

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 12 of 2013
Cuttack, this the 30th day of June, 2014

Bhabagraghi Mallick Applicant
Versus
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Y*
2. Whether it be referred to PB for circulation? *Y*

R.C.MISRA
(R.C.MISRA)
Member (Admn.)

A.K.PATNAIK
(A.K.PATNAIK)
Member (Judicial)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 12 of 2013
Cuttack, this the 30th day of June, 2014

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)
HON'BLE MR. R. C. MISRA, MEMBER (Admn.)

.....

Bhabagrahi Mallick,
aged about 57 years,
Son of Late Radhasham Mallick,
At/PO- Poragadei, Via-Mahijanga,
Dist.- Jagatsinghpur
At present working as Khalasi
Under Dy. CSTE (Con)/Bhubaneswar,
E.Co.Rly, Chandrasekharpur, Bhubaneswar.

(Advocates: M/s. P.K.Mohapatra, S.C.Sahoo)

...Applicant

VERSUS

Union of India Represented through

1. General Manager,
East Coast Railway, Chandrasekharpur,
Bhubaneswar, Dist- Khurda.
2. Chief Personnel Officer,
East Coast Railway, Chandrasekharpur,
Bhubaneswar, Dist- Khurda.
3. Deputy Chief Personnel Officer (Cons.),
East Coast Railway, Chandrasekharpur,
Bhubaneswar, Dist- Khurda.
4. Dy. Chief Signal & Telecom Engineer (Cons.),
East Coast Railway, Chandrasekharpur,
Bhubaneswar, Dist- Khurda.

... Respondents

(Advocate: Mr. B.B.Pattnaik)



ORDER

A.K.PATNAIK, MEMBER (JUDL.):

The case of the applicant in nutshell is that he entered into service on 24.01.1973 as a Khalasi on Daily Rate Basis in the construction organization of the Railway. He got temporary status w.e.f. 22.02.1990. He was regularized as Khalasi against PCR Group-D post on 22.02.1992 in the said construction organization. Thus, from the beginning of his service career, he was working in construction organization on permanent basis against the PCR post till date. His colleagues those who are working in the open line have already availed 2 to 3 promotions and at present they are working in Grade-I higher post in open line whereas the applicant has not got any promotion. Since his lien is being maintained in the open line, he has not been considered for promotion to a higher post as has been given to the other similarly situated Khalasis. At no point of time, he has been intimated that his lien is being maintained in the open line but at the fag end of the service, the Sr. Personnel Officer, Construction/Coordination/E.Co.Rly., Bhubaneswar, issued an office order dated 15.10.2012 repatriating him to open line stating that his lien is being maintained in the open line and such repatriation is by way of replacement of staff from open line to construction. However, no objection/willingness has been given/obtained from him. Therefore, his repatriation is prejudicial to his interest as in the event of his repatriation to open line, he will have to work under his juniors because of their promotions to the next higher post in the meantime in

Alley

29

open line. Being aggrieved of such repatriation, earlier he approached this Tribunal in O.A. No. 826/12, which was disposed of at the admission stage on 16.11.2012 with direction to Respondent No.2, i.e. Chief Personnel Officer, E.Co.Rly., Chandrasekharpur, Bhubaneswar, to consider the representation of the applicant dated 02.11.2012. In compliance with the order dt. 16.11.2012 passed in O.A.No. 826/12, Respondent No2 considered the representation of the applicant for his retention in construction organization and rejected the same vide letter dated 21.12.2012. Hence, being aggrieved by the said order of rejection dated 21.12.2012, the applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying to quash the order dated 15.10.2012 and 21.12.2012 being illegal, arbitrary, malafide and unconstitutional. He has also prayed for a direction to the Respondents to allow him to continue in the construction organization till his retirement.

2. Respondents have filed their counter in which it has been stated that the applicant was initially engaged as Khalasi under South Eastern Railway on Daily Rate Basis w.e.f. 24.01.1973. After several retrenchment and break in service, he got temporary status w.e.f. 20.02.1990 and, subsequently, regularized as Khalasi in the Scale of Pay Rs. 780-940/- against PCR post on 20.02.1992. While working as such, as a matter of policy it was decided that the staff who completed more than 20 years in construction organization and whose lien have been fixed in various zones/divisions and have a residual service of more than 3 years for retirement are to be repatriated to their lien



maintaining unit/division. As per the said policy decision, a large number of staff have been repatriated to their parent unit/division/organization. In the instant case, the post in which the applicant is working as work charge post, which is purely temporary in nature and his continuance is dependant on the availability of work. Since the fund as well as work is/are shrunked in construction unit/organization, it is decided to repatriate the staff as per the said policy and, accordingly, the applicant has been transferred to Khurda Road Division where his lien is fixed/maintained. It has been stated that as all the posts in construction organization are temporary work charge post, no one can claim to be posted permanently in the construction wing/organization. The claim of the applicant to continue in the construction organization is not tenable as per the order No. 115/2042 dated 15.10.2012 issued by the SPO, Construction, Co-ordination, Bhubaneswar and has been done in administrative interest since there is no work available in the construction organization/unit. As per the order dated 09.05.2012, the lien of PCR staff of construction organization was fixed as per the Railway Board Instruction (RBE No. 61/02 circulated vide S.E.Rly. Estt. Srl. No. 66/2002 dated 20.02.2006) in which it has been provided to do away with the concept of permanent construction reserve post and to provide lien to the existing PCR staff in the open line. Since the Railway Board circular was not implemented in the E.Co.Rly therefore decision has been taken by the competent authority to fix lien of the PCR staff of construction organization in the open line. They have also denied the allegation of the applicant that his repatriation to the open line is to

W.D.O.S

favour some other persons those who are working in the open line to be brought to construction unit. It has been stated that the repatriation of the applicant is in compliance with the RBE No. 61/02, therefore, there is no illegality committed by the Respondents in doing so. It has been stated that as no work is available for the applicant in the construction unit, the applicant was rightly taken to the open line as per order dated 15.10.2012. Respondents have prayed for dismissal of this O.A. especially on the ground that repatriation of the applicant being on the basis of a policy, this Tribunal should not interfere in the matter and hence the O.A. is liable to be dismissed.

3. Applicant in his rejoinder has more or less reiterated the facts stated in the O.A. It has been stated that in the circular it has been provided for taking immediate action to provide promotion in open line on repatriation so that no difficulty will be caused to the employee and the employee concerned on repatriation should not suffer in the matter of seniority and promotion. The Respondents did not implement the said circular and remained silent over the years as a result of which a number of junior employees were promoted to the higher post in the open line by ignoring the seniority of the persons continuing in the construction wing. Therefore, in case the applicant is repatriated at this juncture he will have to suffer and work under his juniors. On the above ground he has reiterated the prayer made in the O.A.

4. We have heard Mr. P.K.Mohapatra, Ld. Counsel for the applicant, and Mr. B.B.Patnaik, Ld. Panel Counsel for the Railways.

W. Alles

5. The main argument advanced by Mr. Mohapatra is that the Respondents in their counter have specifically stated that the order of repatriation has been passed in compliance of the instruction of the Railway Board vide Estt. Si. No. 66/02 dated 20.06.2002. Though the Railway Board has specifically stated to take immediate action so that the staff working under construction organization can avail promotion in open line, the Respondents instead of implementing the same at once considered and granted promotion to many employees working in the open line, out of which, some are junior to the applicant and after a lapse of 10 years have sought to repatriate the applicant in the guise of policy decision and there is no work in the construction organization which is not tenable in the eyes of law. On the above ground, Mr. Mohapatra has prayed for quashing of the impugned order and allowing the applicant to continue in his post in construction organization till his retirement.

6. On the other hand, Mr. B.B.Patnaik, Ld. Panel Counsel for the Railway, by placing reliance on the points made in the counter has strongly opposed the stand taken by the applicant. It has been stated by him that absolutely there is no flaw in the decision making process of repatriating the applicant from construction organization to open line. The applicant instead of joining on repatriation in parent unit/open line has unnecessarily dragged the matter to this Court stating that as some of his juniors have already got promotion in the open line he will have to work under them and it will be prejudicial to him. Repatriation of the applicant from construction organization to open line is by way of policy and shrinkage of work. Mr. Patnaik's



contention is that the lien of the applicant is all along maintained in open line but his services were placed for the interest of the Railways in the construction unit. For all purposes, the continuance of the applicant in the construction unit was on deputation and a deputationist has no right to claim his continuance forever in an organization where his services were placed till completion of work. The repatriation of the applicant is in order and, therefore, this O.A. is liable to be dismissed.

7. We have considered the arguments advanced by Ld. Counsel for both the sides with reference to their respective pleadings and perused the materials placed in support thereof.

Letter dated 9/10.5.2010 reads as under:

“While fixing the lien, the following principles should be adopted.

0. The lien will be fixed on as is where is basis in the Division under whose geographical jurisdiction the PCR staff is working.
0. The lien of the PCR staff should be provided category-wise and trade-wise in their respective departments.
0. The lien should be fixed from the date of regular appointment/promotion/absorption (non-fortuitous service) in the grade and the post substantively held, irrespective of the present grade held now by the incumbents, and seniority should be assigned/regulated accordingly in the Open Line Organization.
0. After interpolation of seniority along with the Open line staff as per above principle, if it is revealed that immediate junior Open Line staff has already been promoted to higher grade vis-à-vis a PCR staff in the Construction Organization, the PCR staff should also be entitled to proforma promotion and seniority at par with his junior Open Line staff, subject to his being found suitable for the same.”

Alley

Estt. Srl. No. 66/02 is extracted herein below:

“2.1 The Board have reviewed the matter and come to the conclusion that with the above developments having taken place the concept of Construction Reserve has already lost its utility and, therefore, should no longer be used for any purpose whatsoever. If any staff happen to continue in the Construction/Projects without a position/lien in the open line in the appropriate category, immediate action should be taken to provide him the same so that there is no difficulty in the tie of his repatriation from the Construction/Project when the need arises and he does not suffer in the matter of seniority and promotion.”

8. We find that the present repatriation of the applicant is with reference to the above circular and instruction issued by the Railway Board. The above two circulars have not been assailed by the applicant to be in any manner illegal, arbitrary or unconstitutional. Further, who should be transferred where and at what point of time is a matter of policy and Court and Tribunal lacks jurisdiction to interfere in the those matters. Further, law is well settled in plethora of judicial pronouncements that Court and Tribunal is not competent to enter into the domain of administration where the decision is taken as a matter of policy. In the instant case, the grievance of the applicant is only against his repatriation on the ground that in the open line unit many of his juniors have already got promotion and his joining would prejudice his interest, which is hardly of any ground for this Tribunal to interfere.

9. For the discussions made above, we are not inclined to

W.Lee

interfere in the policy decision of the Railway administration with regard to the repatriation of the applicant from construction organization to open line.

10. O.A. is accordingly, dismissed being devoid of merit.


(R.C. MISRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judicial)

RK