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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 693 of 2013
Cuttack, this the 23rd day of May, 2016

S.P.Srinivas Rao Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


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


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

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 693 OF 2013
Cuttack, this the 23rd day of May, 2016

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

.....
S. P. Srinivas Rao,
aged about 45 years,
Son of Late S. Rama Rao,
at present working as SSE(Works)/
E.Co. Rly/ RGDA/ Waltair Division,
permanent resident of C/o. Y. Harishchandrudu,
Door No. 9.6.9, Tirumala Rao Street,
Gandhi Nagar, Kakinada, Dist-East Godavari,
Andhra Pradesh-533004.

.....Applicant

By the Advocate(s)-M/s. N.R.Routray, Smt. J.Pradhan, T.K.Choudhury,
S.K.Mohanty

-Versus-

Union of India, represented through

1. General Manager, East Coast Railway, E.Co.R Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Chief Personnel Officer/ East Coast Railway, E.Co.R Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Divisional Railway Manager (P), East Coast Railway Waltair Division, At/P.O- Dhondapathy, Town/Dist-Vishakhapatna, Andhra Pradesh.
4. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43, West Bengal.
5. Sr. Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, At/P.O. Chakradharpur, Dist-West Singhbhum, Jharkhand.

.....Respondents

By the Advocate(s)- Mr. S.Barik(For R-1, 2 & 3),
Mr. S.P.Mohanty (For R-4 & 5)

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ORDER

A.K.PATNAIK, MEMBER (J):

The facts absolutely necessary for adjudication of the present dispute are precisely and succinctly stated hereunder.

2. The order dated 03.03.2003 issued by the Divisional Personnel Officer of erstwhile South Eastern Railway under Annexure-A/7 reads as under:

“In terms of CPO/GRC’s No. P/Engg/W/02/00 dated 9.3.99 the following orders are issued with the approval of Sr. DEN(Con)’s:-

1. Sri S.P. Srinivas Rao, SE(W) in scale of Rs. 6500-10500(RSRP) of CKP Division who has reported in this Office on 25.02.03 on being released by CKP Division vide DRM(P)/CKP’s No.EE/Supor/Posting/SE(Works)/33 dated 21.02.03 is posted as SE(Works) in scale of 6500-10500(RSRP) as In-charge at KRDL vice Sri Prabhu Singh.

2. Sri Prabhu Singh In-charge SE(W) in scale Rs. 6500-10500(RSRP) KRDL is posted as SE(Works)/Special at KRDL.

NOTE: 1) The above postings ordered in administrative interest as such Sri S.P. Srinivas Rao is entitled to all transfer privileges. Period from 25.02.2003 all date shall be treated as waiting for order

2) This has reference to Sr. DEN (CO)’s Note No. WEX/06/SE(W)/2 dated 01.03.2003.”

3. As it appears the applicant submitted representation and upon consideration of the same, the authorities issued the letter dated 30.04.2013 (Annexure-A/37) and dated 10.05.2013 (Annexure-A/38).

Both the orders are quoted hereunder:

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“(Annexure- A/37, dated 30.04.2013)

Sub: Your representation for transfer of lien from CKP Division of S.E. Rly. to WAT Division of this Railway.

Ref: Your representation dated 18/03/2013 and 08.09.2013.

Your above mentioned representations have been examined by the competent authority and it is decided that either you have to submit application for own request transfer to WAT Division of this Railway as you will be spared to S.E. Railway if no such request application is received from you.

Hence, you are requested to submit application for own request transfer to WAT Division of this Railway by 15.03.2013 failing which action will be taken for your repatriation to south Eastern Railway as your lien is being maintained in CKP Division of SE. Railway.

(Annexure- A/38, dated 10.05.2013)

Sub: Transfer of lien from CKP Division of S.E. Rly to WAT Division of East Coast Railway.

Ref: 1) Your representation dated 18.03.2013 and 08.04.2013.

2) CPO/BBS letter No. E.CoR/Pers/04/Staff/ Repatriation/SPSR dated 30.04.2013

In connection with your representation submitted to CPO/BBS the reply letter addressed to you by CPO/BBS is enclosed herewith.

As per the decision of the competent authority. You are requested to submit application form own request transfer to WAT Division of this Railway by 15.05.2013 failing which action will be taken for your repatriation to S.E. Railway as your lien is being maintained in CKP Division of S.E. Railway.”

4. The present O.A. has been filed by the applicant assailing the orders dated 30.04.2013 (Annexure-A/37) and dated 10.05.2013

(Annexure-A/38) with further prayer to quash those orders and direct the Respondents to treat the applicant as regular employee of Waltair Division in pursuance of the order dated 03.03.3003 under Annexure-A/7.

5. Respondent Nos. 1, 2 and 3 have filed their counter in which it has been stated that the applicant is not entitled to the relief claimed in this O.A. as he was selected as an Appr. Inspector of Works, Grade-I through Railway Recruitment Board as would be evident from the order of the CPO, Garden Reach, Kolkata (Annexure-A/1). Thereafter, he was sent for training for a period of 12 months as would be evident from the order dated 13.10.1997 (Annexure-A/2), in which it was specifically known to him that his lien shall be maintained in Chakradharpur (CKP) Division. On completion of his training the applicant was posted as IOW, Grade-I in Waltair Division keeping his lien at CKP Division of S.E.Railways vide order dated 09.03.1999 (Annexure-A/4). The above condition that his lien shall be maintained in CKP Division was clearly stated in his release order dated 21.02.2003 (Annexure-A/6). On reporting to duty at Waltair Division, he was posted to Kirandul as SE (Works) vide letter dated 03.03.2003 (supra). Provisional Integrated Seniority List of ADEN, Grade-B selection against 70% DPQ quota was circulated vide letter dated 24.03.2004 wherein the name of the applicant did not feature. He represented to DRM (P), Waltair on 24.04.2004 (Annexure-A/8) to include his name in the said Integrated Seniority List circulated on 24.03.2004. Respondent No.2, based on the wrong information issued restructuring promotional order dated 01.02.2005



promoting the applicant from SE to SSE. Subsequently, his name was included in the provisional integrated seniority list of Civil Engineering Department of E.Co.Railways for promotion to the post of AEN Group-B against 70% DPQ vide letter dated 05.01.2007, in which the name of the applicant was also forwarded wrongly showing therein that the lien of the applicant was being maintained at Waltair Division. On 10.03.2007, the applicant submitted representation requesting for expunging his lien from CKP Division. The applicant again represented on 05.03.2010, reiterating his earlier request. In response thereto the CPO, Bhubaneswar vide letter dated 30.08.2010 (Annexure-A/23) advised the DRM (P), Waltair to obtain an application from the applicant for his transfer from CKP Division to Waltair Division so as to take further necessary action in the matter as the posts of SE and SSE have been merged together in PB-II with Grade Pay Rs. 4600/- with an element of Direct Recruitment Quota on implementation of recommendation of the 6th CPC. After a protracted correspondences in the matter, the CPO/SER vide letter dated 27.07.2011 informed that the request of transfer of lien of the applicant from CKP Division to Waltair Division had been agreed to subject to following of all the rules about seniority etc. The said letter dated 27.07.2011 was received in the office of CPO, Bhubaneswar on 19.12.2011. In terms of letter dated 27.07.2011, the applicant was advised to submit his Inter-Railway own request transfer application through proper channel giving his willingness to accept the bottom seniority. In the meantime, the provisional seniority of Technical Supervisors in Engineering

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Department of E.Co.Railway was published on 17.05.2012 showing the name of the applicant at Sl. No. 45. Thereafter, a list of eligible candidate was published in letter dated 22.08.2012 featuring the applicant's name at Sl. No. 34. On 05.09.2012, a letter was received from DPO, Waltair requesting to delete the name of the applicant from the integrated seniority list as he was a lien holder of CKP Division working in Waltair Division. Accordingly, his name was deleted from the integrated seniority list published on 18.02.2013. The applicant, in pursuance of the earlier letter of the DPO, Waltair, dated 22.02.2013 did not submit any application with reference to the letter of the CPO, Bhubaneswar dated 08.02.2013 in which he was advised to give his willingness for his lien transfer from CKP Division to Waltair Division accepting the bottom seniority and made a representation dated 08.04.2013 to maintain his lien at Waltair Division. On considering the representation dated 08.04.2013. he was advised vide letter dated 10.05.2013 to submit application for own request transfer by 15.05.2013 with a rider that if no such application is received within the stipulated time action will be taken for his repatriation to S.E.Railways where his lien is being maintained. By stating so, it has been submitted that there being no fault on the decision taken in the matter, this O.A. is liable to be dismissed.

6. The applicant has filed a rejoinder in which it has been stated that the applicant was transferred from CKP to Waltair Division vide letter dated 05.02.2003 and posted against the existing vacancy. In the said order of transfer there was no stipulation regarding maintenance of lien in CKP Division whereas for the first time in the release order it



was stated that the lien of the applicant will be maintained in the CKP Division. It has been stated that the Respondents have not filed a piece of evidence or scrap of paper to establish that the lien of the applicant is still continuing in CKP Division. Rather, after his posting at Waltair Division applicant was promoted to the post of SSE (Work) on regular measure and his name was also reflected in the integrated provisional seniority list of Civil Engineering Department of E.Co.Railways. If, at all it is a fact that the applicant belongs to CKP Division then he would have been called upon to participate in the selection conducted at CKP Division for promotion to the post of SSE as well as for formation of Group B panel of AENs against 70% vacancy. Accordingly, the applicant has tried to establish that the stand taken by the Respondents in their reply is nothing but to mislead this Tribunal so as to deprive the applicant to get relief claimed in this O.A.

7. Respondent Nos. 1 to 3 have also filed their reply to the rejoinder filed by the applicant more or less reiterating the stand taken in the counter and denying the stand taken in the rejoinder.

8. We have heard Mr. N.R.Routray, Ld. Counsel for the applicant, Mr. S.Barik, Ld. Panel Counsel appearing for Respondent Nos. 1, 2 and 3, and Mr. S.P.Mohanty, Ld. Counsel appearing on behalf of Respondent Nos. 4 and 5, and perused the materials placed on record.

9. In this O.A., Respondent No. 4 is Chief Personnel Officer, S.E.Railway, and Respondent No. 5 is Sr. Divisional Personnel Officer, S.E.Railway. They have filed M.A.No. 384/14 under Section 8(3) of the CAT (Procedure) Rules, 1985 in which they have prayed for deletion of

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their names from the cause title. Taking cue from the stand taken in the said M.A., it has been stated by Mr. N.R.Routray, Ld. Counsel for the applicant, that as Respondent Nos. 4 and 5 have candidly admitted in their M.A. that CPO, Garden Reach, S.E.Railways, vide letter dated 27.07.2011 had given his approval to change the lien from CKP Division to Waltair Division, there is no impediment on the part of the Tribunal to allow the O.A. by quashing Annexures-A/37 and A/38, wherein the applicant was asked to submit his willingness for change of lien by accepting the bottom-most seniority.

10. On the other hand, Ld. Counsel for the Respondents reiterated that as the present applicant submitted his representation for transfer of his lien from CKP Division to Waltair Division and to maintain his lien and seniority in Waltair Division without specifically mentioning therein with regard to acceptance of bottom seniority obviously he has not been taken to be a permanent lien holder of Waltair Division. Accordingly, he has prayed for dismissal of this O.A.

11. We have considered the rival submissions of the Ld. Counsels for the respective parties.

12. The focal issue which really warrants to be dwelled upon is as to whether in view of the stand taken by Respondent Nos. 4 and 5 in the Misc. Application that the CPO, Garden Reach, S.E.Railways vide his letter No. P/L/9/Repatriation/SECR dated 27.07.2011 (Annexure-A/26) has given his approval for change of the lien of the applicant from CKP Division to Waltair Division would operate as against the order issued and impugned in this O.A. under Annexures-A/37 and A/38. The



letter dated 27.07.2011 (Annexure-26) being very relevant for taking a decision, the same is quoted herein below:

“Sub:Representation of Sri S.P. Srinivas Rao, SSE (Works) working in KRDL/WAT Division for transfer of his lien from CKP Division to WAT Division.

Sri S.P. Srinivas Rao, SSE(Works) is working in WAT Division of East Coast Railway and his lien is being maintained in CKP Division of this Railway. Sri Rao applied for cut off his lien from CKP Division as he is physically working in WAT Division of East Coast Railway. The case was put up to competent authority who agreed to with the change of lien in favour of Sri S.P. Srinivas Rao, SSE(Works) from CKP Division of this Railway to WAT Division of East Coast Railway subject to following of all the rules about seniority etc. applicable for such cases.

The staff concerned may please be informed accordingly.”

As it appears, in pursuance of the aforesaid letter, the CPO, Bhubaneswar wrote a letter dated 08.03.2012 to the DRM (P), E.Co.Railway, Waltair requiring submission of the application by the applicant giving declaration to accept the bottom seniority. The said letter is at Annexure-A/29, which is extracted herein below:

“Sub:- Representation of Sri S.P. Srinivas Rao, SSE (Works)/VZM a lien holder of CKP Division to expunge his lien from CKP Division/S.E. Rly to WAT Division of E.Co. Rly.

Ref: GM(P) SER's Letter No. P/L/9/ Repatriation/SECR dated 27.07.2011.

With reference to the above, it is informed that Sri S.P. Srinivas Rao SSE(Works) working in KRDL/WAT Division may be advised to submit his inter railway own request transfer application from CKP division S.E.Rly. to WAT Division E.Co.Rly in

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the prescribed format duty giving declaration to accept bottom seniority etc. through proper channel if he desires so, and forwarded to this office for further necessary action.

This issued with the approval of competent authority.”

13. Going by the letter dated 27.07.2011 at Annexure-A/26, letter dated 08.03.2012 (Annexure-A/29) and the impugned letters dated 30.04.2013 (Annexure-A/37) and dated 10.05.2013 (Annexure-A/38), we do not see any infirmity in asking the applicant to submit his representation for change of lien by accepting the bottom seniority as per rules. The applicant, admittedly, has not filed his willingness with reference to the aforesaid letters. If rules of the Railways provides so then both the employer and the employee are bound to follow the rules. Deviation of the rules in one case tantamount to cause injury to all other existing employees, who might have placed above the applicant but for the reasons and change of lien have to face consequence adversely affecting their interest but they are not before us. The letter of the CPO, Garden Reach (Annexure-A/26) cannot be termed to be an unconditional irrespective of acceptance of bottom seniority. It is also noted that in the letter of selection dated 26.09.1997 (Annexure-A/1), it was clearly mentioned that the lien of the applicant will be maintained in CKP Division as per the order of the competent authority. This has also been reiterated in the order dated 21.02.2003 (Annexure-A/6). In pursuance of the order under Annexure-A/6 dated 21.02.2003, the DPO, Waltair ought to have mentioned such condition in the order under Annexure-A/7 dated 03.03.2003. The applicant was very much aware by the orders under



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Annexure-A/1 and A/6 that his lien is being maintained at CKP Division.

Mere, non-mentioning of the said clause in the order under Annexure-A/7 dated 03.03.2003 by the DPO, Waltair does not mean that the lien of the applicant has been transferred from CKP Division to Waltair Division. The applicant has also not challenged the orders under Annexure-A/1 and A/6 earlier to this O.A. or even in the present O.A.

14 In view of the above, the prayer of the applicant to quash the letter under Annexure-A/37 and A/38 thereby insisting upon the Respondents to act upon the order under Annexure-A/7 is not warranted.

Accordingly, the O.A. is dismissed. No costs.


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


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

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