

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO:385/2006

Date: 6th December, 2007

CORAM:

HON'BLE MR.JUSTICE P.K.SINHA, VICE CHAIRMAN
HON'BLE MR.AMIT KUSHARI, MEMBER(A)

Om Prakash Srivastava, Son of Late Kailash Lal Srivastava,
Sr.Clerk,O/O the Chief Administrative Officer(Con),
E.C.Railway, Mahendrughat, Patna
presently under the Dy.Chief Engineer(Bridge),
E.C.Railway, Chiraitand, Patna.

.. Applicant

By Advocate : Sri M.P.Dixit

vs.

1. The Union of India through the G.M.,
E.C.Railway, Hazipur.
 2. The Chief Administrative Officer (Con),
E.C.Railway, Mahendrughat, Patna.
 3. The Chief Personnel Officer, E.C.Railway, Hazipur.
 4. The Dy. Chief Engineer(Bridge), E.C.Railway,
Chiraitand, Patna.
 5. The Chief Personnel Officer, Eastern Railway, Kolkata-1.
 6. The Divisional Railway Manager, Eastern Railway, Asansol, Distt.Burdwan.
 7. The Sr.Divisional Personnel Officer, Eastern Railway, Asansol,
District- Burdwan(W.B.)
- ... Respondents

By Advocate : Sri A.K.Choudhary, ASC



ORDER

JUSTICE P.K.SINHA, V.C:-

Heard the learned counsels for both the sides. In the circumstances of the case, this Original Application is being disposed of at this stage itself.

2. The applicant has come up for his promotion as Sr.Clerk with effect from 28.5.2003 while he was working in the Eastern Railway(E.Rly) before his coming to the newly created East Central Railway (EC Rly) on option, on which date his junior, one Sri Naveen Kumar Srivastava was so promoted in his parent Railway zone, with consequential benefits as well for quashing of Annexures A/13 and A/14 in this regard.

3. Before we proceed it may be stated that it is admitted position that the Railway Board vide their circular dated 4.7.2003 had directed that employees transferred to a new Railway zone would maintain lien with the parent zone till the date of 'cadre closing' in the new zone and as such, till the date of cadre closing they would be considered for promotion if that takes place in parent zone.

4. Following facts are also not disputed:-

i) That the applicant who was working in the Eastern Railway had opted to join the newly created EC Rly and, from E.Rly, he was relieved for joining the new zone on 17.1.2003 which new zone he joined on 21.1.2003 (vide Annexure A/2).

ii) The office of the General Manager,EC Railway at Hajipur wrote a letter dated 24.2.2006 to the DRM(Personnel), E.Rly, Asansol relating to the promotion of the applicant in the post of Sr.Clerk stating therein that the applicant, on his release from E.Rly on account of his option, had joined the EC Rly and before the cadre in EC Rly was closed,a junior staff in the Eastern Railway in Asansol Division, namely, Naveen



Srivastava was promoted to the post of Sr.Clerk in the scale of Rs.4500-7000 by order dated 28.5.2003. It was also pointed out that vide letter of the Railway Board dated 29.9.2003 the cadre of the EC Rly was closed on 31.10.2003, hence as per direction of the Railway Board, the lien of an employee would remain with his parent Railway zone till the cadre in the newly created zone was closed, where the employee had joined. It was opined that the applicant should be promoted to the post of Sr.Clerk with effect from 28.5.2003 as had been done in the case of Naveen Srivastava. A request was made to intimate the EC Rly about such promotion of the applicant so that his case could be disposed of (Annexure A/12).

iii) Annexure A/13, one of the impugned orders, is dated 17.2.2006 through which the EC Rly was intimated from the office of the DRM, E. Rly, Asansol that the applicant was transferred to EC Rly vide their letter dated 18.12.2002 on option basis which was after closing of the cadre (of EC Rly) with effect from 1.10.2002. It was also mentioned that it had been clarified by CPO/KKK that since EC Rly had become operational with effect from 1.10.2002, the lien of the staff transferred from E.Rly to EC Rly would cease with effect from 1.10.2002 or from the date of the staff joining the new Railway zone prior to the closure of the cadre. It was also intimated that since the applicant was released from E.Rly on 17.1.2003, question of his lien continuing in Eastern Railway did not arise nor he could be promoted with effect from 28.5.2003 from which date his junior was so promoted. A copy of the communication was sent to the applicant through Annexure A/14 dated 7.3.2006 which also has been the impugned

5. Learned counsel for the respondents has argued that as per information with the



authorities of the E. Rly, the cadre of EC Rly was closed prior to the date on which Naveen Srivastava was promoted, hence the applicant not maintaining his lien by virtue of the direction of the Railway Board till then, he could not claim a promotion in his parent zone.

6. Annexure A/3 dated 7.3.2003 is a letter issued by the Railway Board to the General Manager of North Western Railway, Jaipur intimating him that since the cadres in the new zones had not been closed, the employees working in the headquarter office would be eligible to be considered for promotion in their parent cadres who should continue to retain their lien, with direction to call the employees concerned according to their seniority for appearing in the selection etc. till the dates the cadres remain open in the new zones. As argued, this shows that till that date cadre was not closed.

7. Annexure A/4 is another letter issued from the Railway Board dated 4.7.2003 through which, in view of the reasons mentioned therein, the date of closure of cadres in all the 7 new Zonal Railways was extended till 30.9.2003.

8. Through their letter dated 29.9.2003 (Annexure A/5) the Railway Board again extended the date of closure of the cadres in the headquarter offices of all the 7 new Zonal Railways upto 31.10.2003. It has been argued that this way the cadre was ultimately closed with effect from 31.10.2003, not before that.

9. The learned counsel for the applicant Sri M.P. Dixit has also argued that in view of extension of dates of closure of cadres in the newly created zones including of EC Rly, similar benefits were granted to other employees as detailed in paragraph 2, onwards, in the rejoinder of the applicant to the written statement filed by the official respondents. Annexures P1 to P3 have been pointed out through which similar benefits



were granted.

10. A judgement of this Tribunal in which similar facts were involved was also pointed out. This Tribunal in O.A.No.244/2005 by order dated 29.3.2007, in a Division Bench, had considered similar facts and had noted that the official respondents in their reply had admitted that the latest instructions as contained in circular dated 4.7.2003(Annexure A/4) were not communicated to the Chief Personnel Officer of the Eastern Railway, Kolkata or the DRMs and due to communication gap, the applicant of that case was not considered for promotion. That application was allowed by this Tribunal. This Tribunal had held that the Eastern Railway had wrongly left out the applicant of that application from consideration for promotion in the higher pay scale.

11. The learned counsel for the applicant also pointed out that the post of Sr.Clerk is not a selection post and is to be filled up in accordance with seniority, taking into account the service records.

12. The learned counsel for the respondents frankly admitted that the subsequent orders of the Railway Board including at Annexure A/4, and subsequently at Annexure A/5 dated 29.9.2003 by which the date of closure of cadres was finally extended up to 31.10.2003, were not brought to the notice of the concerned authorities of the E.Rly, nor to his notice.

13. The learned counsel for the respondents also submitted that now that the cadre of the EC Rly has been closed, presently the applicant had no lien with the E.Rly, hence he cannot be promoted there. This argument is noted only to be rejected. When cause of action arose to the applicant on a date on which he had his lien intact with the E.Rly, Asansol Division, and was not granted benefit of promotion, which he was legally

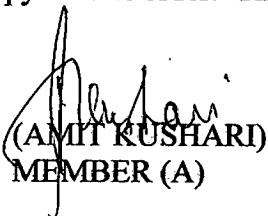


entitled to, by the respondents under wrong notion about the date of closure of cadre in the EC Rly, the applicant cannot be blamed for such mistake occurring at the hands of the authorities of the E. Rly. Such argument would amount to suggesting punishing of Mr.'Y' for the fault of Mr.'X'.

14. In view of what has been discussed above, it is apparent that this application has to be allowed.

15. In the result, Annexure A/13, a communication sent by the authority of E.Rly dated 17.2.2006 is hereby quashed. Respondent Nos 5,6 and 7, namely, the CPO, E.Rly, Kolkata, the DRM, E.Rly, Asansol and the Sr.Divisional Personnel Officer, E.Rly, Asansol in the District of Burdwan are hereby directed to consider the case of promotion of the applicant with effect from the date his immediate junior (Naveen Kumar Srivastava/Naveen Srivasatava) was so promoted, and if the applicant is otherwise found eligible for such promotion, then to notify his promotion with effect from the date his immediate junior was so promoted. The applicant will also be entitled to consequential benefits.

16. This should be done by the aforesaid respondents within three months of receipt of a copy of this order. This application is, accordingly, disposed of. No costs.


(AMIT RUSHARI)
MEMBER (A)


(P.K.SINHA)
VICE CHAIRMAN

/njj/