

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 260 OF 2006

[Patna, this 21st Tuesday, the 31st Day of January, 2012]C O R A M

HON'BLE MR. NARESH GUPTA, MEMBER [ADMN.]

HON'BLE MS. URMITA DATTA (SEN), MEMBER [JUDL.]

1. Rajpati Jha, ACM/ACM/HO, S/o Sri Prabhas Jha, 304, Mundrika Palace, Ara Garden Road, Jagdeo Path, Patna-14.
2. Pradip Kr. Sinha, ACM/HO, S/o Sri Shiva Chandra Sinha, B/31, Sachivalaya Colony, Kankarbagh, Patna-20.
3. Birendra Mohan, ACM/DNR, S/o Late J.P.Sharma, 402/C, Jagmano Sri Apartment, Ara Garden Road, Jagdeo Path, Patna-14.
4. Sri Prakash Chandra Ojha, ACM/DNR, S/o Late Vinchyachal Pd.Ojha, 901 B, Rly. Officers Colony, Khagaul, Danapur.
5. Subodh Kr.Lall, ACM/DNR, S/o Sri Kameshwar Lal, 691/B, Rly. Officers Colony, Ranga Tad, Near Puja Talkies, E.C.Railway, Dhanbad.

.....APPLICANTS.By Advocate :- Shri S.K.Singh.

Vs.

1. The Union of India through the Secretary, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, E.C.Railway, Hajipur.
3. The General Manager [P], E.C.Railway, Hajipur.
4. Dy. C.P.O. [C], E.C.Railway, Hajipur.
5. Chief Commercial Manager, E.C.Railway, Hajipur.
6. Dy. C.C.M./FSM [Freight Service Marketing], E.C.Railway, Hajipur at Patna.
7. Sri B.M.Prasad, S/o not known, posted as STM, Head Quarter/Hajipur [Acting as Secretary to C.O.M]
8. Shri B.N.Lal, son of not known, DOM, Dhanbad, C/o D.R.M., Dhanbad.

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9. Shri N.K.Singh, son of not known, DOM, Sonepur in the Office of D.R.M, Sonepur.
10. Shri A.P.Singh, son of not known, SMR,Dhanbad.
11. Shri O.N.Verma, son of not known, A. T. M.Coaching, Head Quarter/ECR.RESPONDENTS.

By Advocate :- Shri Mukund Jee,
 [Standing Counsel for official respondents].
 Shri M.P.Dixit
 [Counsel for private respondents].

O R D E R

Urmita Datta (Sen).Member [Judl.] :- The instant OA has been filed challenging the order dated 28.04.2005 [Annexure-A/1] passed by the General Manager [P] and circulated by Dy. CPO [Gazetted], E..C.Railway,Hajipur, whereby promotion was given to the private respondents who are junior to the applicants, as alleged, and asking for the following relief :-

"8.1 That the impugned order of promotion dated 28.04.2005 passed by the respondent no.3 as contained in Annexure-A/1 to the application be set aside and quashed.

8.2 That upon quashing of the Annexure-A/1 the official respondents may be directed to reconsider the case of promotion of Gr. B Officers of TT&C Deptt. of E.C.Railway as per rules and pass fresh order of promotion taking into consideration the relevant rules and instructions on the point.

8.3 Any other consequential benefits arising after the quashing of the Annexure-'A' be passed in favour of the applicants.

8.4 The cost of the litigation may be awarded to the applicants

8.5 Any other relief/reliefs may be granted in favour of the applicants to which this Hon'ble Court finds them entitled to."

2. The case of the applicants is as follows :-

2.1 The Railway Board on 22.08.2002 issued a Notification calling upon options from Group 'B' officers to serve in the new Railway Zones and determination of seniority of staff on transfer to the new Railway Zones would be made as per the above mentioned Notification [Annexure-A/2]. The learned counsel for the applicants submits that as per para 3.4 of the said

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notification the options have to be exercised in writing before 23.09.2002 positively and the seniority of such optee officers will be determined on the basis of regular appointment in Group 'B' in parent Railway. It is submitted on behalf of the applicants that seven new Zonal Railways were established by the above mentioned notification dated 22.08.2002 and the applicants had submitted their options within due date and according to their options the Railway Board vide letter dated 06.01.2003 [Annexure-A/4] had directed that the optee should be transferred to E.C.Railway for permanent absorption in Group 'B' Cadre of TT&C Deptt of Railway, wherein the names of applicants no. 1 to 5 are listed at sl.no. 25, 26, 28, 29 & 24 respectively. The learned counsel for the applicants submits that the Eastern Railway by an order dated 02.07.2003 [Annexure-A/5], through the CPO, published a provisional seniority list of Group 'B' officers of TT&C Department of that Railway as on 01.05.2003, wherein the names of private respondents appear at sl.no. 51 to 53 and 61 & 64 whereas, the names of applicant no.1 at sl.no.77, applicant no.2 at sl.no.81 and applicant no.3 at sl.no.74 respectively. It is submitted by the learned counsel for the applicants that these five private respondents were also senior to the applicants before the cut-off date in their parent Railway. The applicants' case is that two of the applicants, i.e., applicants no. 1 & 2, along with some others, had represented before the General Manager [P], E.C.Railway, vide their representation dated 17.03.2005 [Annexure-A/8/1] asking for publication of seniority list of Group 'B' Officers of TT&C Department of newly created E.C.Railway. Thereafter, on 12.08.2005 a provisional seniority list of Group 'B' Officers of TT&C Deptt. was published

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on behalf of the respondent no.3 [Annexure-A/9] wherein the private respondents were shown below the applicants. According to the applicants another order of permanent absorption was issued on 21.09.2004 [Annexure-A/10] wherein the lien of Group 'B' Officers were considered by the Railway Board and the names of the applicants were shown above the private respondents. It is the allegation of the applicants that all of a sudden the impugned order dated 28.04.2005 [Annexure-A/1] was issued promoting the private respondents and not considering the case of the applicants. Some of the applicants made representation vide letter dated 02.06.2005 which was replied to by the APO [Gazetted] for General Manager [P] vide letter dated 12.09.2005 [Annexure-A/12] stating, inter alia, -

".....your application for giving the benefit of promotion in Sr. Scale on the basis of published provisional seniority list of even number dated 12.08.2005 has been examined. Further the necessary correction was made for sl.no. 19,25,26,28 & 29 of the seniority list vide this office memorandum of even number dated 22.08.2005 & 30.08.2005.

On the basis of the above seniority position, your seniority stands at sl.no.28 and your promotion in Sr. scale will be as per turn basis."

2.2 The applicants also referred one corrigendum dated 22.08.2005 by which the seniority position of the private respondents have been re-cast [Annexure-A/13]. The main submissions of the applicants' side are that -

- [i] the private respondents had not opted before the cut off date as mentioned in the notification dated 22.08.2002;
- [ii] as per the seniority list dated 12.08.2005 they are senior to the private respondents; and
- [iii] the promotion order dated 28.04.2005 [Annexure-A/1] is liable

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to be quashed since no show cause was issued prior to re-casting of seniority list, i.e., corrigendum dated 22.08.2005 [Annexure-A/13].....”

3. Official Respondents have contested the case by filing their written statement. Shri Mukund Jee, learned Standing Counsel for the respondents submitted that from perusal of Railway Board's letter dated 20.04.2004, it is clear that the private respondents were all along senior to the applicants in their parent Railway and the applicants themselves have accepted that they were junior to the private respondents at the parent Railway. Thus, the re-casting of seniority was done in accordance with the terms and conditions of the Railway Board's notification dated 22.08.2002. He has further submitted that though upto 25.03.2004 the lien of the private respondents were ⁱⁿ their parent Railway but it is not established from Annexure-A/6 that the private respondents had not opted prior to cut off date. Since the private respondents are all along senior to the applicants, they were rightly given promotion in adhoc senior scale as per Notification dated.22.08.2002. He further submitted that it is the prerogative of the Railway Authorities to transfer its employees as per para 226 of IREC [Vol. I].

4. Shri M.P.Dixit, learned counsel appearing on behalf of the private respondents vehemently objected ^{to} the contention of the applicants. The above application has been contested by the private respondents by filing written statement. The learned counsel for the private respondents submits that vide letter dated 22.08.2002 [Annexure-A/2] the Railway Board has issued notification calling options from serving Group 'B' Officers for their

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absorption in the newly created Zonal Railways, including E. C. Railway latest by 23.09.2002, and in compliance of the said notification the CPO, Eastern Railway, Kolkata, has issued letter dated 03.09.2002 [Annexure-A/3 to the OA] calling options before the said cut off date. According to the private respondents, they have submitted their options before the said cut off date, which were duly forwarded by the concerned Division on 20.09.2002 and 29.09.2002 [Annexure-P/1 to the written statement filed by the private respondents]. In support of his contention he referred letters dated 22.07.2003 and 25.05.2004 [Annexure-P/2 series] wherein it has been referred that options were submitted before 29.03.2002. Learned counsel for the private respondents also referred Railway Board's letter dated 05.08.2004, wherein it has been indicated that the Ministry of Railways have decided that the private respondents, who have opted for E.C.Railway for permanent absorption in Group 'B' Cadre of TT&C Department of that Railway and they should be assigned appropriate seniority as per their position in E.C.Railway. He also submitted that the seniority list dated 12.08.2005 [Annexure-A/9] is not the final seniority list and further it was wrongly published when the applicants were admittedly junior to the private respondents. When the matter was examined by the concerned authorities, they immediately issued corrigendum dated 22.08.2005, whereby the private respondents have been placed above the applicants as per their seniority in parent railways and the said corrigendum dated 22.08.2005 was not challenged by the applicants. It is also his submission that the list of permanent absorption of Group 'B' officers dated 21.09.2004 is not the seniority list, rather it is a list of absorbed Group 'B'

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Officers of E.C.Railway. He also submitted that since the private respondents are senior to the applicants in parent railway, they were rightly promoted against available vacancies in the senior scale vide order dated 25.04.2005.

5. Applicants have also filed Misc. Application, bearing MA No.207 of 2007, for adding the General Manager as also the CPO, Eastern Railway as party respondents in the OA. Another Misc. Application, bearing MA No. 158 of 2011, has been filed for deletion of name of private respondent no.9 [Shri N. K. Singh] from the array of respondents in the OA.

6. We have heard learned counsel for all the parties and perused all the three M.As along with O.A. and the materials available in the record. The admitted position in this matter is that the Railway Board's Notification No. E[GP]2002/1/18 dated 22.08.2002 [Annexure-A/2] is the vital document for consideration of the issue. The terms and conditions laid down in the said Railway Board's notification are the deciding factor in this case. The main terms and conditions enumerated in the said notification are reproduced below:-

"[1]. In terms of Ministry of Railway's notifications no. 97/E&R/700/1/Notification dated 14.06.2002 and 04.07.2002, the following seven new Railway Zones have been constituted, the first two w.e.f. 01.10.2002 and the remaining five w.e.f. 01.04.2003

<u>Sl. No.</u>	<u>Name of Railway with Head Quarters</u>
1.	North Western Railway, Jaipur.
2.	East Central Railway, Hajipur.
3.	East Coast Railway, Bhubaneswar.
4.	South Western Railway, Hubli.
5.	West Central Railway, Jabalpur.
6.	North Central Railway, Allahabad.
7.	South East Central Railway, Bilaspur.

[2] The Board have decided that Group 'B' officers in position

Uday K. Singh (for)

within the jurisdiction of the new zonal Railways shall continue to remain there irrespective of their lien, for the time being.

[3] The Board have further decided that options may be called for from the Group 'B' Officers of various departments including the officers working in Sr. Scale on adhoc basis and also those working in the Divisions, workshops etc. who are regularly appointed to Group 'B' after due selection, for absorption in the same department in the new zones as indicated below:-

- [a] [i] *From NER & ER to East Central Railway.*
- [ii] *From NR & WR to North Western Railway.*
- [iii] *From SER to East Coast Railway.*
- [iv] *From SR & SCR to South Western Railway.*
- [v] *From CR & WR to West Central Railway.*
- [vi] *From NR, CR, NEW & WR to North Central Railway.*
- [vii] *From SER to South East Central Railway.*

[b] From all Railways/Production Units. Etc. for transfer to any of the new zones.

3.1 The Group 'B' Officers [including the officers working in Senior scale on adhoc basis] who are already working in the HQ or Divisions of new zones should also exercise the option as indicated in para 3 above.

3.2 The options as per para 3[a] shall be considered in preference to para 3[b]. Within [a] or [b], the options will be considered for absorption in the new zones only to the extent of requirement of the new zones, in the order of the date of regular appointment in Group 'B' and seniority in the parent Railway [s].

3.3 x x x x x

3.4 The options have to be exercised in writing by the officers within 30 days of issue of this letter, i.e., by 23.09.2002 positively.

X	x	x	x	x
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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. Their seniority including those working in Sr. Scale on adhoc 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."

Urovi in Galton (Sm)

7. As per the terms and conditions of the said letter [Annexure-A/2] the options of Group 'B' officers were invited for absorption in the newly created E.C.Railway on or before 23.09.2002, and their seniority was to be determined on the basis of their regular appointment in the parent Railway without disturbing the inter-se seniority position of officers transferred from the same Railway, i.e., from parent Railway. The contention of the applicants are that the private respondents had not opted before 23.09.2002 and, according to them, vide letter dated 21.09.2004 they are senior to the private respondents and, hence the promotion order dated 28.04.2005 [Annexure-A/1] should be quashed and set-aside. Though in their OA the applicants have only challenged the impugned promotion order and asked for quashing the same, but they have filed one Misc. Application, bearing MA No. 386 of 2011, on 03.11.2011 only for amendment to the tune of challenging the corrigendum dated 22.08.2005 [Annexure-A/13] and to incorporate in the relief portion of the OA.

8. The private respondents have contested the aforesaid submission of the learned counsel for the applicants on the ground of limitation.

9. After going through the records and submissions made by the learned counsel for the parties, we find that the private respondents had opted before the cut-off date and they are admittedly senior to the applicants in their parent Railway. Though the applicants have prayed for quashing of the promotion order dated 28.04.2005 [Annexure-A/1] and subsequently, by way of Misc. Application No. 386 of 2011, the corrigendum dated 22.08.2005

Umesh Chandra Gullu (dm)

[Annexure-A/13 to the OA], but they have neither challenged the seniority list dated 02.07.2003 [Annexure-A/5], nor the rejection letter dated 12.09.2005 [Annexure-A/12], but after a lapse of long time they have filed a Misc. Application asking for quashing of corrigendum dated 22.08.2005 [Annexure-A/13]. It is admitted fact that as per Railway Board's letter dated 22.08.2002 both the applicants and private respondents had opted for absorption in the newly created E.C.Railway and both the parties were absorbed in the year 2003 only. Since the private respondents were senior to the applicants in the parent Railway, they were rightly promoted as per Para 4.1 of the above mentioned Notification dated.22.08.2002.

10. We allow M.A. No. 207 of 2007 & M.A. No. 158 of 2011, but the OA along with the M. A. No.368 ^{of 2011} are dismissed being devoid of merit and on the ground of limitation respectively. No costs.

Urmita Datta (Sen)
[Urmita Datta (Sen)]/M[J]

Naresh Gupta
[Naresh Gupta]/M[A]