

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.448 of 2005

Jabalpur this the 2nd day of August, 2006.

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

1. Ashok Kumar Nayak, aged about 42 years, S/o Shri Ramesh Chandra Nayak, Presently posted as Assistant Financial Advisor/ Assistant Divisional Financial Manager, S.E.C. Railway, Bilaspur, R/o Railway Quarter No.1465/A, Officers Colony, Opposite Railway Telephone Exchange, SEC Railway, Bilaspur, District Bilaspur Chhattisgarh.
2. S.Mahapatro, aged about 44 years, S/o late Shri A. Mahapatro, Presently posted as Assistant Financial Advisor/Assistant Divisional Financial Manager, S.E.C. Railway, Bilaspur, R/o Railway Quarter No.1121/A, Construction Colony, SEC Railway, Bilaspur, District Bilaspur Chhattisgarh.
3. Ramesh Bhattacharya, aged about 43 years, S/o Late Shri B.B.Bhattacharya Presently posted as Assistant Financial Advisor/Assistant Divisional Financial Manager, S.E.C. Railway, Bilaspur, R/o Railway Quarter No.1468/1,Officers Colony, SEC Railway, Bilaspur, District Bilaspur Chhattisgarh.
4. D.K.Sarkar, aged about 45 years, S/o late Shri Sisir Kumar Sarkar, Presently posted as Assistant Financial Manager/Assistant Divisional Financial Manager, S.E.C. Railway, Bilaspur, R/o Railway Quarter No.1468/1, Officers Colony, SEC Railway, Bilaspur, District Bilaspur Chhattisgarh.
5. A.K.Vinaikar, aged about 41 years, S/o Shri B.Harish Chandra, Presently posted as Assistant Financial Manager/Assistant Divisional Financial Manager, S.E.C. Railway, Bilaspur, R/o Railway

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Quarter No.1103/B, Officers Colony, SEC Railway,
Bilaspur, District Bilaspur Chhattisgarh.

-Applicants

(By Advocate – Shri Ranbir Singh)

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1. Union of India, through the Secretary, Government of India, Ministry of Railways, Rail Bhawan, New Delhi 110001.
2. The General Manager, South Eastern Railway, Garden Reach, Kolkata-43
3. The General Manager, South East Central Railway, GM Building, Bilaspur, District Bilaspur, Chhattisgarh.
4. The Financial Advisor & Chief Accounts Officer, South Eastern Railway, Garden Reach, Kolkata-43
5. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43
6. The Financial Advisor & Chief Accounts Officer, South East Central Railway, GM Building, Bilaspur, District Bilaspur, Chhattisgarh.
7. The Chief Personnel Officer, South East Central Railway, GM Building, Bilaspur, District Bilaspur, Chhattisgarh.
8. Sri P.P.Sharma, aged about 46 years, Presently working as Director (Establishment) Room No.533(B), Ministry of Railway, Railway Board, Rail Bhawan, New Delhi-110001, R/o 96, Kala Vihar, Mayur Vihar, Phase-I, New Delhi.
9. Sri J.Srinivas, aged about 45 years, Presently working as Director Finance (CCA), Room No.425, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi-110001, R/o 252/6-A, P.K.Road, New Delhi.

-Respondents

(By Advocate – Shri M.N.Banerji)

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O R D E R

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

Through this Original Application, the applicants, who are working in the accounts branch of South East Central Railway (for short 'SEC railway') challenge the order dated 13.3.2005 (annexure A/2) by which their claim for administrative transfer of their lien from South Eastern Railway (for short 'SE railway') to SEC railway was rejected and they were advised to seek transfer on bottom seniority basis.

2. The case of the applicants is that they were serving in the SE railway till 31st March,2003, when SE railway was split to create two more zones, viz. SEC and East Coast (for short 'EC') railways. During this period, they appeared in a Limited Departmental Competitive Examination (for short 'LDCE') conducted for filling up 30% vacancies in group-B. This examination was held on 20.12.2002 on the basis of a notification issued on 17.5.2002 (annexure A/5). The applicants were declared successful and vide order dated 27.3.2005 (annexure A/15) four of them (applicants nos. 1 to 4) were posted on promotion at Bilaspur as officiating AAO, SEC railway and applicant no.5 was posted at Adra. It appears that applicant no.5 refused to go to Adra and was debarred for promotion for one year, but, subsequently, after a period of one year he was posted to SEC railway on the basis of the same panel which was prepared before trifurcation. While applicants nos. 1,2 & 3 joined in group-B post before trifurcation, applicants 4 & 5 joined in group-B post after trifurcation.
3. The grievance of the applicants is that they are being treated as holding lien in SE railway on the ground that they did not exercise their option as group-B employees before the dead line of

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23rd September, 2002, that was fixed by the railway board vide annexure A/4. They contend that since they were appointed in group-B posts after the dead line was over and no subsequent communication was received by them to exercise their option, the question of their exercising the option does not arise. They further contend that the notification on the basis of which they appeared in the LDCE did not mention that in the event of their selection they will have to exercise their option. Accordingly, it was submitted by the learned counsel for the applicants that they are entitled to have their lien and permanent absorption in SEC railway where they had been working since long.

4. Opposing the prayer of the applicants, the respondents submitted that the LDCE was conducted by the SE railway and after qualifying in the LDCE the applicants became group-B officers and, therefore, they could get absorbed in the SEC railway on acceptance of bottom seniority only. The option, if any, submitted by them as group-C employees has to be treated as redundant.

5. We have heard the arguments advanced on behalf of both the parties and have also gone through the pleadings and various circulars available on record.

6. Our attention has been drawn to the circular dated 17.5.2002 (annexure A/5) by which the LDCE was announced by the SE railway. This was done much before the trifurcation and naturally it does not contain any reference to post trifurcation situation. But, another circular, which was issued on 25.9.2002 (annexure A/21) dealt with panels for selection/LDCE for promotions to group-B which are already under process. It has been specifically mentioned therein that such panels may be finalized and declared

with reference to the original number of vacancies for which the selection/LDCE was notified. Since the process for LDCE for promotion to group-B post in the instant case had already started with the issue of notification dated 17.5.2002, there is no doubt in our mind that this circular would be applicable in the instant case. Subsequently, another circular, which was issued on 11.11.2002, dealt with selections/LDCE which ~~are~~ ^{were} yet to be notified.

7. The circular dated 25.9.2002 (annexure A/21) gave guidelines about the manner in which the panel prepared on the basis of such selection/LDCE is to be operated. It laid down that "in the matter of operation of the panels, both in respect of panels yet to be declared and un-operated portions of the panels already declared, adequate care may be taken and the panels may be operated to the extent of actual vacancies in the residual jurisdiction of the railway after the new zones come into existence and keeping in view the number of group 'B' officers of the railway who have opted for transfer to a new zone".

8. The circular dated 17.5.2002 (annexure A-5) notified LDCE for 13 vacancies. Since it was done much before trifurcation, the notification must have taken into account the total number of vacancies in undivided SE railway. However, before the panel was declared, circular dated 25.9.2002 (annexure A/21) was issued advising the zonal manager to operate panels according to vacancies available in the "residual jurisdiction" of the railway after trifurcation. The facts that the panel was declared on 25.3.2003 (annexure A-14) i.e. much after the issue of this circular and the subsequent order issued on 27.3.2003 (annexure A-15) posted the selected candidates, without taking their option, not only in the jurisdiction of residual SE railway, but also in the jurisdiction of the newly created SEC and EC railways with the

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approval of the "Competent Authority" (as mentioned in the opening sentence of the said order), we have no doubt in our mind that this was done in accordance with the guidelines laid down in the circular dated 25.9.2002 (annexure A/21).

9. The fact that the applicants were retained within the jurisdiction of SEC railway even after trifurcation clearly shows that they were selected in group-B posts, taking vacancies of SEC railway into account and it will not be legally tenable to ask them to apply for transfer of lien to SEC railway on the basis of bottom seniority rule. The respondents have stated in their written statement that the options exercised by them as group-C employees have become redundant on account of their promotion to group-B post. If that is so, there is also no possibility of their exercising fresh option as a group-B employee, as the date of exercising that option was over much before they were appointed to group-B post. It would be not only unfair but also illegal to ask them to lose their seniority if they want to continue on a permanent basis in their existing position. They have become entitled to permanent retention in SEC railway and, thereby, for transfer of their lien from the erstwhile SE railway to SEC railway, by virtue of having been posted there after they succeeded in an LDCE that was notified much before the trifurcation and was held for a specified number of vacancies worked out for the undivided SE railway. Their claim is further strengthened from the fact that they were not told in advance that they would have to lose their seniority if they wanted to continue within the jurisdiction of the SEC railway, and also because they were retained in SEC railway without having been given an opportunity to exercise their option.

10. In view of the above discussion, we hold that the applicants are entitled to a lien in SEC railway and the impugned order by

which their claim was rejected is illegal and deserves to be set aside.

11. In the result, the OA is allowed. The impugned orders are set aside. The applicants are entitled to have their lien and seniority in SEC railway on the basis of the rules governing transfer of lien on restructuring of zones. No order as to costs.

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

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

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पूँछक्कन सं ओ/न्या..... जवलपुर, दि.....
प्रतिलिपि दावो दिलातः—
(1) सचिव, उच्च न्यायालय दाव एस्टेटिशन, जवलपुर
(2) अकेडमी/दीक्षिती/वडु..... के काउंसल
(3) प्रस्तावी श्री/कीरती/कु..... के काउंसल
(4) क्षेत्रपाल, टोप्रा., जवलपुर नायरिंड
सूखना एवं आकर्षक कार्यवाही केन्द्र

Shri R.B.Singh Chanay Bilaspur
Shri Anil Banerjee N.C.I.B.P

Shri B.N. Banerjee
9.8.06

Issued
on 9/8/06
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