

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 260/57 OF 2013
Cuttack, this the 02nd day of February, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....

1. Madhusudan Pradhan, aged about 51 years, Son of Late Arjun Pradhan, at present working as Tech-1, O/o.SSE(E), Berhampur, permanent resident of Vill.- Narasinghapur, P.O-Banabulapalli, P.S- Chamakhandi, Dist-Ganjam, Odisha.
2. Bijay Chandra Behera, aged about 47 years, Son of Late Kasinath behera, at present working as Tech-1, O/o.SSE(E), Berhampur, permanent resident of Vill.- Belapada, Balugaon, Dist-Khorda, Odisha.
3. Sanjay Kumar Nayak, aged about 35 years, Son of Late Uday Nath Nayak, Technician-III, O/o SSE(E) Berhampur, Permanent resident of At/P.O-Alarigarh, P.S-Kukudakhandi, Dist-Ganjam, Odisha.
4. M. Srinivas, aged about 40 years, Son of M. Jaggarao Babu, Khalasi Helper, O/o. SSE(E), Berhampur, Permanent resident of At.-8th Lane, Gandhi Nagar, Berhampur, Dist-Ganjam.

...Applicants

(By the Advocate-M/s. N.R. Routray, S. Mishra, T. K. Choudhury, S.K. Mohanty)

-VERSUS-

Union of India Represented through

1. General Manager, East Coast Railway, E.Co.R Sadan, Chandrasekarpur, Bhubaneswar, Dist-Khurda.
2. Divisional Railway Manager/E.Co.Rly, Khurda Road Division, At/PO-Jatni, Dist-Khurda.
3. Senior Divisional Personnel Officer/E.Co.Rly/ Khurda Road Division, At/PO-Jatni, Dist-Khurda.
4. Senior Divisional Electrical Engineer(G)/ E.Co.Rly/ Khurda Road Division, At/PO-Jatni, Dist-Khurda.
5. Secretary, Railway Board, Rail Bhawan, New Delhi-110001.

...Respondents

(By the Advocate- Ms. S. Rajaguru)

.....

O R D E R

S. K. PATTNAIK, MEMBER (J):

The applicants, in this O.A., have challenged the order of surrender of post dated 04.09.2014 (Annexure-A/20) and seek for a direction to the Respondents to restore the promotional post in compliance of RBE No. 39/2012 dated 23.03.2012 (Annexure-A/17).

2. The case of the applicants, in short, runs as follows:

The applicants were working as Technician-I, II and III in various station operating under the Khurda Road Division under E.Co.Railway and were due for their respective next promotions and, accordingly, panel of eligible employees were prepared to appear in the trade test, which was scheduled to be held in January, 2012. However, vide order dated 16.01.2012 (Annexure-A/3), the selection process was cancelled in view of the surrender and redeployment of posts. Applicants have submitted that vide Annexures-A/5, R/1 and A/6, as many as 145, 14 and 158 numbers of posts respectively have been surrendered. The applicants further pleaded that as per Annexure-A/18, as many as 317 posts have been surrendered by the Department. The grievance of the applicant is that vide order dated 02.11.2012 (Annexure-A/8), they, along with others, have been declared surplus and have been transferred to different stations. The submission of the applicants is that, declaring them surplus and transferring to other station is in violation of the Railway Board's Circular No. 39/2012 dated 23.03.2012. They have further pleaded that before surrender of the posts, the Unions were required to be consulted as per RBE No.

23/2012 dated 21.02.2012 which was not done. In view of the orders passed by this Tribunal in O.A.No. 854/2012, their representations were considered and rejected by Respondent No.4 vide order dated 19.01.2013 (Annexure-A/16).

3. Respondents have filed their counter opposing the prayer made by the applicant in this O.A. The main plank of argument of the Respondents is that the creation and surrender of posts is an on-going process in the Railway organization and as per the policy decision of the Government, the East Coast Railways through the Work Study Team conducted the work study in Electrical (General) Department of Khurda Road Division, which recommended for surrender of 317 posts in Power Group of Electrical (General) Department. Respondents have further pleaded that before taking steps for surrendering of posts and re-deployment of staff from the Power Wing, the matter was discussed in the joint meeting with both the recognized Unions and 317 posts were surrendered in 3 phases. After surrender of these posts, there were no vacancy to complete the selection for promotion and hence the Suitability Test/Trade Test/Selection was cancelled. Respondents further submitted that the Hon'ble Apex Court in the case of Indian Drugs and Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs and Pharmaceuticals Ltd. reported in (2007) 1 SCC (L&S) 270 have emphatically held that creation and abolition of posts, transfer and posting are the domain of the administration and purely executive functions. Hence, the Court cannot create a post where none exists. The Tribunal/Court cannot issue directions to absorb the Respondents to continue them in service or pay them salaries of regular employees, as these are purely executive functions. According to Their Lordship the Supreme Court cannot arrogate to itself the powers of the executive or legislature. Similar view has also been expressed by the Hon'ble Apex Court in the case of Transport and Dock Workers Union and others reported in (2011) 1 SCC (L&S) 566. Respondents submitted that the in view of the decision

of the administration so also of the recognized Unions, more of the employees have already joined in the new assignment as the redeployment is made within the same Department but different Wing only. Respondents have prayed that since the redeployment is neither affecting any of service conditions of the employees nor is against any directives of the Railway Board's instruction and the action has been taken looking into the administrative exigencies, there is little scope for any judicial review.

4. Heard both the Counsels.
5. All the four applicants have challenged the order dated 04.09.2014 (Annexure-20) by which after surrender of 317 posts of Power Wing of Electrical (G) Department, some posts and staffs were ordered to be retained. It was further ordered that the staff who are treated as surplus and charged against supernumerary posts will be redeployed in due course of time, and even the surplus staff were given scope to exercise their options for the categories/posts in respective departments given in the table. The applicants have further sought for a direction to restore the departmental posts in compliance to RBE No.39/12 dated 23.03.2012 (Annexure-A/17). The letter dated 21.02.2013 (Annexure-A/18) further discloses that only after Work Study Report, 317 posts have been surrendered, and the matter was discussed during the meeting held in February, 2013 in Board's Office and it was decided that East Coast Railway should follow Board's instructions dated 23.03.2012 (RBE No.39/2012) and restore higher grade posts which are adversely affecting promotional prospects of staff.
6. Before delving into the merit of various contentious issues raised by the applicants so also by the respondents, it may be clarified at the outset that the Tribunal has only a limited scope of interference in the administrative function of the department. The department is competent to take a decision which post to be

retained and which post to be surrendered because the Tribunal does not act as an advisory panel or an expert of the administrative function. There is a statutory bar in exercise of such judicial function in view of the authoritative pronouncement of the Hon'ble Apex Court passed in the case of ***The Commissioner, Corporation of Madras Vs. Madras Corporation Teachers'Mandram & Ors. reported in (2007) 5 SCC 519 and in the case of official Liquidator Vs. Dayanand and Others (2008) 10 SCC 1.***

According to Their Lordship's creation and abolition of posts, are matters which fall within the exclusive domain of the employer and the Court or Tribunal is devoid of power to give any direction.

7. Since the respondents have categorically pleaded that on the recommendation of the work study team, the department has taken such step to surrender 317 posts which were surrendered in three phases no interference is called for and frankly speaking this Tribunal lacks jurisdiction to entertain such matters. There is nothing wrong in impugned orders Annexure Nos-A/17 & A/20 calling for interference. Hence ordered.

8. The O.A. is devoid of merit is dismissed.

9. Interim order which was granted on 08.02.2013 to maintain status quo is hereby vacated.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

K.B.