(A/5).

2. Facts as embodied in the O.A. are that all the members of applicant-union belong to Electrical General Department(P) of East Coast Railways, Khurda Division. This Electrical Department is divided into three groups, viz., (i) Power Group (Group-A), (ii)Train Lighting (Group-B), and (iii)Air Conditioning(Group-C). Power Group-A deals with the electric supply to railway stations, platform lighting, street lighting, supply to service building, water supply and single lighting maintenance whereas Train Lighting Group-B deals with maintenance of lighting and fans in TL Coaches, <sup>and</sup> conversely, Air Conditioning Group(Group-C) is assigned maintenance and operation of A.C. coaches. All the three groups have their separate cadre and seniority and the promotion being limited



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is only within the cadre and there is no inter-changeability with the cadre.

3. Earlier, when the employees from the above groups were due for promotion, in order to deprive them of their promotion, the railway authorities were surrendering the promotional posts. This action of the authorities having come to the notice, the Railway Board, vide RBE No.206 of 2000 dated 28.11.2000(A/3) issued consolidated instructions, which inter alia, provided that surrender of posts and/or redeployment of surplus staff should be done with the prior consultation with the employees' union. Thereafter, vide RBE No.32 of 2007 dated 6.3.2007(A/1), the Railway Board took a decision that higher grade posts cannot be surrendered in case promotional prospects of staff are affected. It was further decided that normal posts in safety categories should not be surrendered. However, this surrender could be done subject <sup>to</sup> review having been undertaken that the number of posts have reduced or in case of technological upgradation/<sup>e</sup>change in working system. While the matter stood thus, on 21.12.2011(A/7 series), notification was issued for conducting selection test for promotion of Technician Grade-III to Technician Grade-II under Electrical General(P) Department. On 26.12.2011 the test was rescheduled. Thereafter, vide A/5 dated 30.12.2011, respondents surrendered 145 posts in Power Group-A and redeployed them in other groups, i.e., Air Conditioning and



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Train Lighting and on 16.1.2012, the trade test in power group stood cancelled due to surrender of posts. Being dissatisfied with the above, applicants-Union preferred representations on 25.1.2012, 7.8.2012, 21.9.2012 and 8.11.2012, which having not yielded any fruitful result, this Original Application has been filed.

4. It is the case of the applicants'-union that surrender of posts could be done where (i) technological improvement/new technology introduced for the work done by manpower, (ii) total or partial closure of the work, as the work is no more required and (iii) huge financial loss to the employer. Since none of these conditions is fulfilled, the surrender of posts is illegal and arbitrary. It has been submitted that surrender of posts is an attempt to outsourcing, which is fatal to the conditions of service of employees. In the above background, applicant-union have sought for the following relief.

- i) Quash the order dt.2.11.2012 and 30.12.2011 under Annexure-4 and 5 respectively by concurrently holding the same as bad, illegal and not sustainable in the eye of law;
- ii) Restore the process of trade test for promotion of the posts of Sr.Tech., Tech-I, Tech-II and Tech-III in Elect (P) Group.
- iii) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice;

5. In the counter reply, respondent-railways have resisted the claim of the applicant-Union. They have submitted that there are three wings in Electrical (General) Department such

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as Power, Train Lighting and Air Condition group. Three separate seniority lists are being maintained for these three groups. They can be inter-changeable only on recruitment grade as per their own request accepting bottom seniority subject to fulfillment of other norms.

6. The applicants of the instant OA are working in the Power Group of Electrical (General) Department in Khurda Road division. Suitability test/trade test/Selection for promotion to the post of Sr. Tech., Tech-I Tech-II & Tech-III was initiated which was cancelled due to the administrative reasons. The reasons assigned are that as per the policy decision of the Government, the Railway administration through the Work Study Team (WST) has conducted the work study in Electrical (General) Department of Khurda Road Division. As per the report of W.S.T., man-power is required in Train Lighting and Air Condition Wing due to increase of passenger train services and the amenities etc. The assets like ACs., inverters, fan, stabilizers, water coolers, etc. of the passenger trains besides regular additional works in the stations need more concentration of manpower for its regular maintenance and repair and therefore, more manpower is required in that direction. Basing on the Work Study Report submitted by the high level committee, the Zonal Railways, Khurda Division had to surrender 317 posts in Power Group of Electrical (General) Department. Accordingly, in the first phase 145 posts have been surrendered on 30.12.2011 (Annex-A/5) i.e. before issuance of Railway Board's letter dated 23.3.2012 (Annexure-A/2). Subsequently, the remaining 14 & 158 (Total=172) posts were also surrendered vide Office Memo dated 30.3.2012(R/1) and Office Memo dated 1.6.2012(R/2).

***The maintenance work of Power Wing of Electrical (General) Department has already been out sourced.*** In order to supervise the contractual works, decision has been



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taken to keep 30% of manpower of Power Wing and the rest from different categories are to be surrendered and in the circumstances, due to surrender of posts from power wing, it was expedient on the part of the administration to post the surplus staff in the AC and TL wing of Electrical (General) Department.

7. It is the case of the respondent-railways that before taking any step for surrendering of posts and re-deployment of staff from the power wing, the matter had been discussed in the Joint Meeting with both the recognized Unions and 317 posts have been surrendered in 3 phases. 156 surplus staff of power wing have been redeployed in Train Lighting and Air Condition Wing as per requirement vide Divisional Railway Manager (P) Khurda Road's Office Order dated 2.11.2012 (A/4). Before re-deploying of staff from Power Group, Railway Administration had discussed in the joint Meeting at several times with both the recognized Unions whereafter A/4 dated 2.11.2012 could be issued by redeploying the staff in Train Lighting and Air Condition Group as per requirement of the Division. According to Respondent-Railways, General Secretary, N.F.I.R. had raised this issue, which received the attention of Railway Board and to that effect necessary reply has already been given vide letter dated 7.9.2012.

8. Notifications, according to respondents, had been issued for promotion in 3 different categories prior to implementation of Work Study Report. As mentioned above, based on the Work Study Report, 145 posts of Power Group have been surrendered vide order dated 30.12.2011 (A/5). Since looking into requirement, posts have been surrendered, hardly there were vacant posts available in higher grades and in effect, the proposed selections stood cancelled. Respondents have submitted that at the time of surrendering posts of Power

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Group, Railway Board's Instructions have been taken into consideration by keeping the percentage structure of cadre intact. According to railways, the higher grade posts retained as a percentage of total retained posts after surrender are more in comparison to the prescribed cadre structure. By this, the Administration has kept in view that promotional prospects of the existing staff should not be affected. So far as the cadre structure and maintenance of ratio is concerned, surrender of posts in the lower Grade only will affect the initial recruitment/induction of staff to the cadre as no posts will be left in the lower grade. This matter has been brought to the notice of Executive Director (T & MPP), Railway Board under intimation to all Chief Personnel Officers of Indian Railways to review the matter (R/3 dated 8.10.2012). It has been submitted that if the lower grade posts will be completely surrendered, the avenue of promotion of the Helpers will be blocked. Hence, for a greater interest, lower grade posts were not completely wiped out. However, it is the case of the respondents that Annexure-A/7 Series to OA have been taken into account while surrendering the posts and maximum posts in lower grade have been surrendered.

9. Privatization and out sourcing are the policy of Central Government. Division has no role to play in this regard. ***Since, the posts are already surrendered and there is no room to accommodate the applicants in the promotional grade, no further step was taken to proceed with further test.***

10. With these submissions, respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

11. Applicant-union have filed rejoinder to the counter. It has been submitted that Railway Board vide RBE No.39/2012 (A/2) have issued clarification regarding surrender of higher grade posts, which reads as under.







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**"In pursuance of the discussions held in the PNM meeting between Railway Board and All India Railwaymen's Federation [AIRF] on 23rd and 24<sup>th</sup> February, 2012, it has been decided that instructions issued vide Board's letter date 17.6.2011 [RBE No.91/2011] stands withdrawn and *wherever higher grade posts have been surrendered after the issue of the letter dtd.6.3.2007 [RBE No.32/2007] and which have led to promotions being adversely affected for staff working in the immediate lower grade [except in case of cadre restructuring] in all situations the higher grade posts may be restored and the post in the lower recruitment grade from the cadre be surrendered without resorting to seeking difference of money value from the vacancy bank.*"**

12. Again, Director (MPP), Railway Board vide order dated 21.2.2013 communicated the decision of PNM/NFIR meeting held on 20<sup>th</sup> and 21<sup>st</sup> February, 2013 that E.CoR should follow Board's instructions dated 23.3.2013(RBE No.39/2012) and restore higher grade posts which are adversely impacting promotional prospects of staff.

13. It has been submitted that it may not be that for creation of posts, consultation with Trade Union is <sup>not</sup> required, but in case of surrender of posts, consultation with Trade Union is mandatory. In respect of Air Conditioning and Train Lighting, it has been submitted that if requirement was there, the authorities could have outsourced for those branches only. Instead, they chose to outsource for the power wing. It is stated that the theme of the work study group is that the manpower is required in train lighting and air-conditioning wings due to increase in passenger train services and amenities etc. But, this does not mean that the work study group recommended  surrender of posts from Power Group-A.

14. We have heard the learned counsel for both the sides and perused the records. We have also gone through the written



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notes of submission filed by the applicants-Union and the respondent-railways. In the written notes of submission applicants-Union have highlighted the following points.

- i) Impugned orders are passed without consultation with the unions.
- ii) Respondents exceeded their jurisdiction by transferring the applicants on the verge of their promotion.
- iii) There being no question of any technical improvement nor any new technology introduced and there being no closure of the work and there being no any financial loss to the employer, impugned orders are liable to be set-aside.
- iv) Surrender of posts and re-deployment of staffs are opposed to the decision of the Railway Board.

15. In the written notes of submission filed by the respondent-railways, it has been mentioned that ***"while constituting the O.A. on the basis of the documents and averments, applicants have prayed to quash the orders dated 2.11.2012 and dated 30.12.2011 by virtue of which posts have been surrendered and to restore the process of trade test for promotion of the posts of Sr. Tech., Tech-I, Tech.-II and Tech-III in Elect (P) Group"***. In this respect, it has been submitted that simultaneously, applicants also approached the Railway Board for their intervention. Considering the gravity of the matter and after necessary discussion with the Central Union, the Railway Board communicated the decision (Annexure-A/9 to Re-joinder) directing the Zonal Authority to follow the Board's instruction

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circulated under R.B.E. No.39/2012. Resultantly, the Zonal Authority has taken the decision as under.

- (i) All the 317 posts of Elect.(G) surrendered vide office order dated 30.12.2011, 23.3.2012 & 30.3.2012 have been restored back.
- (ii) In view of the order of status quo and further developments made in the matter restoring the surrendered posts, the order dated 2.11.2012 became inoperative and none of the staff has ever been redeployed due to surrendering of posts.
- (iii) Claim of Applicants for restoring the trade test has already been accepted and the persons so eligible have been awarded promotions in the meantime.

16. We have considered the rival submissions and given our deep thoughts thereto. From the above, two things need to be emphasized. Firstly, Work Study Team although recommended the requirement of more manpower in Train Lighting (Group-B) and Air Conditioning (Group-C), but never <sup>assessed</sup> recommended the existing sanctioned strength in Power Group-A to be more thus rendering them surplus necessitating their redeployment. If this be so, it is not understood what prompted the respondent-railways to declare the existing staff working in power Group-A as surplus and consequently, redeploy them in Train Lighting (Group-B) and Air Conditioning (Group-C) by concomitantly, outsourcing manpower for Power Group-A. This action of the respondent-railways appears not to be above board. Secondly, respondents have indicated that since the posts are already surrendered there is no room to accommodate the applicants in

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the promotional grade. This submission of the respondents in their counter makes it very clear that despite there being Railway Boards' instructions (RBE No.32 of 2007) to the effect that higher grade posts cannot be surrendered in case promotional prospects of staff are affected, they did surrender the promotional posts in Power Group-A thereby affecting the promotional prospects of the incumbents in the feeder grade of that Group-A. The above two instances, in our considered view, are approbation and reprobation of the facts in issue by the Respondents. Be that as it may, it is a matter on record that 317 posts of Elect(G) surrendered vide office order dated 30.12.2011, 23.03.2012 and 30.3.2012 have been restored back and the claim of the applicant-union for restoring the trade test has already been accepted and the persons so eligible have been awarded promotions in the meantime. In addition to the above, it has been submitted that in view of order of status quo granted by this Tribunal and further developments made in the matter by restoring the surrendered posts, the order dated 02.11.2012 became inoperative and none of the staff has ever been redeployed due to surrender of posts.

11. Having regard to the above, we quash order dated 2.11.2012 and 30.12.2011 (A/4) and (A/5) respectively. Since it is the categorical submission of the respondents that the claim of the applicant-union for restoring the trade test has already been accepted and the persons eligible have been awarded promotions in the meantime, we are not inclined to pass any order with regard to relief sought vide Para-8(ii) of the O.A.

With the above mentioned observations and directions, the O.A. is disposed of. No costs.

**(R.C.MISRA)**  
**MEMBER(A)**

**(A.K.PATNAIK)**  
**MEMBER(J)**