

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
 O.A. No. 763 of 2005

Dated : 30th September, 2011

CORAM

Hon'ble Mr. Justice Syed Md. Mahfooz Alam, Member [Judicial]
 Hon'ble Shri A.K.Jain, Member [Administrative]

Sudhir Kumar Sinha, son of Late Surendra Bahadur Sinha, resident of Railway Quarter No. T/194 A, Barbatta Railway Colony, Saran [Bihar] – 841101.

Applicant

By Advocate : Shri Gautam Bose, Sr. Adv. & Shri Vikash Jha.

Vrs.

1. The Union of India through the Chairman, Ministry of Railways, Railway Board, Railway Bhawan, New Delhi.
2. The Secretary, Ministry of Railways, Railway Board, Railway Bhawan, New Delhi.
3. The Director [Establishment], Railway Board, New Delhi.
4. The General Manager, N.E. Railway, Borakhpur.
5. The General Manager, E.C. Railway, Hajipur.
6. The General Manager [P], N.E. Railway, Gorakhpur.
7. The Divisional Railway Manager, E.C. Railway, Sonapur.

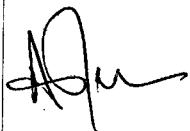
Respondents.

By Advocate : Shri M.N.Parbat, ASC

ORDER

A.K.Jain, Member [Administrative] :- The question involved in this original application is fixation of lien of the applicant. The applicant was initially appointed as a Junior Clerk in Sonapur Division under North Eastern Railway [NER] at that time and posted at Sonapur in 1979. Subsequently, he got promotions as Senior Clerk and Head Clerk. Thereafter he moved to Welfare side and rose to the rank of Welfare Inspector Gr. I from 11.12.2002.

2. On 13.05.2003, the Railway Board issued a letter on the subject of selection/LDCE promotion to Group 'B' category on formation of new zones. It was stipulated in para 5[a] of the said letter that since the new zones would not be



able to hold selection for promotion to Group 'B' for quite some time. the parent Railway may hold the selections/LDCEs for the period from 01.04.2003 onwards for filling up vacancies in the parent Railway plus the vacancies in the Divisions, Work-shops etc. which originally belonged to the parent Railway and which have now gone to a new zone. However, the Group 'B' vacancies in the headquarters of the new zones were excluded. It was also stipulated in para 5[e] of the letter that after formation of fresh panels for selection/LDCE, the empanelled candidates may similarly be posted on either Railway depending upon availability of vacancies, but they will have their seniority in Group 'B' on the parent Railway. Para 6 of the letter further clarified that provisions in para [c] and [e] were only in regard to posting of officers against Group 'B' vacancies in parent Railway or the new zone and that permanent absorption of a Group 'B' officer in the new zone would, however, be decided based on their options for the same on the basis of criteria laid down in the Board's letter of even number dated 22.08.2002.

3. In accordance with the letter of 13.05.2003 the NER issued a notification on 24.06.2003 for holding selection for promotion to the post of Assistant Personnel Officer [APO] in Group 'B' against 8 vacancies of 70% quota indicating therein the eligibility criteria for the persons to be considered [Annexure-A/5]. The applicant appeared in the said selection test and got selected as APO. He was then transferred for posting against Group 'B' vacancy of APO in Sonapur and Samastipur Divisions of ECR vide order dated 17.11.2003 issued on behalf of the General Manager [Personnel], North Eastern Railway, Gorakhpur [Annexure-A/8]. Accordingly, he submitted his joining report to General Manager [Personnel], E.C. Railway, Hajipur on 24.11.2003 and joined duty on 25.11.2003 [Annexure-A/9]. Thereafter, the applicant submitted representations for fixation of his lien and seniority as APO in ECR. A list of Group 'B' officers under ECR who had applied for fixation of lien was apparently sent to the Railway Board by the ECR vide letter dated 25.03.2004 and a reply was received vide Railway Board letter dated



20.04.2004. All concerned authorities were communicated the same for necessary action vide letter dated 13.05.2004 [Annexure-A/12] Vide letter dated 05.07.2004 issued on behalf of the General Manager [P], N.E.R., Gorakhpur [Annexure-A/13], the representation submitted by the applicant dated 09.06.2004 requesting for his permanent absorption in E.C.R. was forwarded to the Secretary [E], Railway Board, New Delhi. It also appears that E.C.R., vide letter no. ECR/HRD/GAZ/Lien/Group'B' dated 03.01.2005 also forwarded the representation of the applicant requesting for his transfer to E.C.R. with effect from the date of his posting in E.C.R. i.e. 25.11.2003 on the ground that he was a Group 'C' employee of E.C.R. and had opted for remaining in E.C.R. after selection as Group 'B' officer. The Railway Board vide its letter dated 19.04.2005, [Annexure-A/1] informed that the last date for submission of option was 23.09.2002 and as the applicant was not a Group 'B' officer at that time, he was not eligible to give any option. It was further mentioned in the letter that para 6 of the Board's letter dated 23.05.2003 did not speak of exercising any fresh option in supersession of Board's letter dated 22.08.2002. Therefore, the applicant could not be transferred to ECR on the basis of his option w.e.f. 25.11.2003.

4. The General Manager E.C. Railway also addressed a letter dated 27.06.2005 to the Member Staff, Railway Board [Annexure-A/14] informing therein that the applicant after his promotion as APO applied for fixation his lien in E.C.R. vide his letter dated 22.01.2004 which was forwarded to the Railway Board vide letter dated 25.03.2004. It was further mentioned that the case was regretted vide Board's letter dated 19.04.2005. The General Manager mentioned that due to procedural bottleneck, there was some delay in processing and forwarding his case to the Railway Board by the E.C.R. and stated that the applicant should not be penalized for this. He strongly recommended for applicant's absorption in E.C.R. on bottom seniority with effect from 22.01.2004 when he applied for absorption in E.C.R.



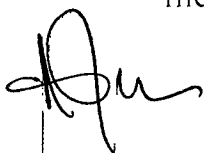
5. The Railway Board vide letter dated 29.07.2005 [Annexure-A/1], however, informed that the matter was considered and the same could not be agreed to. It was further noted that the applicant if he was still willing for transfer to E.C.R. on bottom seniority, he might give declaration regarding acceptance of bottom seniority and his seniority in E.C.R. would then be fixed from the date of issue of Board's order only.
6. The applicant has cited case of one Shri B.K. Rai who was posted as Chief Vigilance Officer at Hajipur and was transferred on promotion to Mughalsarai and absorbed there against 30% quota in NER whereas the case of the applicant was not considered [Annexure-A/15]. He has alleged that this action of the Railway Administration is discriminatory and is in gross violation of Article 14 and 16 of the Constitution of India.
7. Through this OA, the applicant has prayed for quashing and setting aside the Railway Board's letter dated 19.04.2005 [Annexure-A/1] and has 29.07.2005 [Annexure-A/1] and further prayed for a direction upon the respondents to absorb him in E.C.R. and fix his seniority and lien with effect from the date of his joining i.e. 25.11.2003 or at least from 24.01.2004, i.e. the date of recommendation by the General Manager, E.C.R., Hajipur along with all consequential benefits and cost of litigation.
8. Heard the learned counsel of both the sides.
9. The learned counsel for the applicant submitted that the time of creation of E.C.R., the applicant was a Group 'C' employee and posted in Sonapur Division which was transferred to E.C. Railway. As such the applicant automatically became an employee of East Central Railway. At that point of time, there was no question for him to exercise any option against Group 'B' post as he was not a Group 'B' employee. The selection through Limited Departmental Competitive Examination held by the parent railway was a joint selection against the vacancies of NER as well as those of the Divisions in ECR which were earlier part of NER.



It was only because the newly created zones were not in a position to hold the examination, that the Railway Board prescribed that such examination would be held by the parent Railway. However, after selection, the applicant was transferred and posted against the vacancy of E.C.R. As such he should be treated as absorbed in E.C.R. with effect from the date of his joining in Group 'B' post i.e. 25.11.2004. In any case, he also submitted his representation for fixation of lien and seniority in E.C.R. which has been clearly mentioned in the letter written by the highest authority in E.C. Railway, i.e. the General Manager. The learned counsel for the applicant added that though the claim of applicant is justified w.e.f. his date of joining but in deference to the decision of the GM who is the highest authority in a Zone, the applicant was agreeable even to accept the absorption with effect from date recommended by the General Manager. However, the authorities in Railway Board had rejected the prayer without assigning any reason. It is also clear that even the NER Headquarters also recommended his case for absorption in ECR in 2004 itself.

10. The learned counsel for the applicant further submitted that the Hon'ble Supreme Court of India in the matter of Harbansh Mishra vs. Railway Board [1989 SLR page 153 SC] clearly held that the lien is to a post and not to a place. Since after selection as APO in Group 'B', the applicant was transferred and posted against the vacancy in E.C.R., logically his lien should be fixed against the post in E.C.R. It was further contention of the learned counsel for the applicant that in the instant case the applicant was suffering because of non fixation of his lien, as a result of which his seniority was also not being fixed in E.C.R. In support of his contention, he drew attention to lists of Group 'B' personnel in E.C.R., NER as well as All India List as down-loaded from the website of Indian Railway Promotee Officers Federations claimed to be recognized by the Govt. of India.

11. The learned counsel for the respondents relying on the written statement filed on behalf of the respondents submitted that though as Group 'C' employee,



the lien of the applicant was posted in Sonepur Division and he was automatically transferred to E.C.R. as a Group 'C' employee, on his selection to the post of APO in Group 'B' through the examination conducted by the NER. his lien was transferred to N.E.R. as per instruction of the Board contained in letter dated 13.05.2003. The applicant represented for fixing his lien in E.C.R. with effect from the date of his joining. Since, he appeared in the Group 'B' examination much after the cut off date for exercising options for transfer to ECR on its creation, he was not eligible for the same. The only option, therefore, left with him was to apply for his transfer to the E.C.R. on acceptance of bottom seniority. There was no such request from the applicant who had only represented for fixation of his lien with effect from 25.11.2003 i.e. the date of his posting or as recommended by the General Manager w.e.f. 22.01.2004 when he first requested for his absorption in ECR. The learned counsel for the respondents further submitted that as per Railway Board's instruction, the applicant was required to apply for transfer to E.C.R. giving a clear declaration of acceptance of bottom seniority which would have become effective from the date of issue of Board's order only as per the procedure. The respondents had been taking similar uniform stand on all such requests of transfer to new zones and had not deviated therefrom. As regards the case of transfer of Shri B.K. Roy, Group 'B' Officer of Personnel Department of NER to Eastern Railway on permanent absorption basis, it was stated by the learned counsel for the respondents that Shri Roy was transferred to E.C.R. on bottom seniority in terms of Ministry of Railway's letter dated 21.06.89 as was clear from the order in his case annexed by the applicant as Annexure-A/15. The applicant was also offered option to apply for transfer to E.C.R. on bottom seniority but he himself was not willing to accept the same. In view of these facts, the learned counsel for the respondents submitted that the OA is devoid of merit, hence be dismissed.

12. We have perused the records and considered the rival submissions made by



the learned counsels for the parties.

13. At the outset, we note that averment made by the learned counsel for the applicant that applicant's lien has not been fixed either in the E.C.R. nor in the NER was not denied by the learned counsel for the respondents. It also transpires clearly that the authorities in the NER did not have any objection to applicant's transfer to E.C.R. and the authorities of the E.C.R. did not have any objection to his transfer to E.C.R.

14. We further note that as per instructions in Railway Board's letter dated 13.05.2003 ¹⁹⁵ ~~of the Railway Board~~ as contained in Annexure-A/4. on being selected as APO in Group B on the basis of the examination conducted by the parent Railway i.e. NER, the lien of the applicant on Group 'B' post was certainly in NER, notwithstanding that the examination was conducted for vacancies of NER as well as those of the zones transferred from NER to ECR. Moreover, mere posting of the applicant against a vacancy in ECR did not amount to his permanent absorption in ECR as has been clearly stipulated in para 6 of the letter quoted earlier in this order. Thus, we are not inclined to agree with the applicant that having been transferred to ECR as Group 'C' employee, and subsequently on his selection to Group-'B' and posting against Group 'B' post in ECR, he became an employee of ECR automatically. Certainly, in terms of stipulation in para 6 of the letter of Railway Board referred to above, his lien as Group 'B' officer continued to be with the parent Railway, i.e. NER.

15. As to the question of option submitted by the applicant, it is quite clear that the last date of submission of option for transfer on creation of new zone was certainly over. Obviously, not being a Group 'B' official, the applicant could not have opted as Group 'B' official before that date. At the same time having appeared in the examination for Group 'B' post in terms of the Railway Boards instruction, he cannot now question the conditions stipulated therein. Thus, only option left with him was to apply for transfer as per applicable instruction by

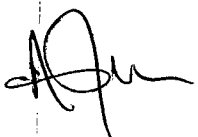


accepting bottom seniority. We find that at no stage, the applicant in his representation gave a declaration of accepting bottom seniority. As such we do not find any illegality or irregularity in the decision of the Railway Board rejecting his prayer for transfer/absorption w.e.f. date of his joining or the date of submission of representation. We also take note of the averment made by the respondents that the respondents have been taking similar uniform stand on all such requests of inter zonal transfer to new zones and have not deviated from that and also that lien on transfer is fixed w.e.f. date of the order of the Board on the prayer of an employee categorically giving declaration of accepting of bottom seniority. Even in the case of Shri B.K. Rai quoted by the applicant, we note that the transfer was ordered on bottom seniority against 30% quota as is clear from the order dated 07.06.2004 contained in Annexure-A/15. Moreover, this appears to be a case of promotion against 30% quota whereas applicant sat for examination against 70% quota vacancies. No other example has been cited by the applicant. We are, therefore, not convinced of the plea of discrimination taken by the applicant.

16. The applicant has tried to rely on the recommendation of the General Manager who is head of the Zonal Railway. However, if the recommendation is not in accordance with rules and instructions, the rejection thereof by the Railway Board cannot be said to be irregular or illegal merely because a very senior officer has made the recommendation.

17. In view of foregoing discussion, we do not find any merit in the OA. However, we are at a loss to understand why the lien and seniority of the applicant has not been fixed so far either in NER or in ECR. If the applicant continues to hold lien in NER, then his seniority should have been fixed in that Railway and all admissible consequential benefits should have been allowed. Alternatively, if he is taken as absorbed in ECR, similar action should have been taken in ECR.

18. We, therefore, dispose of this OA with direction to the concerned respondents to decide the matter of lien and seniority of the applicant as per laid :



down rules and instructions within a period of three months from the date of receipt of a copy of this order and thereafter allow all the admissible consequential benefits as per rules/instructions within a further period of two months. No order as to cost.



[A.K. Jain]
Member[Administrative]
mps.



[Syed Md. Mahfooz Alam]
Member [Judicial]