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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No.306 of 2013
Cuttack, this the 22nd day of May, 2013

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HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

.....
Manas Pritam Rout,
Aged about 33 years,
S/o.Upendra Bhanja Rout,
Working as Peon,
Under Sr. Divisional Electric Engineer (TRD),
Rourkela, S.E.Railway,
Chakradharpur Division,
Residing at Q.No.E/86,
Sector-18,Rourkela-III,
Dist. Sundergarh.Applicant

(Advocate(s):-M/s.Dhuliram Pattanayak,N.Biswal,N.S.Panda)

-Versus-

Union of India represented through –

1. General Manager,
South Eastern Railway,
Garden Reach,
Kolkata-43,
West Bengal.
2. Divisional Railway Manager,
Chakradharpur Division,
South Eastern Railway,
Chakradharpur,
At/Po.Chakradharpur,
Dist. West Singhbhum,
Jharkhand.

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3. Senior Divisional Personnel Officer,
S.E.Railway,
Chakradharpur Division,
At/Po.Chakradharpur,
Dist. West Singhbhum,
State-Jharkhand.Respondents

(Advocate(s)-Mr.T.Rath)

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(oral)

A.K. PATNAIK, MEMBER (J):

It is the case of the Applicant, *inter alia*, that after being completed ITI in (Instrument Mechanic), he was selected to undergo Act Apprentice Training under the South Eastern Railway and came out successful. Thereafter, he was sent for medical checkup in which he was found B2 and below. He was posted as "Sub Crane Khalasi" under (C&W), S.E.Railway under Chakradharpur Division. Accordingly, Applicant joined at Bondamunda Section on 30.8.2006. Due to family problem, while he was continuing under SSE, Mech (C&W) Department, Bondamunda under Chakradharpur Division, he opted for mutual inter departmental transfer to ECoRly vide Shri Narayan Sasmal of Khurda Division. Since the Medical category of Applicant was B2

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& below and Shri Narayan Sasmal was B1 and below, Respondent No.3 directed the applicant to report the Chief Medical Officer of Bondamunda Section as according to Rules in case of mutual transfer the medical category of both the employees should be same. As the medical category of applicant was found to be B2 and below, the request of mutual transfer was cancelled.

2. It has been alleged that from the month of December, 2011, the SSE, Mech (C&W) Department, Bondamunda did not allow the applicant to sign the attendance register but allowed him to continue as Crane Khalasi under (C&W) Department without any salary. Applicant represented against such action based on which Respondent No.3 vide order dated 31.5.2012 held the posting of the applicant in Mech (C&W) Department as illegal as he was not medically fit for the post of Sub Crane Khalasi. Hence the applicant was transferred and posted ^{as} ~~at~~ Helper under SSE/Works/Rourkela. It has been stated that the said order of reversion to Helper is not sustainable as the same was issued without giving him any notice in compliance of principles natural justice. By citing cases of few others who have been allowed to

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continue in Mech (C&W) Department though found medically B2 and below the applicant submitted representation to Respondent No.3 on 3.9.2012 requesting restoration of his position. It has further been alleged that the Respondent No.3 without meeting the points raised by him in his representation vide order dated 7.9.2012 directed for payment of arrear salary from November, 2011 till his joining at his new unit i.t. at SSE (Works) Rourkela.

3. Further the applicant questioned the action of the Respondents by stating that the post of Crane Driver in Mech (C&W) Department is a promotional post of Crane Khalasi and as when similarly situated employees have been allowed to continue as Crane Driver in Mech (C&W) Department how was he declared unfit to continue in Mech (C&W) Department as Crane Khalasi. But the Respondent No.3 without considering his grievance issued an order dated 17.10.2012 transferring and posting him as Peon under the Sr. Divisional Electric Engineer (TRD), Rourkela under Chakradharpur Division without giving him any opportunity.

4. Hence being aggrieved by the above action of the Respondent No.3, the Applicant has filed the instant OA with



8
prayer to quash the order dated 31.5.2012, 17.10.2012 and to direct the Respondents to allow him to continue as Sub Crane Khalasi in Mech (C&W) Department under Chakradharpur Division with all consequential service and financial benefits.

5. Copy of this OA has been served on Mr.T.Rath, Learned Standing Counsel for the Railway for the Respondents. We have heard Mr.N.Biswal, Learned Counsel for the Applicant and Mr.T.Rath, Learned Standing Counsel appearing for the Respondents. Mr.Biswal in course of hearing has placed reliance on the information obtained under RTI Act, 2005 showing continuance of persons in the C&W Department even after finding medically fit in B2 and below and has submitted that the injustice caused to the applicant in the decision making process of the matter needs to be removed. However, Mr. Rath, Learned Standing Counsel appearing for the Respondents vehemently opposed the maintainability of this OA on the ground that if the applicant has any grievance against the orders impugned in this OA instead of rushing to this Tribunal straightaway he should have agitated the

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same before the next higher authority and having not done so this OA is liable to be dismissed *in limine*.

6. On being confronted, Mr.Biswal has prayed for liberty to make an exhaustive appeal/representation to the Respondent No.3 and has prayed for direction to the Respondent to consider and dispose of the same within a stipulated period and till then the Respondents be directed not to take any coercive action against the Applicant. Mr.Rath, Learned Standing Counsel has no serious objection if liberty is allowed to the applicant to make an appeal/representation. the above extent. WL
In view of the above, this Original Application is disposed of with direction to the Respondent No.3 that in case the applicant makes an application within fifteen days hence, the same be considered and disposed of within a period of one month and communicate the result thereof to the applicant within a period of one month and till then there shall be no coercive action against the Applicant. There shall be no order as to costs.

7. On the prayer of Mr.Biswal, Learned Counsel for the Applicant it is ordered that copy of this order along with OA be sent to the Respondent No.3 by speed post at the cost of the

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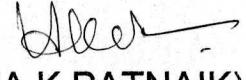
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OA No.306/2013

Applicant for which Mr.Biswal undertakes to furnish the required
postal requisite within three days.


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


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