

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Applications Nos.873 & 1075 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) Original Application No.873 of 2005

Om Prakash Chakraborty, S/o late Shri B.L.Chakraborty, aged about 49 years, Employed as Jr.Engineer (Works)Cons. C/o Dy.C.E. (Constructions), S.E.C. Railway, Raipur.

-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, PO: Bilaspur (CG).
2. The Chief Personnel Officer, South East Central Railway, Bilaspur Zone, Headquarters Office, Bilaspur (CG).
3. The Chief Engineer (Construction) South East Central Railway, Bilaspur Zone, Bilaspur (CG).
4. The Dy.Chief Engineer (Construction), South East Central Railway, Raipur Division, Engineering Colony, Raipur (CG).
5. The Chief Personnel Officer (Cadre), for Chief Personnel Officer, South East Central Railway, Bilaspur Zone, Headquarters Office, Bilaspur (CG).
6. The Chief Personnel Officer, South East Railway, Garden Reach, Kolkata (WB).

7. The Sr. Divisional Personnel Officer, S.E.
Railway, Adra Division, ADRA(WB).

-Respondents

(By Advocate – Shri M.N.Banerji)

(2)Original Application No. 1075 of 2005

Om Prakash Chakraborty, S/o late Shri B.L.Chakraborty, aged about 49 years, Employed as Jr.Engineer (Works)/Cons. C/o Dy.C.E. (Constructions), S.E.C. Railway, Raipur.

-Applicant

(By Advocate – Shri B.P.Rao)

V E R S U S

1. Union of India through the General Manager, South East Central Railway, Bilaspur Zone, G.M.Office, PO: Bilaspur (CG).

2. The Chief Personnel Officer, South East Central Railway, Bilaspur Zone, Headquarters Office, Bilaspur (CG).

3. The Senior Personnel Officer, South East Central Railway, Bilaspur Zone, Headquarters Office, Bilaspur (CG).

4. The Chief Engineer (Construction) South East Central Railway, Bilaspur Zone, Bilaspur (CG).

5. The Dy.Chief Engineer (Construction), South East Central Railway, Raipur Division, Engineering Colony, Raipur (CG).

- Respondents

(By Advocate – Shri M.N.Banerji)

COMMON ORDER

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

As both the aforesaid OAs have been filed by the same applicant and have common factual background, both the OAs are being decided by this common order for the sake of convenience.

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OA 873/2006 :-

Through Original Application No.873/2006, the applicant Om Prakash Chakraborty, working as Jr. Engineer (Works) under the control of Dy. Chief Engineer (Construction), South East Central Railway (for short 'SEC Railway') has challenged the order passed by the respondent no.2 on 12.8.2005 (annexure A/10) rejecting the claim of the applicant for transferring his lien to the SEC Railway and upholding cancellation of his candidature for LDCE selection held by SEC railway.

2. The facts of the case are that the applicant was originally appointed as Junior Engineer on 14.9.1984 in Adra Division of South East Railway (for short 'SE Railway'). He was subsequently transferred to the construction wing of the railways and was posted under the Chief Engineer (Construction), SE railway, Bilaspur. He, however, maintained his lien in Adra Division. Subsequently, on the trifurcation of the SE railway on 1.4.2003, Bilaspur came under the SEC railway and the applicant was posted in the newly formed Raipur Division of SEC railway under the control of Dy. Chief Engineer (Construction) with no change in his lien. On 18.1.2003, the applicant submitted his option (annexure A/1) giving SEC Railway as his first option for headquarters posting. But even before that, vide annexure A/2 dated 15.9.2002, a consolidated statement showing the willingness/ option submitted by the staff working under the Dy. Chief Engineer (Construction), Raipur for transfer of services to various zonal offices was forwarded to the Chief Engineer (Construction), Bilaspur for necessary action. This statement included the applicant's name seeking posting to SEC railway. Having received no response, the applicant along with some others submitted a representation to the Chief Personnel Officer, SEC

Railway, Bilaspur on 20.8.2004 (annexure A/3) for favourable consideration of the request for transfer of lien to SEC railway on the ground that privilege has been given to the staff that they can change their lien as per their choice without losing seniority during re-grouping of zones. It was further submitted that some staff from other railways have already been transferred to SEC Railway and the staff already working in the construction organization has not been shown the same consideration. There was no response from the authorities. Meanwhile, a notification was issued by SEC railway on 23.7.2004, for holding a selection for Assistant Engineer/ Assistant Executive Engineer (group-B) against 30% Limited Departmental Competitive Examination (for short 'LDCE') quota. The applicant qualified in the written test (annexure A/5) but subsequently, his candidature was cancelled, vide annexure A/6, on the ground that he was not eligible to appear in the test as his lien was still maintained at Adra division of SE railway and not with Bilaspur zone of SEC railway. On intervention of this Tribunal (in OA 599/2005) he was allowed to appear at the viva voce pending disposal of his representation. The representation of the applicant was disposed of by respondent no.2 on 12.8.2005 (annexure A/10) confirming cancellation of the candidature of the applicant. The applicant has now come to the Tribunal ~~.....~~ challenging the order passed by respondent no.2 upholding the cancellation of the candidature of the applicant for LDCE and rejecting his request for transfer of his lien to SEC railway.

3. The applicant's contention is that his option for transfer of lien from SE Railway to SEC Railway has not yet been disposed of by the respondents and having worked in the Bilaspur zone for the last 22 years and drawing his salary from the SEC Railway, the request of the applicant cannot be rejected without assigning any

reasons. Further, since he was allowed to appear in the written test for LDCE and his option form was also forwarded to the SEC Railway, the cancellation of his candidature is unjust. It has also been alleged by the applicant that two other employees whose lien is being maintained in Adra division were allowed not only in the written test, but also in the *viva voce*.

4. Opposing the contentions of the applicant, the learned counsel for the respondents stated that on the basis of the options received, 63 persons were transferred to SEC Railway vide order dated 31.10.2003 (annexure D-2). The name of the applicant does not figure in this list. As such he has no right to appear for the selection which was meant only for those employees who belong to the SEC railway. It is further contended that annexure A/5 clearly mentions that the result was subject to verification of details regarding lien etc. The learned counsel for the respondent also stated that the applicant has now been repatriated to his parent cadre so that he may take part in selections to be held there and is not deprived of any legitimate benefits.

5. We have given careful consideration to the arguments advanced by the counsel of both parties and have also gone through the material on record.

6. We find that there is no order transferring lien of the applicant from Adra division of SE railway to SEC railway. The impugned order rightly mentions that "transfer of service/change of lien is a positive act and when such change/ transfer of services from SE Railway (Adra) to SEC Railway was not communicated, it is not clear how you have presumed that your lien stands transferred to SEC railway". It has also been mentioned in the impugned order that the notification for the selection had clearly

indicated that ineligible candidatures would be cancelled at any stage. The argument of learned counsel for the applicant that since the applicant has been working for the last more than 20 years in Bilaspur/Raipur division, he is entitled to be considered for promotion/higher appointment in the SEC railway is also not tenable as the construction wing of railway does not have any permanent cadre of its own and employees there are posted from different places in the open line while maintaining lien in their parent cadre. Merely working within the jurisdiction of a particular division does not entitle them to be considered for promotion in that division in open line. In view of these facts, we do not find any merit in Original Application 873/2005 and the same is liable to be dismissed.

OA 1075/05 :-

7. By Original Application 1075/2005, the applicant has challenged order dated 31.10.2005 (annexure A/1) passed by the Chief Personnel Officer repatriating the applicant to his parent division. The applicant has contended that the order is illegal and incorrect as there has been no demand from his parent division for repatriation; the order does not fulfill the need of any administrative interest and there are no justifiable reasons for this order. Further, the applicant alleges that he has been singled out for repatriation and it amounts to discrimination. Since no reasons have been given for this order, the applicant has not been able to submit any representation to the department against this order. Accordingly, the applicant has prayed for setting aside of the impugned order.

8. Opposing the prayer, the learned counsel for the respondents has submitted that the applicant has been holding his lien in Adra division and he can not continue in a project for life long. It is further submitted that he was being repatriated so that he can be considered for further promotion in his normal channel of promotion as he was not considered for selection held in the SEC railway.

9. We have heard the arguments advanced by the counsel of both the parties.

10. The learned counsel for the applicant has cited several cases, with a view to convince us that the repatriation is illegal. We have gone through these judgments and find that none of them are relevant to the instant case. Here the applicant has been retaining his lien in the parent department for more than 20 years without reverting back. Generally, lien is for a specified period after which either the employee should revert to the parent department or he should seek absorption in the borrowing department. In the instant case, the applicant sought for transfer of lien only on restructuring of the railways. This request was not acceded to. In fact, in one of the cases cited by the applicant himself (**Dr.S.M.P. Sharma Vs. State of MP and another, 2005 (1) MPHT 380**) it has been very clearly mentioned that "unless employee on deputation has already been absorbed in the borrower department, he can always be recalled or repatriated to the parent department". In **Kunal Nandu Vs. Union of India, AIR 2000 SC 2076**, the apex court has held that an employee on deputation has no vested right to get absorbed in the borrower department. In view of this, we find that the order passed by the respondents repatriating the applicant to his parent department does not suffer from any infirmity. It is absolutely the prerogative of the borrowing department to assess

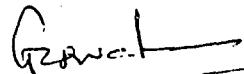
the suitability and need of further retention of a borrowed officer in the department. The borrowed officer can not be the judge of the need of the department in respect of his services. Accordingly, we hold that the OA 1075/2005 is devoid of merit and is liable to be dismissed.

11. In the result, both the Original Applications 873 & 1075 of 2005 are dismissed. No order as to costs.


(A.K. Gaur)
Judicial Member

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(Dr. G.C. Srivastava)
Vice Chairman