

**Central Administrative Tribunal
Jabalpur Bench**

OA No.119/05

Jabalpur, this the 26th day of December 2006

CORAM

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

B.V.Ramana Rao
S/o late Shri B.Sitarama Swamy
Employed as adhoc Office Superintendent Grade-II
Under Chief Engineer (Construction)
S.E.C.Railway, Bilaspur (CG).

Applicant

(By advocate Shri B.P.Rao)

Versus

1. Union of India
through the General Manager
South East Central Railway
Bilaspur Zone, G.M.Office
District Bilaspur
2. The Chief Personnel Officer
South East Central Railway
Bilaspur Zone
Bilaspur.
3. The Senior Personnel Officer
Office of the Chief Personnel Officer
South East Central Railway
Headquarters Office, Personnel Department
Bilaspur.
4. The Chief Engineer (Construction)
South East Central Railway
Bilaspur.

Respondents

(By advocate Shri Abhishek Sinha)

ORDER

By A.K.Gaur, Judicial Member

This Original Application has been filed for the
following reliefs:

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- (i) Direct the respondents to amend the applicant's lien from Engineering Department to Personnel Department with effect from the date of memorandum dated 18.10.2004 (A-12) so as to entitle the applicant for getting further promotions and other benefits in the Personnel Department.
- (ii) Direct the respondents to empanel the applicant at par with his juniors who are empanelled for OS-Grade II vide memo dated 29.12.2004 (A-16).

2. The main grievance of the applicant is that his lien should be maintained in the Personnel Branch of Chakradharpur Division instead of Engineering Department.

3. The applicant was initially appointed as Khalasi at Electrical Loco Shed at Tatanagar in 1970. He was promoted as Junior Clerk in 1973 and then as Senior Clerk in 1983 maintaining his lien in the Personnel Branch of Chakradharpur Division. While so, in 1984, the applicant was transferred to Koraput Project in the same capacity of Senior Clerk and as per the seniority list of Chakradharpur Division (A-1), he was at Sl.No.15 in the seniority list. In 1990, the applicant was promoted as Head Clerk and posted in the Personnel Branch of Chakradharpur Division. Again in the same year, the applicant was promoted as adhoc Office Superintendent Gr.II in the Personnel Branch and posted at Laximpur. In 1992, the applicant was transferred to the Railway Electrification Department at Bilaspur in the same capacity while retaining his lien in the Personnel Branch of Chakradharpur Division. Thereafter in 1995, the applicant was posted at Construction Organization at Bilaspur, retaining his lien at Chakradharpur Division. On account of formation of new zone at Bilaspur, options were invited from all the Divisions of S.E.Railway and applicant submitted his option (A-2) to work at Bilaspur Zone by maintaining his lien at Charkdharpur Division. Thereafter the applicant appeared in a screening test for working in the Headquarters of SEC Railway while retaining his lien in the personnel Department of Chakradharpur Division. While so, vide memorandum dated 4.12.03 (A-8), the applicant's lien was transferred from Chakradharpur Division to the Headquarters of South East Central

Railway, Bilaspur, as per his option. Thereafter vide memo dated 18.10.2004 (A-12) the applicant's lien was changed to Engineering Department. Against the allotment of lien in the Engineering Department, the applicant made a representation to respondent No.2 requesting him to retain his lien in the Personnel Department on account of his waiting for regularization against restructuring posts under Bilaspur Zone. The said representation was turned down by respondent No.3 vide communication dated 1.12.2004 (A-15). Thereafter vide memo dated 29.12.04 (A16), the Personnel Department, Bilaspur empanelled the applicant's juniors for promotion to the post of OS-II against restructuring. This empanelment, according to the applicant, deprived him of the promotional benefit as OS Grade II in the Personnel Department. Hence this OA has been filed.

4. In their reply, the respondents have stated that the applicant has not arrayed the empanelled persons who are, according to him, his juniors, as respondents in the OA. They are necessary parties and they have a right to be heard to protect their interests. Options were invited from the willing staff of various divisions/zonal railways due to urgent requirement of man power in the newly formed zonal Railways with a stipulated condition that optees should physically join the concerned new Zonal Headquarters as on 30.4.2004. The applicant had submitted his option for his release from Construction/BSP on 27.7.04 after the cut-off date i.e. 30.4.2004. Those who reported to the SEC Railway Headquarters before the cut-off date have been promoted. The applicant wanted to derive dual benefits from the Personnel as well as Engineering Departments, which is not permissible. The respondents have further stated that no junior to the applicant in the Engineering Department had been promoted ignoring the applicant. The applicant has failed to demonstrate any legal right to hold a lien in the Personnel Department; as such the claim of the applicant is untenable.

5. The learned counsel for the applicant has argued that the screening test was conducted to post employees in the Personnel Branch of New Zone at Bilaspur, and that if the applicant could not

join before the cut off date, it was because of the respondents' failure in relieving him in time. The counsel for applicant has relied on a judgement of Jammu & Kashmir High Court in Subhash Chandra Gupta vs. State of J&K - 1 (1990) ATLT (HC) 106 and N.Krishna Iyer vs. Union of India (Ernakulam Bench of the Tribunal) - SLR 1990 (CAT) 255, and argued that the applicant has never submitted any application for change of his lien from Personnel Department to any other Department, therefore changing his line from that department is illegal.

6. On the other hand, the respondents have relied on 2004 2 SCC 76 - Rama Rao vs. All India Backward Classes Bank Employees Welfare Association, and contended that it is settled legal position that an employee has got only a right to hold lien on a substantive post and not on a particular post or department. They also relied on AIR 1971 SC 359 - Paresh Chandra vs. Controller of Stores and AIR 1989 SC 696 - Haribansh Misra vs. Railway Board in support of the case.

7. We have heard arguments of the learned counsel for both the parties and carefully seen the records and we are of the considered view that the persons who have been empanelled for restructured post of O.S. Grade-II vide memo dated 29.12.04 (A-16), issued by the Personnel Department, are not at all necessary persons to be impleaded as respondents. No prayer for quashing the said panel has been made in the original application. The cases cited on behalf of the respondents are wholly distinguishable and are not applicable to the present case.

8. We have also noticed that in view of the options invited from the willing staff of various Divisional/Zonal Railways, due to urgent requirement of manpower, the optees must have joined the concerned newly formed zonal Railway Headquarters on or before 30.4.04, strictly in accordance with the Railway Board's letter dated 30.10.2003 (Annexure R-1). In the present case, the applicant had submitted his requisition to his immediate head of department i.e. C.E. (Const.), Bilaspur for his release only on 27.7.04 much after a lapse of more than three months after the cut off date i.e. 30.4.04. Since the

applicant did not report to the new zonal Headquarters of SEC Railway on or before 30.4.04, he is not entitled for the relief claimed. On the other hand, all those persons who are alleged to be juniors to the applicant have been physically working in the Personnel Department and reported to the SEC Railway Headquarters office much before 30.4.04, the cut off date. The applicant was already availing benefit of adhoc promotion in Construction Organization and due to this reason he did not show any interest to come to SEC Railway, till the orders came from Railway Board dated 9.10.2003 for joining Headquarters on or before 30.4.04.

9. The applicant has failed to demonstrate any legal right to hold his lien in Personnel Department of SEC Railway Headquarters in as much as that he was screened for accommodation in Headquarters and had been given lien in Engineering Department as per distribution and requirement of the department. The applicant cannot claim as of right the department of his choice in the newly formed headquarters office of SEC Railway at Bilaspur.

10. On a careful perusal of the records, it is clearly borne out that the applicant has failed to indicate as to how and on what grounds he is challenging the transfer of his lien. He has also failed to point out any irregularity or violation of norms in the transfer of lien. The optees have been screened by the competent authority to accommodate them in the Headquarters office and their lien has been fixed as per the requirement of man power in various departments of the Headquarters office. As per the requirement of the Railway Board letter dated 30.10.2003 (Annexure R-1), the applicant did not join the newly formed zonal Railway before the cut-off date.

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11. In view of the aforesaid observations, the applicant has failed to make out a case warranting our interference with the OA. The OA is accordingly dismissed. No order as to costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

General
(Dr. G.C. Srivastava)
Vice Chairman

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पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अर्पित:-
(1) सचिव, उच्च न्यायालय एवं हाजिरीदख्त, जबलपुर
(2) आदेशक श्री/श्रीमती/श्री.....के कारुसल
(3) प्रत्यक्षी श्री/श्रीमती/श्री.....के कारुसल
(4) न्यायालय, संवत् ७१, जबलपुर प्रत्यक्षी
सूचना एवं आवश्यक कार्यवाही हेतु

BP Rao Adv Duro
Abhishek Singh
Adv Bslgpru

Issued
on 3/1/07
Am

3/1/07
सचिव