CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Applications Nos. 7,8,9,25 & 38 of 2006

This the 30th day of August, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

(1) Original Application No. 7 of 2006

K.Srinivas S/o late K.Ram Mohan Rao, Aged about 31 years, Coaching Depot Officer, South East Central Railway, Bilaspur, R/o Railway Quarter No.233/2, Bungalow Yard, Near Bada Girja, Bilaspur (Chhattisgarh).

-Applicant

(By Advocate – Shri R.K.Thakur)

VERSUS

1. Union of India through Secretary, Ministry of Railways, Railway Board, New Delhi.

2. General Manager, South East Central Railway, Bilaspur (Chhattisgarh).

3. General Manager, South Eastern Railway, Garden Reach, Kolkata-43.

-Respondents

(By Advocate – Shri H.B.Shrivastava)

(2) Original Application No. 8 of 2006

B.B.Roy, S/o late Bibhuthi Bhusan Roy, Aged about 52 years, Asstt Commercial Manager, CCM's Office, South East Central Railway, Bilaspur, R/o Railway Quarter No.185/1, Railway Engineering Colony, SEC Railway, Raipur.

-Applicant

(By Advocate – Shri R.K.Thakur)

2. B.L.Das, S/o K.N.Das, Aged 53 years, Working as ARM, SEC Rly/ Bhilai, R/o Officers Colony, Bhilai-3, Durg, Distt. DURG (C.G.)

3. K.K.Pathak S/o M.P.Pathak, Aged 50 years, Working as ATM (M), SEC Rly, Head Quarter, R/o Pathak Bhawan, Near Gujarati Samaj, Tikarapara, Bilaspur, Distt. Bilaspur (C.G.).

4. A.M.Masram S/o Late Mansaram Masram, Aged 48 years, Working as AOM (C), SEC Rly, Nagpur Div., R/o Bunglow No.179, SEC Rly Officers Colony, Mount Rd, Distt. Nagpur (M.S.)

5. K.M. Gajbhiye S/o late Maniram Gajbhiye, Aged 53 years, Working as ADME, SEC Rly/BSP, R/o Rly.Q.No.1514/4, Railway Officers Colony, Bilaspur, Distt. Bilaspur (C.G.).

-Applicants

(By Advocate – Shri R.K.Thakur)

VERSUS

1. Union of India through its Secretary, Government of India, Ministry of Railways, Railway Board, New Delhi-110001

2. General Manager, South East Central Railway, Bilaspur (CG).

3. General Manager, South Eastern Railway, Garden Reach, Kolkata-43.

-Respondents

(By Advocate – Shri H.B.Shrivastava)

(5) Original Application No. 38 of 2006

Santosh Kumar Mal S/o Late Rajnikanta Mal, Aged 55years, Working as DSTE, SEC Rly Nagpur/ BSP Zone, R/o Plot No.26, Bhosle Wadi, Saw Mill Area, Lashkaribag, Distt. Nagpur (M.S.)-440017.

-Applicant

(By Advocate – Shri R.K.Thakur)

VERSUS

1. Union of India through its Secretary, Government of India, Ministry of Railways, Railway Board, New Delhi-110001

2. General Manager, South East Central Railway, Bilaspur (CG).

3. General Manager, South Eastern Railway, Garden Reach, Kolkata-43.

-**Respondents**

(By Advocate – Shri H.B.Shrivastava)

COMMON ORDER

By Dr.G.C.Srivastava,VC.-

As the issue involved and grounds raised are common, and the facts are similar, these Original Applications are being disposed of by this common order.

2. In all these cases, the applicants were employed in the South Eastern Railway (for short 'SER'), which was trifurcated with creation of two new zones, namely, South East Central Railway (for short 'SECR') with headquarters at Bilaspur and East Coast Railway (for short 'ECR') with headquarters at Bhubneshwar with effect from 1.4.2003. Admittedly, in the case of Group-B employees, a letter dated 22.8.2002 (annexure-R/1) was issued by the Railway Board calling for option from the group-B officers for their option for absorption in any of the three zones. It was made clear that the options were to be submitted by 23.9.2002 and any application other than in response to the options invited as aforesaid, for transfer from one zone to another, shall be dealt with in the normal course as per rules. It was further mentioned that General Managers of the new zones may conduct selections/LDCE for filling up vacancies, if any become available in group-B posts within their jurisdiction, only after finalization of the gazetted cadre of the new zones and completion of the process of transfer of officers to various grades.

3. All the applicants, who were working in the undivided SER continued to do so at their respective places of posting even after 1.4.2003, when the places they were posted at became part of the SECR. They all claim that they are entitled to be absorbed in the SECR and should accordingly be shown in respective seniority list prepared by the SECR. The applicants basically fall in two groups viz. one who were in group-B on the crucial date but allegedly exercised their option after the dead line of 23.9.2002 was over, (namely, Santosh Kumar Mal in OA 38/2006 & K Ramana Rao and B.L.Das in OA 25/2006) and secondly those who were group-C employees on the crucial date i.e. ~~1.4.2003~~ 23.9.2002 but were subsequently appointed to group-B post (namely, K.K.Pathak, A.M.Masram and K.M.Gajbhiye in OA 25/2006, Om Prakash in OA 9/2006, K.Srinivas in OA 7/2006 and B.B.Roy in OA 8/2006).

4. In OA 25/2006, the contention of the applicants K.Ramana Rao and B.L.Das, who were in group-B on the crucial date, is that they had submitted their option within time but the options were lost by the respondents, as a result of which they were asked to resubmit their option, which they did on 9.12.2003. On the basis of these options, their case was referred to the Railway Board by the General Manager, SECR vide annexure A/2. In this letter it was admitted by the General Manager that "their applications/options could not be forwarded to the Board in time due to preoccupation of the administration with the Zone formation formalities and constraints". It was also mentioned that these "officers were working on the territorial jurisdiction of South East Central Railway even before trifurcation of S.E.Railway" and "their technical expertise and knowledge in respect of steel and coal loading would be of great help to this premier loading Zone". On these grounds, the General Manager, SECR requested the Railway Board to consider transfer of lien of these officers to the SECR

favourably on administrative grounds. This request was rejected by the Board vide annexure R/4 on the ground that, they did not submit their option within time. It was, however, mentioned that their request for transfer to SECR may be processed as inter-Railway transfer on acceptance of bottom seniority subject to the approval of the Railway Board.

5. In the case of Santosh Kumar Mal, applicant in OA 38/2006, who was holding a group-B post on the crucial date, it is claimed that the option was submitted by him within time, a fact which is also admitted by Shri G.R.Mali, Chief Signal & Telecom Engineer, SECR, Bilaspur vide annexure A/4. His option was subsequently forwarded on 29.6.2004 (annexure A/4) to the Railway Board, but no decision has been communicated to the applicant so far. The applicant has prayed that his name should appear in the seniority list communicated by the SECR vide annexure-A-1 on 15.3.2004. The contention of the respondents is that the applicant had not submitted his option within time and even in case of those employees who had submitted their options in time, cases of four of them could not be acceded to for want of sufficient number of vacancies in the SECR. It is further contended that the options were accepted on the basis of seniority and the senior most 10 officers of S&T department, to which the applicant belongs, were retained on SECR. A perusal of annexure A/2 shows that the applicant had submitted his option form for posting in the headquarters office, on 9.9.2002, and it was forwarded by his controlling officer on 10.9.2002. In this option form he gave SECR as his first choice followed by SER and ECR. Subsequently, he submitted another copy, which was forwarded by the Divisional Railway Manager, Nagpur, on 11.12.2002 stating that the option was received on 9.12.2002. From annexure A-4, it appears that the option of the applicant was not forwarded to the Railway Board

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(for reasons not indicated) by the time when the initial approval of the Board for permanent absorption of 10 group-B officers of S&T department was issued on 31.10.2003. Even when the SECR approached the Railway Board again on 25.3.2004 to review the case of 7 officers, who had submitted their options within time but were not approved for permanent absorption, the name of the applicant was not included in the list of those who had submitted their options within time. For the first time, the name of the applicant appeared on 29.6.2004, when the matter was taken up by the SECR once again for reconsideration vide annexure A/4. In this letter while in sub- paragraph (e) of paragraph 2, it is stated that "although all the above mentioned Group-B officers except Shri S.K.Mal, exercised their options for permanent absorptions on SECR within due date", the letter does not mention as to why the option of the applicant, if it was received in 2002, could not be forwarded to the Board earlier. Even otherwise, since all the vacancies are reported to have already been filled and many of those whose names were forwarded earlier could not be accommodated by the Board, there is no justification for the applicant to claim absorption on the basis of an option which does not appear to have been received within time.

6. Opposing the prayer of the applicants K.Ramana Rao, B.L.Das (both in OA 25/2006) and Santosh Kumar Mal (in OA 38/2006) that they should be allowed to retain their lien on the SEC Railway, the learned counsel for the respondents stated that since they did not submit their option within time and there is no convincing proof that their options were submitted in time but were lost in the department, the request has rightly been rejected by the Board. A perusal of annexure A/3, which was submitted by applicant K.Ramana Rao on 9.12.2003, shows that there is no reference to any other option which might have been submitted earlier. In the case of applicant B.L.Das, a perusal of annexure A/4

shows that he claims that "previously, a statement regarding to this willingness has been submitted but some how it has been missed". This statement is very vague and no information regarding the date on which the option was submitted has been given. Even the letter written by the General Manager (annexure A/2) does not clearly say that they had submitted their option within time but these could not be forwarded due to administrative lapse. In view of this, it has to be held that applicants K.Ramana Rao and B.L.Das, who were holding a group-B post on the crucial date and were required to submit their options for SECR by 23.9.2002, did not do so within the prescribed date and they are, therefore, not entitled to their absorption or maintenance of lien in the SECR on the basis of the Railway Board's letter dated 22.8.2002 (annexure R/1). Similar is the fate of Santosh Kumar Mal as discussed in para 5 above.

7. All other applicants, who were admittedly holding group-C posts on the crucial date, subsequently on different dates as indicated below, were appointed to group-B post on the basis of selections conducted by the SER:

Case No.	Name of applicant	Date of promotion in Group-B
OA 7/2006	K.Srinivas	24.5.2004
OA 8/2006	B.B.Roy	27.2.2003
OA 9/2006	Om Prakash	17.5.2004
OA 25/2006	K.K.Pathak	12.3.2003
OA 25/2006	A.M.Mesram	12.3.2003
OA 25/2006	K.M.Gajbhiye	10.1.2003

8. Admittedly, in all these cases, the selection was conducted by the SER and it was mentioned in the notification dated 26.9.2003 that "the empanelled candidates on promotion to Group-B may be posted in any of the 3 zones (SER/SECR/ECoR)". It is also an admitted fact that after appointment to group-B posts, these applicants continued to work in the SECR. The contention of the respondents is that since they were selected by the SER and Railway Board's letter dated 22.8.2002 (annexure R/1) specially

mentions that further recruitments were to be made after the completion of the process of transfer of officers, the selection made by the SER has to be treated as selection for SECR and SER. This contention does not appear to be correct specially because the notification issued by the SE Railway has clearly mentioned that the empanelled candidates may be posted to any of the three zones. The fact that the applicants have been posted in SECR even after appointment to group-B posts shows that vacancies are available in SECR. Morever, there is no evidence to show that any selection took place in group-B post in the SECR before the applicants appointment to group-B post. In view of these facts, it will neither be justified nor legally tenable to treat them as a part of SER and not of SECR after the trifurcation.

9. Further, it has been mentioned in the above notification dated 26.9.2003 that "in terms of Railway Board's letter no. E(GP)2002/1/18 dated 13.5.2003 wherever 70% selection for the period up to 31.3.2003 has been held but the corresponding 30% LDCE has not been held so far, the 30% LDCE for vacancy period up to 31.3.2003 shall be held by the parent railway as per the original assessment and zone of consideration". Hence holding of the selection by SER does not debar the applicants from retention in SECR in the higher post on regular basis.

10. In view of the above discussion, we are of the considered opinion that the applicants, whose names are mentioned in paragraph 7 above, are entitled to permanent absorption in SECR even against group-B posts, while other applicants whose names appear in paragraphs 4 & 5 have rightly been informed by the Railway Board that if they wish to remain in SECR, they have to apply for inter-railway transfer as per rules. Accordingly, it is ordered as follows:

(i) Impugned order dated 9.9.2005 in OA 7/2006 is quashed so far as it relates to the applicant K.Srinivas and the

respondents are directed to absorb him on lien in SECR with due seniority and all consequential benefits. This exercise should be completed within three months from the date of receipt of this order.

(ii) Impugned order dated 16.3.2005 in OA 9/2006 is quashed so far as it relates to the applicant Om Prakash and the respondents are directed to absorb him on lien in SECR with due seniority and all consequential benefits. This exercise should be completed within three months from the date of receipt of this order.

(iii) Impugned order dated 13.9.2005 in OA 8/2006 is quashed so far as it relates to the applicant B.B.Roy and the respondents are directed to absorb him on lien in SECR with due seniority and all consequential benefits. This exercise should be completed within three months from the date of receipt of this order.

(iv) OA 38/2006 filed by Santosh Kumar Mal is dismissed.

(v) OA 25/2006 is partly allowed and respondents are directed to absorb the applicants K.K.Pathak, A.M.Masram and K.M.Gajbhiye on lien in SECR with due seniority and all consequential benefits. This exercise should be completed within three months from the date of receipt of this order. Similar prayer made by the remaining applicants viz. K.Ramana Rao and B.L.Das is rejected.

11. In the result, OA 7,8 and 9/2006 are fully allowed. OA 25/2006 is partly allowed and OA 38/2006 is dismissed. No costs.

(A.K.Gaur)
Judicial Member

(Dr.G.C.Srivastava)
Vice Chairman

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