

IN THE ADMINISTRATIVE TRIBUNAL
Cuttack Bench, Cuttack

O.A.260/00036/2014

Date of decision: 02-01-2017

Arunjyoti Sahoo Applicant
Mr. D.P. Dhalsamant. Advocate for the applicant.

Versus

Union of India & Ors. Respondents
Mr. S. Barik. Advocate for respondent [s]

C O R A M

The Hon'ble Mr. R.C. Misra, Member [A]

The Hon'ble Mr. S.K. Pattnaik, Member [J]

F O R W A R D I N G

Pre-delivery draft order is being sent herewith for your kind consideration/approval and return please.

F O R R E P O R T I N G

1. Whether Reporters of local paper may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

S.K. Pattnaik
Member [J]

Member [A]

I authorize Hon'ble member Mr. R.C. Misra to pronounce the judgment on our behalf in order
S.K. Pattnaik
21/1/16
I agree.

Seen 04/12/2016
(R.C. MISRA)
Member (A) - On line as on date

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.260/00036/2014

Date: 02.01.2017

CORAM

HON'BLE MR. R.C. MISRA, MEMBER (A)
HON'BLE MR. S.K. PATTNAIK, MEMBER (J)

Arunjyoti Sahoo, S/o Late Yudhistira Sahoo, at Plot No.-42F, Gajapatinagar, P.S. Sahid Nagar, Bhubaneswar, Dist. – Khurda, at present working as Executive Electrical Engineer/TRD/HQ, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

.....Applicant

By Advocate : Shri D.P. Dhalsamant.

Versus

1. Union of India represented through its General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Railway Board represented through its Secretary, Rail Bhawan, New Delhi.
3. Director, Establishment (GP), Railway Board, Rail Bhawan, New Delhi.
4. Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. General manager, S.E. Railway, Garden Reach, Kolkata – 43.
6. Sri Snehangsu Mandal, Senior Electrical Engineer (Con), C/o- Chief Electrical Engineer (Metro Rail), Metro Rail Bhawan 33/1 J.L. Nehru Road, Kolkata – 700071.
7. Sri B.S. Siva Prasad, Divisional Electrical Engineer (Maint.)/BZA, DRM Office Complex, Near Vijaywada Railway Station, Vijayawada – 520003.

..... Respondents.

By Advocates: Shri S. Barik.

ORDER

S.K. Pattaik, Member (J):- The applicant challenges the speaking order dated 08.02.2013 (Annexure – A/12) passed by Director Estt (G.P.) Railway Board who refused to correct the seniority of the applicant assigned to him on All India Basis. The applicant further prays for a direction to the respondents to treat his seniority from the date of

S. S. Barik

induction to Group 'B' in the final seniority list published by Railway Board dated 29.02.2012 (Annexure-A/9) as 29.03.2004 instead of 29.08.2005.

2. The applicant's case in short runs as follows:-

The applicant entered into the service in the undivided South Eastern Railway (Hereinafter referred as SER), Nagpur Division w.e.f. 09.04.1993 on being appointed through a regular recruitment process on the post of Traction Power Controller Group 'C'. Subsequently, the South Eastern Railway was trifurcated into the three zones, namely South Eastern Railway (SER), East Coast Railway (ECoR) and South East Central Railway (SECR). The headquarters of East Coast Railway is functioning at Bhubaneswar. The option exercised by the applicant being accepted by the competent authority and the applicant joined as Section Engineer in Electrical Department vide East Coast Railway office letter dated 18.09.1997 (Annexure-A/1). The applicant further pleaded that in the said transfer order, it was categorically mentioned that the transfer order of the applicant was in the interest of the administration and the lien of the applicant will be maintained in his parent cadre in Nagpur Division of SER till such time the cadre of East Coast Railway is finally formed. Subsequently, East Coast Railway started functioning w.e.f. 01.04.2003 and the applicant was permanently absorbed in ECoR on 31.10.2003. In the meantime, the Chief Personnel Officer, SER issued a notice dated 30.06.2003 for formation of Group 'B' panel of AEE through LDCE against 30% vacancies in Electrical Department. It was categorically stipulated in the

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said notice that as per Railway Board's letter 13.05.2003 wherever 70% selection for the period up to 31.03.2003 has been held but the corresponding 30% LDCE has not been held so far, the 30% LDCE for vacancy period up to 31.03.2003 shall be held by the parent Railway as per the original assessment and zone of consideration. Said selection was conducted for vacancies existing and anticipated up to 31.03.2003 and the total number of vacancies notified for selection was only 04 and in the notice, it was clearly stated that the empanelled candidate for promotion of Group 'B' may be posted in any of the three zones (Annexure-A/2). The applicant being eligible appeared in the said common selection test conducted by the SER. The written examination was held on 14.12.2003 and the viva was held on 11.02.2004 and the panel of selected candidates was declared on 25.02.2004 (Annexure-A/3) where the applicant was assigned sl.No.2 out of three selected candidates. Since the candidates placed at sl.No.1 and 3 were Group 'C' staff of South Eastern Railway, their posting order was issued by CPO, South Eastern Railway on 03.03.2004 and they were posted in the South Eastern Railway against the existing vacancies. The applicant being a Group-'C' staff of East Coast Railway, was issued order of promotion on 26.03.2004 and posted as ADEE (TRD) in Khurda Road Division i.e. within the territorial jurisdiction of ECoR and the applicant joined his new post on 29.03.2004. The applicant exercised his option of transfer to East Coast Railway under Group 'B' cadre since there was no loss in his seniority, which was approved by the Railway Board vide its message dated 29.08.2005 (Annexure-A/5) In the said approval order, it was

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clearly mentioned that the applicant personally working in East Coast Railway should be assigned bottom seniority in terms of Ministry of Railways letter dated 03.12.1977. The seniority list of Group 'B'/Electrical Officer of East Coast Railway as on 01.01.2006 was published by Chief Personnel Officer, East Coast Railway (Respondent No.4) vide office order dated 01.12.2006 (Annexure – A/6). Subsequently, respondent No.4 published the seniority list of Group 'B'/Electrical officers of East Coast Railway as on 01.01.2010 vide office memo dated 03.03.2010 (Annexure–A/7). Subsequently, provisional integrated seniority list of Group 'B' officers of Electrical Engineering Department was prepared on 01.01.2011 for the limited purpose of their induction to Group 'A'. In the said provisional seniority list published on 09.12.2011, the date of entry/induction in Group 'B' cadre of the applicant was correctly reflected as 26.03.2004 i.e. the order of promotion. Subsequently, respondent No.3 vide letter dated 29.02.2012 circulated a final seniority list of Group 'B' officers as on 01.01.2010 and 01.01.2011 and in the said revised seniority list, the name of the applicant was wrongly shown at sl.No.201 as on 01.01.2010 and at sl.No.186 as on 01.01.2011 and the date of entry into Group 'B' has been wrongly mentioned as 29.08.2005 instead of 26.03.2004. Being aggrieved by the said wrong entry in the seniority list by of the Group 'B' cadre, the applicant submitted representation for correction of date of promotion to Group 'B' cadre and when nothing came out, approached this Tribunal in O.A.940 of 2012 wherein this Tribunal vide order dated 19.12.2012, directed respondent No.3 to dispose of the representation of

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the applicant within two months from the date of receipt of the copy of the order and in response to the said order, respondent No.3 disposed of the representation by passing a speaking order dated 08.02.2013 (Annexure-A/12) and communicated the rejection of representation vide letter dated 25.03.2013 (Annexure-A/13), which are being impugned in this O.A.

3. The respondent No.1 to 5 contested the case by filing a written statement. According to the respondents, the O.A. is liable to be dismissed both on merit, so also on the point of limitation being hopelessly barred by limitation. Further the applicant is not entitled to the seniority as claimed by him and the final seniority list has been correctly drawn and published. Consequent to the formation of seven new Railway zones and two of them functioning w.e.f. 01.10.2002 and the remaining functioning w.e.f. 01.04.2003, options were invited vide Railway Board's letter dated 22.08.2002 from Group 'B' officers who were regularly appointed to Group 'B' after due selection, for absorption in the new zone and such options were to be exercised by 23.09.2002. According to the respondents, those transferred to new zones on option basis retained their original Group 'B' seniority in the parent Railways, while those considered other than in response to the options so invited were transferred to new zones on bottom seniority in terms of existing rules issued vide Railway Board's circular dated 03.12.1977. According to the respondents, 13 Group 'B' electrical Officers got permanent absorption in East Coast Railway vide Railway Board's letter dated 24.08.2003 (Annexure - R/2). In the meantime, in terms of Railway

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Board's instruction communicated vide letter dated 13.05.2003 (Annexure – A/3), permission was granted to erstwhile zones to hold selection/LDCEs for the period from 01.04.2003 onwards to fill up Group 'B' vacancies in the parent Railways along with vacancies in the divisions, workshops, excluding the vacancies of headquarters of new zones which originally belong to the parent railway and which have now gone to the new zones with the stipulation that seniority of officers on their selection of Group 'B', whether posted in the parent Railway or in a new zone will be maintained on the parent Railway only and their permanent absorption in the new zone will be decided based on their option for the same on the basis of criteria laid down in Board's letter dated 22.08.2002 wherein there was clear stipulation that any application other than in response to the options invited as above for transfer from one zone to another shall be dealt in the normal course as per the Rules. Subsequently, the erstwhile South Eastern Railway issued notification dated 30.06.2003 for formation of Group 'B' panel of AEE thorough LDCE against 30% vacancies in Electrical Department. The applicant (Arunjyoti Sahoo), Sr. Section Engineer (Elect), working in the jurisdiction of East Coast Railway was empanelled against the aid notification vide S.E. Railway's memorandum dated 25.02.2004 and posted on East Coast Railway as ADEE (TRD) KUR vide CPO/ECOR's Office order dated 26.03.2004 (Annexure – A/4). Since the said selection was conducted in terms of Railways Board's letter dated 13.05.2003, his lien and seniority in Group 'B'/Electrical was maintained in S.E. Railway. In the meantime, new zones were permitted to conduct Group

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'B' selections/LDCEs independently for the vacancies in their jurisdiction in terms of Railway Board's letter dated 12.01.2004 (Annexure – R/4) and subsequently, the Board vide its letter dated 23.11.2004 (Annexure – R/5) advised all the zonal Railways, including new Railway zones not to forward any further applications for absorption on bottom seniority of Group 'B' officers in the new zones. This was further circulated to all the concerned vide letter dated 14.12.2004 (Annexure – R/6) by Chief Personnel Officer of East Coast Railway. The respondents have further pleaded that the Railway Board vide its letter dated 25.02.2004 (Annexure – R/7) further issued a clarificatory instructions to the effect that transfer of eligible Group 'B' officers to the new zones for permanent absorption on the basis of option exercised in terms of Board's letter dated 22.08.2002 (Annexure – R/1) has been completed and no further option of Group 'B' officers willing to be absorbed in the new zones be forwarded to the Board's office for their permanent absorption on administrative grounds. As a number of Group 'B' officers from the combined Group 'B' selection conducted by S.E. Railway, who were working in the jurisdiction of East Coast Railway having their lien with S.E. Railway, could not avail of the opportunity to exercise option were trying for fixation of their lien in ECo Railway, vide letter dated 01.06.2004 (Annexure – R/8). The office of Chief Personnel Officer, Bhubaneswar of East Coast Railway issued a direction invited applications from those Group 'B' officers of all department intending to remain in East Coast Railway for transfer of their lien to East Coast Railway on bottom seniority, for approaching

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Railway Board for consideration. Accordingly, the Electrical Department, a total number of 8 Group 'B'/Electrical Officers applied for their transfer of lien to East Coast Railway accepting bottom seniority and were absorbed vide Railway Board's letter dated 23.06.2004, 09.09.2004 and 03.11.2004 (Annexure – R/9 Series). The applicant being aware of this development, had made application for transfer of his lien on accepting bottom seniority. Finally, the applicant applied in the prescribed proforma for transfer to East Coast Railway accepting bottom seniority vide his application dated 23.11.2004 (Annexure – R/10). The proposal of the applicant was considered and as per Railway Board's letter dated 29.08.2005 (Annexure – A/5), he was transferred to East Coast Railway on bottom seniority. According to the respondents, the seniority of the applicant has been fixed from the date of his transfer on bottom seniority. Positive case of the respondents is that in terms of the provisional seniority list of 2006 of Group 'B'/Electrical officers communicated vide letter dated 01.11.2006 (Annexure – R/11), the applicant has been enlisted at sl.No.19 just below the first lot of 8 permanently absorbed Group 'B'/Electrical officers transferred on bottom seniority and hence the applicant is not a loser in case of assignment of Group 'B'/Electrical Cadre and his claim of coming under the fresh Group 'B'/Electrical panel by the East Coast Railway is quite unjustified. According to the respondents, the seniority position of the applicant was corrected by the Railway Board assigning his date of entry to Group 'B' as 29.08.2005 i.e. the date on which the Railway Board approved him in Group 'B' in bottom seniority in East Coast Railway. The respondents

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have further pleaded that the case cited by the applicant of other zones is not applicable as he is guided by his own representation and service condition, where he had candidly applied for bottom seniority.

4. Before delving into the merit of the case, it may be worthwhile to mention at the outset that this Tribunal can interfere with the speaking order only when it is irrational, unjust or contrary to their own guidelines and instructions, and not otherwise. So the burden is on the applicant to show where the administration has faulted and how he is victim of an injustice.


5. With all restrain, we can say that the applicant is fighting the present litigation under a misconception. His plea that since he had joined in East Coast Railway on 29.03.2004 and as he was promoted to Group 'B' on 26.03.2004, his seniority should be fixed in East Coast Railway in Group 'B' as on 29.03.2004. It may not be lost sight of the fact that, at that time, his lien was in the parent Railway (South East Railway) and was yet to be absorbed in East Coast Railway after transfer of his lien. Had it not been so the applicant himself by his application dated 31.12.2004 could not have furnished a declaration that his lien may be transferred from South East Railway on his request to East Coast Railway accepting bottom seniority. The undertaking of the applicant has been annexed in the written statement in Annexure – R/10. Since the applicant was absorbed in East Coast Railway on 29.08.2005 in view of the transfer order issued by Railway Board on 29/30.08.2005 (Annexure – A/5), there is nothing wrong in the said order of assigning him bottom seniority in terms of Ministry of Railway letter dated 03.12.1977,


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because prior to this transfer, the applicant was treated as a Group 'B' officer of South Eastern Railway though he was working in East Coast Railway and was also promoted in the promotional quota of South Eastern Railway and cannot be permitted to take seniority of East Coast Railway. He is entitled to seniority from the date of his transfer and absorption. Since the order Annexure – A/5 authorising transfer was passed on 29.08.2005, there is nothing wrong in the impugned order (Annexure – A/9) or in the speaking order (Annexure –A/12) showing his placement in Group 'B' from the date of transfer in new opted railway zone of E.Co.R., calling for interference. Hence ordered.

6. The O.A. being devoid of merit is dismissed. No costs.


[S.K. Pattnaik]
Member (J)
sks/-


[R.C. Misra]
Member (A)