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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.788 of 2013

Cuttack this the 23rd day of December, 2015

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

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

Manas Pritam Rout aged about 33 years S/o Upendra Bhanja Rout, At present working as Peon under Senior Divisional Electric Engineer (TRD), Rourkela under S.E. Railway, Chakradharpur Division. At present residing at Q. no. E/86, Sector – 18, Rourkela – III, District Sundergarh.

...Applicant

By the Advocate- Mr. D.R.Pattnaik

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, District West Singhbhum, Jharkhand.
3. Senior Divisional Personnel Officer, S.E. Railway, Chakradharpur Division, At/PO Chakradharpur, District West Singhbhum, State Jharkhand.

...Respondents

By the Advocate- Mr.T. Rath

ORDER

PER SH. A.K. PATNAIK, MEMBER(J):

This OA has been filed by the Applicant seeking the following reliefs:

- (i) "the impugned order of Reversion dt. 31.5.2012 passed by the Respondent No. 3 vide Annexure – A/7.
- (ii) To quash the order dtd. 17.10.2012 passed by the Respondent No. 3 vide Annexure A/10.
- (iii) To quash the order of rejection vide Annexure – A/15.
- (iv) To direct the Respondents to allow the applicant to continue as Sub-Crane Khalasi in Mech. (C&W) Department under Chakradharpur Division with all service and consequential benefits within a time framed by the Hon'ble Tribunal.
- (v) To restore the application to his former position i.e. Crane Khalasi Medical Category B-2 at Bandamunda since the said post has fallen vacant.
- (vi) To pass such order/directions as deemed fit and proper.
- (vii) To allow the Original application."



2. The gist and kernel of the case of the applicant which are absolutely necessary for adjudication of the matter are briefly and precisely as under:

The applicant after completion of ITI in (Instrument Mechanic) was selected to undergo Act Apprentice Training under the South Eastern Railway and came out successful.

Thereafter he was sent for medical check up in which he was found fit under medical category B2 and below.

He was posted as 'Sub Crane Khalasi' under (C&W) of S.E.Railway under Chakradharpur Division. Accordingly, on 30.08.2006, he joined at Bondamunda Section. But due to his family problem, he opted for his mutual inter departmental transfer to ECoRly vice Shri Narayan Sasmal of ECoRly, KUR. Since the Medical Category of the applicant was B2 and below and Shri Narayan Sasmal was B1 and below, the authority 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 of the applicant was cancelled. Further case of the applicant is that from the month of December, 2011, the SSE Mech (C&W) Department, Bondamunda did not allow him to sign the attendance register but allowed him to continue as Crane Khalasi under (C&W) Department without any salary. Therefore he represented against such action and the authority concerned 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. Thereafter, the applicant was transferred and posted as Helper under SSE/Works/Rourkela. By citing cases of few others who had been allowed to continue in Mech (C&W) Department albeit found medical category of B2 and below, the applicant submitted representation on 03.09.2012 requesting restoration of his position. While the matter stood thus on 07.09.2012 an order was issued directing payment of arrear salary to the applicant from November, 2011 till his joining at his new unit i.e. at SSE (Works), Rourkela. Being aggrieved by such action of the authorities, the applicant filed OA No. 306 of 2013 before this

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Tribunal stating therein that the post of Crane Driver in Mech (C&W) Departmental is a promotional post of Crane Khalasi. When similarly situated employees were allowed to continue as Crane Driver in Mech (C&W) Department then how was he declared unfit to continue in Mech (C&W) Department as Crane Khalasi. But the authority without considering his grievance issued an order dated 17.10.2012 transferring and posting him as Peon under the Sr. Divisional Electrical Engineer (TRD), Rourkela under Chakradharpur Division without giving him any opportunity. Hence in that OA he has prayed 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 the Chakradharpur Division with all consequential service and financial benefits. The said OA was disposed of on 22.5.2013. An excerpt from it would run thus:

"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. 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."

3. The Respondents considered the representation of the applicant and issued the order dated 05.09.2012 (A/15) and challenging and impugning the said order the present OA has been filed seeking the aforesaid relief.

4. Respondents filed their counter opposing the stand taken by the applicant in support of the OA and have prayed that this OA being devoid of any merit is liable to be dismissed.

5. Before proceeding to deal with the nifty gritty of the case of the respective parties, we would like to extract hereunder the order of

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rejection dated 05.09.2013 for ready reference:

"1. You had filed the above mentioned Original Application before Hon'ble CAT/ CAL praying inter alia to quash and set aside Sr.DPO/CKP's office order dtd. 31.05.12 wherein you were transferred as Helper under SSE/Works/ROU on administrative ground & Sr. DPO/CKP's office order dtd. 17.10.12 wherein you were transferred as Peon to Elect (TRD) deptt., on inter departmental own request transfer.

2. The Hon'ble Tribunal had disposed of the matter at admission stage with certain direction upon Respondent No. 3 i.e. Sr. DPO/CKP by an order dated 22.05.13. The operative part of the order is reproduced below :-

".....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.

3. In obedience to Hon'ble Tribunal's aforementioned judgment and in compliance thereof, I have carefully examined the case alongwith your representation dated 03.06.13, which was posted by you on 08.07.13 as per postal receipt No. A R 0585615553IN (Counter No.:1,OP-Code:PA1), received by the office of Sr. Divl. Personnel Officer, Chakradharpur on 11.07.13. A careful perusal of the case reveals that :-

i) You were selected in Act Apprentice 2003-2004 batch and initially appointed as Substitute Crane Khalasi in scale Rs. 2550-3200/- in Mech (C&W) department vide Sr. DPO / CKPs O.O. No. E/Rectt./Act. Appr./Subs/Gr.'D'/104/06 dated 22.08.06.

ii) Vide your application dated 18.06.2011 you had applied for Inter Railway mutual transfer with Sri Narayan Sasmal, Khalasi, Khurda division, East Coast Railway, Subsequently, vide your appeal dated 21.10.11 you had prayed for your re-medical examination which was considered and you were advised to report to ACMS /BNDM for your re-medical examination in B1 medical category vide Sr. DPO / CKP's letter No. E12/3C/C&W/IRMT/MRP/11 dated 25.10.11. However, after your medical examination you were declared fit in B-2 & below vide Medical certificate No. 169 dated 30.11.11.

iii) Since at present the Sanctioned Cadre of Mechanical department of Chakradharpur division has category / post of Khalasi with B-1 medical category and there is no sanctioned post

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of Crane Khalasi with B-2 medical category. As such, when you were declared to be fit in B-2 medical category DRM/CKP had given his approval on 30.05.12 to change your department and post you as Khalasi (Works) under SSE (Works)/ROU. In the meantime, you had also submitted an appeal dated 28.03.12, wherein you had prayed for your posting in Electrical System Training Centre (ESTC)/ROU however, due to non-feasibility it could not be considered.

iv) In accordance with, aforementioned direction of DRM, you were transferred on administrative interest as Helper under SSE/Works/ROU, in existing Pay Band Rs. 5200-20200/- with Grade Pay Rs. 1800/- vide Sr. DPO/CKP's O.O. No. E12/3C/C&W/Posting/MPR/12 dated 31.05.12. In the said office order, it was categorically mentioned that you were incorrectly posted in Mech (C&W) deptt. Though you were not medically fit for the post of KSI, since Medical classification of KSI of Mech (C&W) is B-1.

v) As per Sr. DPO/CKP's O.O. dated 31.05.12 you had reported to SSE (Works)/ROU on 06.06.12. However, vide your appeal dated 05.09.12 you had again prayed for your posting as Peon at Chakradharpur. Your appeal was considered in your favour by the competent authority and accordingly own request transfer order was issued by Sr. DPO/CKP vide No. E/Engg/IDOT/MPR/212/12 dated 17.10.12. Thereafter, you were transferred from SSE (Works)/ROU on 27.10.12 to Electric (TRD) department as Peon in your existing Pay Band and Grade Pay. It is significant to mention here, that you have not mentioned these factual aspects before the Hon'ble Tribunal i.e., it is you who had prayed for your transfer to Chakradharpur as Peon, instead you have tried to mislead the Hon'ble Court into believing that you have been reverted from the post of Helper to Peon even this is a false statement since both the category has the identical Pay Band & Grade Pay.

In view of the above facts and circumstances, your prayer for your posting as Crane Khalasi cannot be considered and is accordingly regretted".

6. Heard Mr. D.R. Pattnayak, learned counsel for the applicant and Mr. T. Rath, learned Standing Counsel for the Respondents-Railways and perused the records.

7. The learned counsel for the applicant placing reliance on the averments made in the OA has submitted that the order of rejection is illegal and arbitrary being issued without application of mind inasmuch as the main grievance of the applicant before the authority was that he being a crane khalsi there is no justification to give him a posting as

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Peon but the authority concerned rejected the representation without considering the said aspect of the matter. Though vacancy in the post of Crane Khalasi existed at that relevant point of time, yet he was posted as a Peon. The applicant was duly selected as Crane Khalasi under Medical Category B2 and he was posted after completion of training. He had also continuously worked for about six years as Crane Khalsi (Medical Category B2). Though he applied for mutual transfer to Khurda Road Division under ECoRly the said option was misinterpreted by the Sr. DPO. Hence the stand of the respondents that the applicant had applied to be posted as Peon is totally false and misrepresentation of facts. Though the applicant was posted as a Peon in Chakradharpur Division yet he was allowed to work in a lower status i.e. Helper which amounted to reversion. Accordingly, he prayed for allowing this OA.

8. On the other hand, the learned counsel appearing for the respondents, placing reliance on the counter has opposed arguments advanced by the learned counsel for the applicant. It was submitted that as the applicant vide application dated 18.6.2011 applied for an inter railway mutual transfer, the said request of the applicant was duly examined by the competent authority and on examination it was found that the applicant did not have the requisite medical category of B1 standard. After this fact was known the applicant appealed for his re-medical examination and accordingly, he was re-examined and on re examination also it was found that he was found to be fit in B2 and below category. However, as there was no sanctioned post of Crane Khalsi or any other Group D post with B2 medical category in Mechanical (C&W) Department of Chakradharpur Division except Safaiwala the DRM/Chakradharpur approved for change of the department of the applicant and posted him under SSE (Works)/Rourkela with the same pay Band and Grade Pay. Accordingly, he was transferred on administrative interest as Helper under SSE (Works)/Rour vide Sr DPO, Chakradharpur Office order dated 31.5.2012 by considering his request to post him as Peon. As such question of his reversion does not arise at all. Accordingly, he would pray for the dismissal of this OA.

The representation of the applicant dated 05.09.2012 at Annexure-R/3 is quoted hereunder for ready reference:

" With due respect I beg to state that I have been posted as Helper under SSE (Works) Rourkela vide O.O. under reference. But sorry to say that due to some unavoidable reason I can not accept to the said post. I want to join the Peon post as my alternative appointment. I am willing to accept bottom seniority & I am accept to posting as post of Peon in CKP. Therefore I request your honour with folded hand to consider my case sympathetically and kindly order me to posting as Peon. For such kind act I shall remain grateful to you."

9. The applicant except quoting the cases of few others who have been given the benefit of mutual transfer even below the prescribed medical category has not cited any judgment to the effect that even if the applicant is found below medical category he has a right to be posted on mutual transfer. Law is well settled in a plethora of judicial decisions that one cannot claim for appointment to a post as a matter of right to which he was not entitled to under the rules merely because the said benefit has wrongly been extended to another similarly situated employee. We also do not find fault with the action of the respondent authority in giving the applicant posting in Gr. D cadre as the same was on the basis of the specific request of the applicant, quoted above. The applicant also joined the post without any demur and, therefore, he is estopped under law to veer round thereafter challenging that his posting as such is against the provision enshrined in Articles 14, 16 and 21 of the Constitution of India.

10. For the discussions made above, we find no merit in this OA which is accordingly dismissed. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)