

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01384/2014

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Uday Kumar Varma, Administrative Member

DURGA PADA DAS

VS

UNION OF INDIA & ORS.

For the applicant : Mr.K.Sarkar, counsel

For the respondents : Mr.B.L.Gangopadhyay, counsel
Ms. N.S.Alam, counsel

Order on : 02.09.2016

O R D E RMr. Uday Kumar Varma, A.M.

The present application has been filed seeking the following reliefs :

- a) to direct the respondents to cancel, withdraw and/or rescind the memo dated 18.6.14 as contained in Annexure A/11 herein;
- b) to direct the respondents to fix the seniority of the applicant w.e.f. 14.7.99 instead of 29.7.13;
- c) to direct the respondents to fix the inter se seniority position of the applicant in terms of the order of the Hon'ble Tribunal dated 28.4.14 passed in OA 364/14 & MA 137/14 as contained in Annexure A/8 herein;
- d) to direct the respondents to issue appropriate necessary direction for allowing the applicant to sit for the supplementary written test within a short period in respect of selection test for LDCE for selection of Gr. 'B' AEE through 30% quota-2011 before publication of the result of viva voce test which is scheduled to be held on 29.9.14 vide notice dated 22.9.14 as contained in Annexure A/12 herein;

2. The facts of the case in brief are as follows :

The applicant was initially appointed as Appr. Mech. (Elect) on 18.9.92 in the office of Chief Project Manager/RE/Ranchi where he worked up to 9.7.99. Thereafter he was transferred to Eastern Railway on administrative ground and joined as JE-II under Dy. CEE/Con/TRD/HQ on 14.7.99, while his lien was retained in E.C.Railway. He got promotion from JE-II to JE-I on 25.6.02 and posted in Construction organisation.

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After bifurcation of Eastern Railway the applicant appeared in SE examination and promoted and posted as SE in Eastern Railway on 30.9.05. On 2.8.06 DRM Dhanbad requested to spare the applicant to Dhanbad Division within 30 days but due to some exigency of services the applicant could not be spared by the Eastern Railway to E.C. Railway. As such the applicant was retained in Eastern Railway due to administrative reason.

On 19.6.12 CEE/E.Rly. issued a notification for holding LDCE for selection of Gr. 'B' AEE through 30% quota and for the aid promotion pre-promotional coaching was given to the eligible candidates including the applicant from 27.5.13 to 15.6.13. The applicant claims that he had all the requisite qualification and eligibility criteria for being considered for promotion to the post of AEE Gr. 'B'. The applicant made representation to the authorities on 17.7.12 for permitting him to appear in the LDCE for selection of Gr. 'B' AEE through 30% quota-2011 enclosing requisite format. This was followed by another representation dated 31.8.12. Vide notice dated 11.2.14 the respondent No.2 directed the railway authorities concerned to spare the candidates whose names have been enlisted with the said notice for appearing in the written examination in connection with the LDCE for selection fo GR. 'B'AEE through 30% quota-2011 to be held on 1.3.14 to the exclusion of the applicant.

The applicant made a representation on 19.2.14 praying for inclusion of his name in the said notice for written examination as he had already attended pre-promotional training for the examination in question.

By order dated 22.1.14 the respondents decided that while holding the post of SSE/TRD/DHN/ECR i.e. Sr. Section Engineer the applicant was transferred from E.C. Railway to Eastern Railway on his own request and was awarded bottom seniority of JE. Being aggrieved by the order the applicant approached the Tribunal in OA 364/14 and the matter was disposed of by the Tribunal by an order dated 28.4.14 directing the respondent No.2 to assign appropriate scale of pay with Grade Pay and rank in accordance with law. It was further directed that since the post of Sr. Section Engineer is feeder post of

AEE, the said respondent is also directed to allow the applicant to appear in the selection test for the post of AEE through 30% quota if the applicant is found eligible after appropriate assignment of his seniority.

The applicant then made a representation to the authority concerned on 2.6.14 for fixation of seniority in the grade of Sr. Section Engineer in terms of the order of the Tribunal dated 28.4.14. The authority concerned vide order dated 18.6.14 fixed the inter se seniority of the applicant w.e.f. 29.7.13 instead of 14.7.99 when he joined Eastern Railway. The applicant states that he is entitled to get the seniority w.e.f. 14.7.99.

3. Dispelling the claim of the applicant, the respondents in their reply have stated that the applicant was initially appointed on 22.9.92 under Chief Project Manager, Rly. Electrification/Ranchi. While he was working as such his lien was fixed in TRD Wing in Dhanbad Division in the undivided Eastern Railway. The applicant did not put any objection to it at the material time. Thereafter on his repatriation he was posted as JE II in HQ office. During his course of working he was promoted to the post of JE-I and retained under Dy.CEE (CON)/TRD/HQ at Sealdah. The applicant was thereafter called for selection to the post of Section Engineer conducted by DRM/DHN for holding his lien in TRD Wing. The applicant appeared in the said selection test without any objection though he was working in Eastern Railway. The applicant was selected for the post of SE and accordingly promoted to the post of SE on 9.8.05 and was retained by Dy. CEE (Con)/TRD/SDAH. The applicant accepted the said promotion without any objection. Thereafter the applicant desired to get his lien transferred to Eastern Railway. As such he submitted an application dated 20.1.11 along with one D-II form with clear undertaking to accept bottom seniority under the rule as transfer sought for was at his own request. Accordingly his case was considered by the competent authority and his lien was ordered to have been transferred from E.C. Railway to Eastern Railway and fixed in TRD Wing of Howrah w.e.f. 1.8.13.

In view of the aforesaid, the applicant stands as an employee of Eastern Railway only from 1.8.13 since the transfer of his lien is based on his own

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declaration with clear undertaking to accept bottom seniority under the rules as transfer sought for was on his own request. Therefore he cannot have any claim to consider fixation of his seniority from the date of posting in Eastern Railway.

The respondents have thus prayed for dismissal of the claim of the applicant.

4. Further the respondents have stated that the notification dated 19.6.12 for holding the test was meant for staff of Eastern Railway only and not for any other staff of other Railway though working in the jurisdiction of Eastern Railway. At that material time the applicant was not a valid staff of Eastern Railway since he was holding his lien in DHN Division of E.C. Railway.

In compliance of the order passed by the Tribunal in MA 137/14 and OA 364/14 the applicant has been assigned with the status of Section Engineer with Grade Pay of Rs.4600/- in the scale of Rs.9300-34,800/- in Eastern Railway and with such compliance the applicant could not be treated to be an employee of Eastern Railway at the material period and therefore his eligibility for appearing in the selection of AEE in question does not arise and the applicant has been specifically informed vide letter dated 22.9.14.

5. We have given our thoughtful consideration to this matter, perused the records and carefully heard the arguments made before us by the Id. Counsel for the applicant and respondents.

6. The main argument advanced by the Id. Counsel for the applicant is that the applicant was transferred in July 1999 to Headquarters Office of Eastern Railway in administrative interest and since then he has been working under CEE/CON/HQ and subsequently posted at Sealdah under Dy. CEE/CON/SDAH. He was promoted on 1.8.05 as SE/TRD/CON/SDAH. Subsequently on 29.11.10 he was transferred to the office of Dy.CEE/CON/HWH and till date his lien was maintained under Sr. DEE/TRD/DHN in E.C. Railway. It is his contention that he was retained in Eastern Railway on account of very important work he was doing and he drew our attention to several communications in this respect written by Eastern

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Railway to E.C. Railway, to transfer his lien, the transfer being in administrative interest. The argument of the counsel is that since he was retained in the Eastern Railway on account of his good performance as he was needed in the Eastern Railway, his lien should be deemed to have been terminated from July 1999 when he first joined Eastern Railway and that he should be given seniority from this date.

7. The other limb of his argument was that pursuant to a direction of this Tribunal he was to be allowed to sit in the examination for the post of Group D'AEE under 30% quota but he was never allowed to sit in the examination and was deprived of this opportunity of a promotion. While this particular argument does not seem to have any apparent bearing on the issue of inter se seniority on termination of his lien in E.C. Railway, the applicant feels that this denial of opportunity has stood in the way of his career progression.

8. We will deal with the second argument first. It is correct that there was a direction from the Tribunal dated 28.4.14 to allow him to appear in the examination. It turns out that the examination was with regard to vacancies of 2012, even though the examination was held in 1.3.2014 and at that point of time as per the extant rules the applicant was not eligible to appear in the said examination. Additionally, on the relevant date he still belonged to E.C. Railway and his lien was still continuing there. It has to be noted that the Tribunal had specifically ordered "the respondents are directed to allow the applicant to appear in the selection test for the post of AEE under 30% quota if the applicant is found eligible after appropriate assignment of the seniority and rank". In other words the direction of the Tribunal was not absolute but was conditional and as the applicant did not fulfil the eligibility he was not allowed to appear in the selection test. We have also taken note of the fact that the applicant was, vide letter dated 22.9.14 (Annexure R/3), very clearly informed the ground and the reason why he was not considered eligible to appear in the aforementioned examination.

9. As regards the first argument placed before us by the Id. Counsel for the applicant, the rule formulation in this regard is unambiguous and absolutely

clear. If there is a transfer from one Railway to another Railway on the request of the employee and his request is acceded to, his seniority would be at the bottom of the rank to which he belongs in the Railways to which he is transferred.

10. In this context para 312 of IREM Vol.I of 1989 edition is reproduced below :

312. TRANSFER ON REQUEST. *The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.*

(i) *This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.*

(ii) *The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted provided they fulfil the educational qualifications laid down for direct recruitment to the post. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment."*

11. Notwithstanding the argument of the applicant that he was retained in Eastern Railway on account of his work and the need of the Eastern Railway to retain him there, we cannot deny the fact that he had indeed requested for transfer of his lien from E.C. Railway to Eastern Railway with a specific submission that he is ready to accept fixing of his lien in the bottom seniority and had further enclosed proforma D-II to this effect. In this context Annexure R/1 which is a letter addressed by the applicant to Chief Electrical Engineer, Eastern Railway, Kolkata dated 20.1.11 be perused.

12. Given this facts and circumstances, we cannot fault the respondents for granting him the seniority in the Eastern Railway at the bottom of his rank, because the same is in complete accord with the provisions of the rule, namely para 312 of IREM Vol.I. At the time of argument the applicant has also raised the issue about an earlier order of the Tribunal dated 28.4.14 where the grievance of the applicant to assign appropriate scale of pay with Grade Pay and rank in accordance with law was passed. The fact of the matter is that


initially the applicant was placed at the bottom of the list of Junior Engineers

which was not correct and subsequently by the Tribunal's order he was placed at the bottom of the list of Sr. Section Engineers and to that extent the wrong fixation of the pay was rectified by the respondents. However, the Tribunal nowhere in its order ever directed the respondents to give the applicant seniority with effect from 14.7.99 and accordingly fix his inter se seniority in the rank of Sr. Section Engineers in the Eastern Railway.

13. Given the facts and circumstances of the case as discussed above, we find ourselves unable to interfere in this matter. We clearly hold that the action taken by the respondents in fixing seniority of the applicant at the bottom of the rank of Sr. Section Engineers is in accordance with the prevalent rules in this regard. The applicant has not challenged this rule and therefore its validity holds good without any qualification.

14. The OA is dismissed being bereft of merit. There shall be no order as to costs.


(UDAY KUMAR VARA)
MEMBER (A)


(BIDISHA BANERJEE)
MEMBER (J)

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