

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No.366/2011
This the 16th day of July 2012

Hon'ble Mr. B.V. Rao, Member (J).
Hon'ble Ms. Jayati Chandra, Member (A)

Lal Bahadur Chaudhary, aged about 52 years, S/o Shri Shiv Prasad Chaudhary, R/o Village-Isapur, Post-Chamiyani, District: Unnao.

...Applicant.

By Advocate: Sri R.C. Saxena.

Versus.

1. Union of India, through Secretary, Railway Board, New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway, Lucknow.
4. Senior Divisional Engineer/C, Northern Railway, Lucknow.

.... Respondents.

By Advocate: Sri S. Verma.

ORDER (Oral)

By Hon'ble Mr. B.V. Rao, Member (J).

1. This O.A. has been filed for the following relief:-

“Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 30.06.2011 passed by the Respondent No.4 as contained as Annexure No.1 with all consequential benefits and the respondents may also be directed to pass appropriate orders of permanent absorption of the applicant in railway without any further delay.”

(b)

2. The brief facts of the case are that the applicant was initially appointed as Lekhpal on temporary by Sub Divisional Officer, Maharajganj, District Raebareily basis vide order-dated 07.09.1981 (Annexure-2). Subsequently, the services of the applicant was confirmed on the post of Lekhpal vide order dated 13.07.1988 (Annexure-3). Thereafter, he had applied for appointment to the post of Survey Clerk in the office of Railway Personnel Office on deputation basis after obtaining the permission from the Additional District Magistrate (Finance & Revenue), Raebareily, dated 29.11.1989 (Annexure No.4) and his application was duly recommended by the Tehsildar, Raebareily (Annexure-5). On 01.02.1990, the D.S.E./Coordination, Lucknow issued a letter regarding transfer of Sri Saryu Prasad Kanoongo Clerk to Delhi Division with immediate effect and similarly a copy was forwarded to the Chief Engineer/General Manager, Railway, Baroda House, New Delhi with a request that a substitute may be posted at Lucknow Division against the vacancy caused by Sri Saryu Prasad, Kanoogo Clerk in the Scale of Rs.1200-2040. The General Manager (P) H.Q. Office, Baroda House, New Delhi issued a letter dated 07.12.1990 (Annexure-7) to the Divisional Railway Manager, Northern Railway, Lucknow stating therein that approval of CE/C is accorded to the appointment of the applicant as Lekhpal on deputation from State Government of U.P. to D.R.M. Office, Lucknow as per usual terms and conditions. Thereafter, the Divisional Railway Manger, Lucknow issued a letter dated 11.01.1991 (Annexure-8) directing the applicant to report for appointment as Lekhpal Clerk. In response to the



aforesaid letter of Divisional Railway Manger, Lucknow, the applicant was relieved from Tehsil Office, Raebareily on 30.09.1991 afternoon and he resumed the duties in the office of D.R.M., Northern Railway, Lucknow by submitting his joining report dated 08.10.1991 (Annexure-9).

3. Thereafter, the Divisional Superintending Engineer wrote a letter dated 17.08.1994 (Annexure-11) to the Collector, Raebareily that the period of deputation of the applicant was required to be extended for further period of three years up to 1997 and in response to the aforesaid letter the A.D.M. (Administration), Raebareily informed the Divisional Superintending Engineer, Northern Railway, Lucknow vide letter dated 22.09.1994 (Annexure-12) that he has no objection for absorption of the applicant as well as on his further continuation on deputation and issued 'No Objection Certificate' to the absorption of the applicant in the railways. Thereafter, vide order-dated 10.10.1994 (Annexure-12), the applicant was promoted to the post of Land Record Inspector w.e.f. 30.04.1993 vide District Magistrate letter dated 30.04.2003 and accordingly, the pay of the applicant was fixed in the grade of Rs.1350-2200 as per fixation made by the D.R.M., Northern Railway, Lucknow vide order dated 16.10.1994 (Annexure-14).

4. The learned counsel for the applicant submitted that the applicant has submitted an application dated 06.12.2000 (Annexure-16) before the General Manger (Personnel), Northern Railway, New Delhi for his permanent absorption stating therein that he has been continuously working since the date of his initial



appointment in northern railway and the same was duly forwarded by the D.R.M., Northern Railway, Lucknow through his letter dated 17.8.2001 (Annexure-17). Thereafter, the applicant again submitted a letter dated 18.8.2004 (Annexure-18) to the General Manager (Personnel), Northern Railway, New Delhi for his absorption, which is still pending for consideration.

5. Learned counsel for the applicant further submitted that the D.R.M. (P), Northern Railway, Lucknow duly recommended the case of the applicant for permanent absorption vide letter dated 18/19.10.2004 (Annexure-19) to the General Manager (Personnel), Northern Railway, New Delhi and also intimated the Collector, Raebareily that the case of the applicant is under process for which the Railway Board has required 'No Objection' and accordingly requesting the Collector, Raebareily to issue No objection for permanent absorption of the applicant in railways vide letter dated 30.12.2004 (Annexure-20). He also sent a letter dated 14.02.2005 (Annexure-21) to the Collector, Raebareily to send the service book of the applicant and also wrote a letter to the Tehsildar Maharajganj, Raebareily on 21.03.2005 (Annexure-22) seeking details of the service of the applicant. Vide letter dated 15.06.2005 (Annexure-23) the Collector, Raebareily informed the Divisional Railway Manager, Northern Railway, Lucknow that there is no objection to the permanent absorption of the applicant in the railways and the copy of service book of the applicant in original was also sent to the D.R.M., Northern Railway, Lucknow. The applicant further submitted a representation dated 20.08.2010 (Annexure-24) before



the General Manager (Personnel), Northern Railway, New Delhi mentioning therein that he has been working in the railways since last about 20 years and the position of lien of the applicant in his parent department after issuance of 'No Objection Certificate' is doubtful. It has been further mentioned therein that several other persons who were working on deputation in northern railway have been absorbed permanently and also requested that his case may be considered sympathetically for permanent absorption in the railways, which was duly forwarded by the Divisional Railway Manger, Northern Railway, Lucknow to the General Manger Engineering, Northern Railway, New Delhi vide letter dated 23.08.2010 (Annexure-25).

6. The learned counsel for the applicant also placed reliance on the judgment and order passed by the Division Bench of Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.1877 of 1993 (Shri Faroorq Ahnad Vs. Union of India and Others) connected with O.A.No.1943 of 1993 (Shri A.K. Saxena Vs. Union of India & Others) and also in O.A.No.2478 of 1993 (Shri Vinod Kumar Saxena Vs. Union of India & Others) vide its order dated 04.09.1997 and 13.7.1995 respectively, directing the respondents to consider the case of the aforesaid applicants regarding their permanent absorption in northern railway in accordance with the law and past precedents (Annexure-28 & 30). The learned counsel for the applicant further contended that both the aforesaid judgments have been complied with by the respective respondents vide orders dated 6.07.1998 and 21.09.2000 (Annexure-29 & 31).

7. Learned counsel for the applicant stated that suddenly on 30.06.2011, the Senior Divisional Engineer had issued the impugned office order, whereby the applicant has been transferred to parent department after relieving from railways, who was working in the railways for the last about 20 years and as such the impugned order is not at all valid and justified.

8. Aggrieved the order, the applicant filed the present O.A., which was dismissed on 12.09.2011. The operative portion of the aforesaid order reads as under:-

“In response to specific query made by this Tribunal, learned counsel for the applicant fairly concedes that the applicant has already been relief from the railways on 23.08.2011. This fact has not been indicated anywhere, which amounts to misleading and misrepresentation. Otherwise also this O.A. has become infructuous.

Therefore, on these grounds, the O.A. is dismissed. No order as to costs.”

9. Feeling aggrieved by the aforesaid order dated 12.09.2011, the applicant preferred a Writ Petition No. 1934 of 2011, which was finally disposed of on 18.11.2011 with the following observations:-

“ In view of all the aforesaid, we set aside the impugned order dated 12.09.2011 and remit the matter to the Central Administrative Tribunal for a fresh consideration on merit with direction to dispose it of at an early date. The operation of repatriation order dated 30.06.2011 (Annexure No.33) shall remain in abeyance till the disposal of the O.A. on merit by the Tribunal.”

10. Heard the learned counsel for both the parties at length. In-spite of granting sufficient time the respondents have not filed any counter affidavit to controvert the pleadings contained in the O.A. In view of



the above, we proceed to dispose of this O.A. on the basis of the material available on record.

11. The point for consideration is whether the applicant is entitled for the relief as prayed for.

12. The applicant is aggrieved by respondents inaction in not absorbing him in Northern Railway, hence he filed the present O.A. for quashing the impugned order dated 30.06.2011 (Annexure-1) passed by Respondent No.4 saying that the parent department of the applicant is State Government where he was working as Lekhpal in Revenue Department and from there he came on deputation to Northern Railway, Lucknow where he has been working for the last 20 years. It is contended on behalf of the applicant that though his parent department has given 'No Objection' way back in the year 2004 in spite of that, the respondents are not absorbing him and they passed the impugned order , which is under challenge in the instant O.A.

13. Admittedly, it is not in dispute that the parent department of the applicant is State Government where he was working as Lekhpal in Revenue Department and from there he came on deputation to Northern Railway, Lucknow where he has been working for the last 20 years and that his parent department has given 'No Objection' way back in the year 2004.

14. It is further submitted that now after long working for more than 20 years continuous service with the Railways and also got promotion in Railways itself to the post of Land Record Inspector then there was no justification to repatriate the applicant after a long period, particularly when there are number of instances



the respondents have been absorbing some other Patwaris Lekhpal as Patwari Clerks in Northern Railway. He further submits that similarly circumstanced three persons namely Farooq Ahmad, A.K. Saxena and Vinod Kumar Saxena have preferred separate O.As. before the Central Administrative Tribunal, Principal Bench, New Delhi and their O.As. were disposed of finally with the direction to the respondents to consider the case of the aforesaid applicants regarding their permanent absorption in northern railway in accordance with the law and past precedents and they have already been absorbed in the northern railway.

15. In view of the above, the impugned order dated 30.06.2011 (Annexure-1) issued by the Respondent No.4 is set-aside and the respondents are directed to consider the case of the applicant for his permanent absorption in northern railway within three months from the date of receipt of a certified copy of this order in accordance with law and past precedents with all consequential benefits as per rules. No order as to costs.

J. Chandra
(Jayati Chandra)
Member (A)

B.V. Rao
(B.V. Rao)
Member (J)

Amit/-