

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.135 of 2012

Cuttack this the 9th day of April, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBERA(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBERA(A)

Tapas Kumar Biswas, aged about 46 years, S/o. late Samresh Chandra Biswas, at present working as a Senior Supervisor (P.Way), O/o. SSE/P.Way/KDJR/East Coast Railway, permanent resident of Vill-Sutragarh Char, PO-Santipur, Dist-Nadia, PIN-741 404, West Bengal.

...Applicant

By the Advocate(s)-M/s.N.R.Routray

S.Mishra

T.K.Choudhury

S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Rail Kunj, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.
2. Chief Personnel Officer, East Coast Railway, Rail Kunj, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.
3. Addl.Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda, Odisha.
4. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda, Odisha.
5. Senior Divisional Engineer/Coordination, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda, Odisha.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Senior Supervisor (P.Way) in the O/o. SSE/P.Way, KDJR under East Coast Railways at the

time of filing the Original Application. He initially joined as a Gangman on 15.3.1990. In due course, he was promoted to the post of Senior Supervisor (P.Way) in PB-II (Rs.9300-34800) with Grade Pay of Rs.4200/-. As per the order dated 29.12.2010 (A/1), the applicant was found suitable for the post of Junior Engineer(P.Way) in PB-II with Grade Pay of Rs.4200/-. He was sent for promotional training course from 21.2.2011 to 20.4.2011 as per order dated 28.01.2011(A/2). However, the Respondent No.3 vide Office Order No.Engg/127/2011 dated 01.11.2011(A/6) cancelled the order under A/1 dated 29.12.2010 on the ground of administrative reasons. The applicant has challenged this order of cancellation and filed the present O.A. praying for the following reliefs:

- i) To quash the order of cancellation dated 01.11.2011 under Annexure-A/6.
- ii) To direct the Respondents to promote the applicant to the post of JE(P.Way) in PB-Rs.9300-34800 with GP Rs.4200 w.e.f. 29.12.2010.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. The applicant has based his prayer on the following grounds:

- i) The ground of administrative reasons is vague, illegal, arbitrary and violative of Article 14 of the Constitution of India.
- ii) The RBE No.95/02 (A/7) clearly mandates that non-mention of any reason for such cancellation is arbitrary and therefore, the

Respondent No.3 has committed a grave error in issuing the order under A/6.

- iii) The respondents committed grave error in cancelling the result for promotion to the post of JE(P.Way) where it is mandated under RBE No.161/09 read with RBE No.81/10 that those promotions were being effected as a onetime measure in exception to the existing procedure.
- iv) The Respondents allowed promotion in other categories whereas the promotion of the applicant to the post of JE(P.Way) was cancelled in an arbitrary and discriminatory manner.
- iv) The applicant having undergone the training programme, any cancellation of his promotion is illegal and arbitrary.

3. The Respondents in their counter-reply filed on 4.9.2013 have contested the claim of the applicant. As per the rule position contained in IREM Vo.I(1989 Edition), the post in the category of Junior Engineer, Gr.II has to be filled up through (i) 66. 2/3% by Direct Recruitment through Railway Recruitment Board and (ii) 33.1/3% by promotion from the category of Supervisor (P.Way) in the pay scale of Rs.4500-7000. The post of Junior Engineer(P.Way), Gr.II in PB-II(Rs.93400-34800) with Grade Pay of Rs.4200 after the 6th CPC has been earmarked as recruitment/entry grade (General Selection) as per RBE No.161/09. The Respondents have made a mistake by processing it as per Bench Marking procedure through scrutiny of only confidential reports instead of following the selection procedure vide Office Order No.108/10 dated 29.12.2010. In

order to rectify the error committed by the Department, A/1 was cancelled on 2.11.2011 vide A/6. The post of Junior Engineer(P.Way) with Grade Pay of Rs.4200 is actually classified as “selection post” being an entry grade as per RBE No.161/09. However, it was inadvertently processed by following the Bench Marking procedure instead of adopting the procedure of selection. Although the applicant was selected and sent for training for the said post of J.E.(P.Way) his promotion was subsequently cancelled in compliance of the existing rules by rectifying the error already committed by the Department. The Hon’ble Apex Court in the case of **Ramesh Gajendra Yadav vs. Secretary, S.G.S.P.Mandal & Ors. [2011]1 SCC (L&S) 200**] has held that any appointment made on the basis of wrong advertisement or procedure can be terminated at any point of time. In the present case, the cancellation of the applicant’s promotion order is only by way of rectifying the error committed by the Department. The administration has always reserved the right to correct the mistakes committed inadvertently. Therefore, the O.A. filed by the applicant is devoid of merit and should be dismissed.

4. In the rejoinder filed by the applicant on 13.09.2013 it has been submitted that the mistake was committed by the respondents for which the applicant was in no way responsible. No reason was mentioned in the order of cancellation nor the applicant was given any opportunity to explain his case. The

applicant is entitled to the benefit under RBE No.64/13 and his O.A. deserves to be allowed.

5. We have heard the learned counsels from both the sides and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the cancellation of the applicant's promotion to the post of JE(P.Way) by order dated 2.11.2011 is legal and whether the applicant is entitled for promotion to the post of JE(P.Way).

6. The Respondents have drawn our attention to IREM 2009 in which 33.13% of P.Way Inspector, Gr.III re-designated as JE, Gr.II was earmarked for promotion by selection of Supervisors(P.Way). However, as a result of the implementation of the recommendations of the 6th CPC, the post of JE(P.Way/Gr.II) was earmarked as direct recruitment/entry grade(General Selection).

7. The post of JE-II(P.Way) was made into a direct recruitment/entry grade (General Selection) from the earlier provision of 66.23% of Direct Recruitment and 33.13% by promotion. The Respondents had erroneously followed the provisions of IREM 2009 while promoting the applicant through order dated 20.12.2010(A/1). But subsequently, following the provisions contained in RBE No.161/2009 dated 9.9.2009, they have cancelled the promotion of the applicant. The respondents have rightly relied upon the judgment in

Ramesh Gajendra Yadav (supra) wherein the Hon'ble Supreme Court has observed as follows:

“The fact of the matter remains that there was a collective error on the part of the University and College and more on the part of the University that led to this situation. But this mistake cannot vest indefeasible legal right in the appellant to be appointed or deemed to have been appointed against a reserve category while he is a candidate, admittedly, belonging to the open category and was so appointed by the Selection Committee”.

8. The applicant has annexed RBE No.64/13 dated 3.7.2013 by which the posts of Sr. Permanent Way Supervisors in PB-II have been enblock merged with the cadre of Junior Engineer(P.Way) with its spread effect in higher grade PB-2, Grade Pay Rs.4600/-. However, Para-3 of RBE No.64/13 states that these orders are effective from the date of issue. Inasmuch as the date of cancellation of the promotion of the applicant on 2.11.2011 precedes the RBE No.64/13 and the present O.A. has been filed on 21.2.2012, any benefit sought to be accrued from RBE No.64/13 is only a subsequent cause of action and can be decided by the respondents as per rules and eligibility of the applicant outside the ambit of the present O.A. Following the rules existing on the date of passing of the impugned order on 2.11.2011, the respondents have only rectified an error inadvertently crept in. We therefore find no reason to interfere with the impugned order dated 2.11.2011, impugned by the applicant.

9. In view of the above, the O.A. filed by the applicant is devoid of merit and accordingly dismissed with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

BKS

