

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O.A. No. 762/2013

Reserved on : 29/09/2016

Date of Order : 2.12.16.

C O R A M

HON'BLE MR. R.C. MISHRA, ADMINISTRATIVE MEMBER
HON'BLE MR. S.K. PATTHAIK, JUDICIAL MEMBER

1. K.S.N. Raju, aged about 52 years, son of Late K.r.K. Raju, presently working as Divisional Personnel Officer, Office of the Divisional Railway Manager, East Coast Railway, Visakhapatnam and presently residing at Murali Nagar, Sector-3, Visakhapatnam.
2. Pulin Bihari Mondal, aged about 54 years, son of Late Bholanath Mondal, presently working as Divisional Personnel Officer, Office of the Divisional Railway Manager, East Coast Railway, Khurda Road and residing at Railway Colony, Khurda Division, Jatani, Khurda.

..... Applicants.

-By Advocate(s) : Shri N.R. Routray

-Versus-

1. The Union of India represented by Secretary (Establishment), Ministry of Railways (Railway Board), Rail Bhavan, New Delhi-110001.
2. The Director Establishment (GP), Ministry of Railways (Railway Board, Rail Bhavan, New Delhi:- 110001.
3. The General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar.
4. General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
5. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar.

..... Respondents.

-By Advocate(s):- Shri S.K. Nayak on behalf of Shri S.K. Ojha.

Shri S.K. PatthaiK

ORDER

Per S.K. Pattnaik, J.M.:- Both the Applicants have filed the present OA for the following reliefs as outlying in Para 8 of the OA:-

- “(i) Allow the original application.*
- (ii) To quash the Board’s letter dtd. 29.05.2013 (Annexure A/17);*
- (iii) To direct the Respondents to reckon the seniority of the Applicants from the date of entry into Gr. B service for preparing the Integrated Seniority List as per Board’s Letter No. E(GP)-2009/1/97 dated 13.05.2011 and incorporate the names in the Integrated Seniority List issued vide letter No. E(GP) 2012/3/5(Personnel), dtd. 07.05.2013;*
- (iv) Or, to direct the Respondents to reckon their seniority in the Integrated Seniority List as per Board’s circular E(Q) III-77AE3/126 dtd. 03.12.1977, from the date they had joined in the East Coast Railway on being transferred and relieved by the South Eastern Railway.*
- (v) And pass any order order/orders as this Hon’ble Tribunal deem fit and proper in the interest of justice.”*

2. Applicants’ case, in short, runs as follows:-

Cause of action for the present case arose on 29.05.2013 (Annexure A/17) when the Railway Board rejected the joint representation of the applicants seeking correction of integrated seniority list published vide letter dated 07.03.2013 (Annexure A/16). The grievance of the applicant is that by rejecting such representation the Railway Board had given a complete go by to their circular dated 13.05.2011 (Annexure A/12) and their own decision communicated vide letter dated 07.01.2003, due to non application of mind. Applicant no. 1 was appointed on 14.02.1980 and Applicant

S.K. Pattnaik

no. 2 was appointed on 15.03.1982 in Group 'C' (Non-Gazetted) in South Eastern Railway. The applicants were promoted to Group 'B' (Gazetted service) in South Eastern Railway vide office Memo dated 12.02.2002 (Annexure A/1). Subsequently, Ministry of Railway issued a notification creating two new zones, i.e. South East Central Railway and East Coast Railway from South Eastern Railway and these zones came in to operation w.e.f. 01.04.2003. The Railway Board called for options from regularly selected Group 'B' officers for their transfer to new zones vide Railway Board's letter dated 28.02.2002 (Annexure A/4). The applicants hailing from South Eastern Railway opted for their transfer and absorption in East Coast Railway and on consideration of their options they were posted on administrative interest vide Chief Personnel Officer (South Eastern Railway) Office Order dated 14.03.2003 (Annexure A/5) and 30th January, 2003 (Annexure A/6) respectively. Consequently, applicant no. 1 joined East Coast Railway on 02.04.2003 and applicant no. 2 joined on 14.02.2003. Applicant no. 1 was initially transferred vide Office Order dated 06.03.2003 against the senior scale posts to East Coast Railway, however vide modified order dated 14.03.2003 the applicant was posted against the vacancy caused due to transfer of one Rajesh Kumar to East Central Railway, Hajipur on the basis of option transfer. When matters stood thus there was a difference of view between Railway Board and the Zonal Railway as to the exact number of posts available on East Coast Railway for absorption of the transferred officers. When the Railway Board vide its letter dated

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16.09.2003 (Annexure A/7) took an arbitrary stand that there were 16 posts (those 16 posts were shown occupied by two Group 'A' officers and 14 Group 'B' Personnel officers already working in East Coast Railways). In response to Railway Board's letter dated 16.09.2003, the Chief Personnel Officer, East Coast Railway vide its letter dated 13.10.2003 (Annexure A/8) intimated the Railway Board that the cadre strength of East Coast Railway, Personnel Branch was 18 (after taking into consideration the two Group 'A' officers working on the system) and not 16 as mentioned and requested the Railway Board to revise their orders as the list of Group 'B' officers of Personnel Department who have exercised option for permanent absorption in East Coast Railway did not contain names of three officers, namely, N.R. Pattnaik, P.B. Mandal (Applicant No. 2) and K.S.N. Raju (Applicant No. 1) of Sl. No. 4,5 and 16 of the list of Group 'B' officers working against the above 16 posts. Further case of the applicants is that they had come on transfer to East Coast Railway along with their post and were physically working with the vacancies available but they could not be shown to have been permanently absorbed from the date of their joining in East Coast Railway in spite of the option called for vide letter dated 22.08.2002 (Annexure A/4). The applicants also are aggrieved by the decision of the Railway Board communicated vide letter dated 15.07.2005 (Annexure A/10) wherein the applicants have been directed to be assigned bottom seniority and have been directed for their transfer from South Eastern Railway to East Coast Railway on their own request

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forgetting the ground reality that they had already joined the new zone in 2003 itself. Applicant no. 1 had joined in East Coast Railway on 02.04.2003 and applicant no. 2 on 14.02.2003 and prior to their joining they had already been promoted to Group 'B' in 2002 itself (Annexure A/1 to A/3). Further case of the applicants is that provisional integrated seniority list of Group 'B' of personnel department was circulated vide Board's letter dated 29.11.2012 in which name of the applicant did not figure. According to the applicants since the provisional seniority list was prepared taking into account the Group 'B' officers appointed upto 2004, the name of the applicants ought to have been placed in the list as they entered in Group 'B' service in 2002 itself. Further case of the applicants is that in spite of Board's letter dated 13.05.2011 (Annexure A/12) wherein there was categorical direction to take into account the entry into Group - 'B' service, but the applicants were denied their entry in the integrated seniority list even though they had entered into Group 'B' service w.e.f. 12.02.2002 (Anexure A/1). Both the applicants had submitted joint representation on 24.01.2013 which has been rejected by the Railway Board communicated vide letter dated 29.05.2013 (Annexure A/17) indicating that the applicants had joined East Coast Railway on Bottom seniority w.e.f. 15.07.2005 and accordingly in the provisional Group 'B' seniority list issued by Railway Board on 29.11.2012 only covered officers of Group 'B' upto 2004. The applicants have impugned the said order being arbitrary

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and not in consonance with the ground reality, and contrary to their own official documents, and correspondence.

3. The official respondents in their counter reply have basically submitted that consequent upon formation of 7 new Railway Zones, options were invited vide Board's letter dated 22.08.2002 (Annexure A/4) from Group - 'B' officers who were regularly appointed to Group - 'B' after due selection, for absorption in the same department in the new zones. Those transferred to new zones on option basis retained their original Group-B seniority of the parent Railways, while those considered otherwise were transferred to new zones on bottom seniority in normal course as per prevalent guideline issued by the Railway Board vide letter dated 03.12.1977. It is submitted by the respondents that the applicants while working in East Coast Railway had sought transfer on that Railway on own request on acceptance of bottom seniority and on the basis of which they were transferred vide Board's order dated 15.07.2005 and assigned bottom seniority in East Coast Railway in terms of Board's letter dated 03.12.1977. Therefore, as their lien in East Coast Railway started from 15.07.2005, they were rightly assigned Group 'B' seniority from 15.07.2005. The respondents have further submitted that there is no dispute with regard to the fact that the cadre strength of Sr. Scale/Jr. Scale posts in East Coast Railway is 18 (including three work-charges posts) instead of 16. As per the respondents since the seniority list as on 01.01.2012 covered officers with Group 'B' dates only upto 2004, the applicants having been

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assigned Group 'B' seniority from 15.07.2005 did not find place in it. It is further submitted by the respondents that the inter-se seniority of the Group 'B' officers in the Railways who carry out inter-railway transfer on bottom seniority is fixed from the dates their transfer orders are issued by the Railway Board (in the case of those who are already working on the Railways to which they are transferred), or the actual dates on which they join the Railway concerned (in the case of those who join consequent to such transfers), as the case may be. The same principle has been adopted while fixing their Group 'B' seniority at the All India level. The applicants came to East Coast Railway on bottom seniority w.e.f. 15.07.2005 and their Group 'B' seniority at the All India level has also been fixed accordingly. The respondents have also denied the discrimination point raised by the applicants as no benefit has been given to any person in similar circumstances based on his date of entry into Group 'B' service. It is further pleaded that as per Board's letter dated 13.05.2011, integration of Group 'B' seniority in each department is to be done in the order of date of induction of the officers into Group 'B' without disturbing the prevailing inter-se seniority on each Railway/Unit, for the limited purpose of empanelment on Group 'A'/Jr. Scale. The phrase used in this letter, viz "in the order of the dates of induction of the officers in Group 'B'.....", connotes the dates from which the Group - 'B' officers are actually holding lien in the respective Railway/Units in which their seniority is being maintained. The seniority of the applicants at the All India level has been fixed as per

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the instructions of 13.05.2011 only and no different method has been adopted in the case of the applicants. The respondents have finally submitted that it is settled laws that the claim of seniority is not a matter of right which is within the domain of the administration restraining judicial interference except exceptional circumstances. The respondents have, therefore, prayed for dismissal of the OA.

4. Before advertent to the merits of this case, it may be worthwhile to reflect at the outset that all the contentious issues can be answered with the aid of circulars and guidelines of the Railway Board vis-à-vis the departmental correspondences. The whole case stems from a circular dated 22.08.2002 (Annexure A/4) by which the Railway Board called for options from Group 'B' officers to serve on the newly created Railway zones and in the same letter inserted guidelines, how the seniority of the staff on transfer to new zones shall be determined. Para 4.1 and 4.2 of the said guidelines may be extracted for ready reference which reads as follows:-

"4. The seniority of Group 'B' officers transferred to the new Zones would be determined as follows:-

4.1 The officers coming on transfer to the new zones will form a separate seniority unit for each Department in the new Zone. The seniority including those working in Sr. Scale on ad-hoc basis, in the new Unit will be determined on the basis of date of regular appointment in Group 'B' on the parent Railway without disturbing the inter-se seniority position of officers transferred from the same Railway.

4.2 The Group 'B' officers who are working in Senior Scale on ad-hoc basis on the parent Railway may be transferred to work in the Sr. scale posts on ad-hoc basis in the new zones provided there are vacancies in the Senior Scale in the new

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Zones, but their seniority in Group 'B' in the new Zone will be determined on the basis of date of their regular appointment to Group 'B' on the parent Railway and they will be eligible for consideration for further promotion accordingly."

5. There is no dispute to the fact that, in response to calling of options, the present two applicants were transferred to the new zone. Even there is no dispute about the fact that both the applicants joined in the new zone in Group 'B' of Personnel Department. So once the Railways accepted their joining in the new zones their seniority vis-à-vis with their colleagues has to be determined on the basis of date of regular promotion/appointment in Group 'B' in the parent railway. We do not understand why the official respondents are giving a go by to their own circular on the basis of which the employees opted for inter zonal transfer. It may not be lost sight of the fact that the transfer of both the applicants was on administrative exigency due to creation of new zones, which necessitated the services of experienced Railways officers of other zones.

6. The Railway Board has treated as if the applicants made a request for usual zonal transfer after creation of new zones as in that event they are entitled to bottom seniority in the new zone. This is not a case of mutual transfer or transfer to new zones on request. Rather it was purely in the exigency of public service and being lured by the Circular dated 22.08.2002 (Annexure A/4) issued by Railway Board the applicants had opted for zonal transfer. On a plain reading of the letter dated 15.07.2005 (Annexure A/10) it clearly indicates, as if the applicants being Group 'B' officers were making a request for

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their transfer from South Eastern Railway to East Coast Railway much after creation of the new zone. But the ground reality is that much prior to issue of this letter dated 15.07.2005 these two officers were already working in East Coast Railway after creation of new zone w.e.f. 01.04.2003.

7. The Railway Board has taken another colourable plea that posts were not available. The basic question one can ask is if the posts were not available how the two Group 'B' officers transferred to the new zone and how they were getting their salary. The applicants have categorically pleaded in their application that they came to the new zones with their post. Even respondents have not controverted to this pleading or had not annexed any document to falsify such statement.

8. Further, Annexure A/17 indicates that the present applicants joined East Coast Railway on bottom seniority w.e.f. 15.07.2005. This is absolutely wrong because the present applicants had already joined East Coast Railway in 2003 soon after creation of new zone on 01.04.2003. Had the applicants joined after 15.07.2005 much after creation of the new zone certainly they could have been assigned bottom seniority. But since their transfers were effected on the basis of circular dated 22.08.2002 which had invited options from Group 'B' officers, their seniority has to be fixed as per parameters envisaged under para 4, 4.1 and 4.2 of the said circular (Annexure A/4) of the Railway Board. Since Annexure A/17 (letter dated

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21.05.2013) has been issued under a misconception it is liable to be struck down, in the larger interest of justice.

9. Another funny thing noticed in this case is that the Railway Board insisting that there were only 16 posts available. The Dy. Chief Personnel Officer of the office of Chief Personnel Officer, Bhubaneswar of East Coast Railway vide its letter dated 13.10.2003 (Annexure A/8) had categorically informed the Railway Board that the total number of SS/JS posts in East Coast Railway is 18 and not 16 as mentioned in the Railway Board's letter dated 16.09.2003 (Annexure A/7). Even it has reflected a list of Group 'B' officers of Personnel Department who had exercised option for permanent absorption in East Coast Railway, which does not contain the names of three officers and requested the Board to revise their orders as per the particulars furnished. Even vide letter dated 21.05.2004 the Chief Personnel Officer of East Coast Railway has addressed another letter under Annexure A/9 to the Secretary, Railway Board requesting for permanent absorption of Group 'B' officers in Personnel Department of East Coast Railway and according to him total number of posts in Personnel Department available in East Coast Railway are 18 as indicated in their letter dated 13.10.2003. Even the said letter reveals that since there were two Group 'A' officers working, the absorption orders can be issued in respect of 20 Group 'B' officers but only 14 officers have been issued with absorption order. These correspondences clearly indicate that, in spite of availability of posts the Railway Board wrongly and rather

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under a misconception did not extend the same benefit to the present applicants which were extended to similarly placed Group 'B' officers who had come on zonal transfer during creation of new Railway zones. Even in para-7 of the counter, the Respondents have candidly admitted that the cadre strength in Sr. Scale/Jr. Scale posts in East Coast Railway is 18 instead of 16. Instead of rectifying their own mistake, the Railway Board took a contrary stand of treating the applicants as new entries of 2005, which needs to be corrected by judicial intervention.

10. On going through the entire pleadings and documents filed by both the parties, one has to conclude that the whole case has been handled rather mishandled by the Railways under a misconception about joining of the present applicants in East Coast Railway. Admittedly, the applicant no. 1 was promoted as a Group 'B' officer and had joined in his parent Division, i.e. South Eastern Railway on 29.04.2002 (Annexure A/2). Likewise, applicant no. 2 was promoted in Group 'B' post and had joined in his parent cadre on 19.02.2002 (Annexure A/3). Further, applicant no. 1 had joined in the new zone i.e. East Coast Railway on **02.04.2003** and applicant no. 2 had joined in East Coast Railway on **14.02.2003**. There is no dispute to the fact that both the applicants had joined in response to the calling of option letter issued by the Railway Board dated 22.08.2002 (Annexure A/4) where it was categorically stipulated how their seniority should be determined in the event of Group 'B' officers joining the new Railway zone. Nowhere it was stipulated that Group

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'B' officers would be given bottom seniority. Since new zone was created, there is no question of maintenance of any seniority list and only the seniority list has to be maintained as per relevant date of respective entry into the grade by the employees in their parent zone. The Railways could not file a single document to show that the applicant joined on 15.07.2005. Had it been so certainly the applicants could have been placed under the bottom seniority, as the new zone (East Coast Railway) become operative from 01.04.2003. No document has been filed by the respondents to show joining of the applicant for the first time in EC Railway on 15.07.2005 for which we say that the whole case was dealt by the Railways under a misconception, and treating the applicants as request transferee.

11. There is considerable strength in the submission of the learned counsel for the applicants that the transfer of the applicants were made in terms of the Railway Boards letter dated **22.08.2002** by which options were called amongst the regularly selected Group 'B' officers of South Eastern Railway for their transfer to new zones and the applicants being the permanent regular Group 'B' officers exercised options within the cut off date for their transfer from the erstwhile South Eastern Railway to East Coast Railway and in the aforesaid Railway Board letter dated 22.08.2002 it was clearly instructed that those who would exercise their option by 23.09.2002 would retain their original seniority on being transferred to new zones. So once the applicants had exercised their option prior to **23.09.2002** they are to be treated as transferred on administrative

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exigency and cannot be treated as a simple case of request transfer and as such they are to be guided by the original circular dated 22.09.2002 which protects their inter-se seniority position in the parent Railway on their transfer to the new zone. Since the applicants had exercised their option before the cut off date, i.e. 23.09.2002 and as the applicants had got their promotions way back on 12.02.2002 as per Annexure A/1 they are entitled to be enlisted as on 2004 along with other Group 'B' officers and cannot be treated as Group 'B' officers of 2005. Since the impugned order suffers from blatant illegality and irregularity the same needs to be corrected in the interest of justice and equity. Hence, ordered.

12. The OA is allowed. The impugned Railway Board's letter dated 29.05.2013 is quashed and the respondents are directed to recast the seniority of the applicants from the date of their respective entry in Group 'B' service and their inter-se seniority in the new zone is to be fixed as per their seniority in the parent zone. The Railway Board is further directed to incorporate the names of the present applicants in the Integrated Seniority List issued vide letter dated 07.05.2013 treating them as Group 'B' officers of 2002. The respondents are directed to rectify the mistake and correct the Integrated Seniority List as expeditiously as possible preferably within a period of three months from the date of passing of this order. We would have imposed heavy cost on the respondents for unnecessarily creating the litigation and forcing its employees to knock the door of judicial forum, but due to judicial restraint we refrain from doing so.

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Parties are directed to bear their own costs in the peculiar circumstances of the case.


[S.K. Pattnaik]
Judicial Member


[R.C. Mishra]
Administrative Member

Srk.

