

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 666/2016 with M.A 271/2017

Reserved on 15.11.2017

Date of Pronouncement 06.12.2017

CORAM

**Hon'ble Shri A.K. Upadhyay, Member [A]
Hon'ble Shri Jayesh V. Bhairavia, Member [J]**

Protim Dutta Son of Late B.N. Dutta, Senior Typist (Diesel Shed), Senior Divisionl Mechanical Engineer, East Central Railway, Samastipur (Bihar)

.....Applicant

By Advocate : Shri M.P.Dixit

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur P.O.- Dighi Kala, District- Vaishali (Bihar).
2. The General Manager, East Central Railway, Hajipur P.O.- Dighi Kala, District- Vaishali (Bihar).
3. The Chif Mechanical Engineer, East Central Railway, Hajipur P.O.- Dighi Kala, District- Vaishali (Bihar).
4. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar)
5. The Senior Divisional Railway Manager, East Central Railway, Samastipur (Bihar)
6. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar).
7. The The Senior Divisional Commercial Manager, East Central Railway, Samstipur (Bihar).
8. The Senior Divisional Financial Manager, East Central Railway, Samastipur (Bihar).

.....Respondents

By Advocate: Shri S.K. Raj

ORDER

Jayesh V. Bhairavia, Member [J]:

The applicant in this O.A is aggrieved by the order dated 06.07.2016 issued by the Senior Divisional

Personnel Officer, East Central Railway, Samastipur (Bihar) by which he has not only been reverted from higher post to lower post but also his cadre has been changed. Therefore, he prays for the following relief(s) in terms on para 8 of their O.A.:-

“[8.1] That your Lordships may graciously be pleased to quash and set aside the impugned order dated 06.07.2016 as contained in Annexure A/2 issued by Respondent no.6 qua the applicant..

[8.2] That the respondents be further directed to grant all consequential benefit arising out the said impugned order on it's quashing.

[8.III] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant.

2. The brief facts of the case, as submitted by the applicants, are as below :-

[i] The applicant namely Shri Protim Dutta was initially appointed as a Junior Typist in the pay scale of Rs. 950-1500 revised as Rs.3050-4590 thereafter Rs.5200-20200 with GP 1900 on 30.09.1990 and now he is presently working as Senior Typist in the pay band Rs5200-20200 GP 2800/- at Diesel Shed under the Respondent No.5.

[ii] The applicant was promoted to the post of Senior Typist with effect from 01.11.1993 in the pay scale of Rs.1200-2040 (revised to 4000-6000 then 5200-20200 with GP 2400). Thereafter, the applicant was granted 2nd MACP in the pay band of Rs.5200-20200 with GP 2800 from 01.09.2008 on completion of 20 years regular service and since then he is working against the post of Senior

Typist in the pay scale 5200-20200 with GP 2800 till date.
(Annexure A/1 refers).

[iii] Thereafter, the applicant, vide order dated 06.07.2016, issued by respondent no.6, has not only been reverted from the higher post i.e Senior Typist (Pay Scale Rs.5200-20200 GP 2800) to lower post of Commercial Clerk in pay scale of Rs. 5200-20200 GP 2000/- but also his cadre and category have been changed. i.e from Mechanical to Commercial on account of being declared surplus in the year 2014 without intimation or asking option from the applicant which is against the order of Railway Board dated 13.01.2004.

[iv] The applicant thereafter submitted a representation on 19.07.2016 through proper channel which yielded no response. Hence the O.A.

In sum, the applicants argues that the actions of the respondents is unjustified, malafide against the principle of promissory estoppels against the Railway Board's order; hence reliefs prayed for in para 8 of this OA.

3. The respondents, through their written statement, have raised the preliminary objection on the issue of limitation and he further submitted as below :-

[i] That the applicant was declared surplus in the year 2006 and after considering every aspects the applicant was absorbed in Commercial Department as Commercial Clerk vide letter 23/24.01.2014 and the same was communicated to the applicant hence the cause of action arose in January 2014.

[ii] That, as per provision of Railway Board and direction of Headquarter, the obsolete posts have been declared surplus.. On introduction of new technology, the manual work is being abolished in phase wise. Thereafter in the light of GM (P) Office's letter dated 23.01.2014, the division has issued absorption letter dated 23/24.01.2014 of applicant and as the applicant did not join on absorbed post i.e Commercial Clerk (GP 2000) hence letter dated 06.07.2016 has been issued to relieve the concerned employee to join commercial department. Annexure R/1 & R/2 refer.

In sum, the respondents submit that the claims of the applicant in this O.A are entirely devoid of merit, hence deserved to be dismissed.

4. The Learned counsel for applicant has filed rejoinder and supplementary rejoinder to the written statement reiterating his earlier submission. Apart from that he submitted that he has not been served a copy of written statement. He further submitted that even GM(P) HQ office Hajipur has issued letter dated 04.08.2014 whereby 08 posts in the typist cadre in GP 4200/- was notified and officials senior to the applicant have been promoted against 07 post and one post is still vacant. Apart from that RBE No. 105 of 1989 (para VII) clearly says that surplus staff if not absorbed immediately against the equivalent post and pay scale, they have to be allowed against supernumerary post and they will also be granted future promotion. The applicant has annexed seniority list of typist cadre issued on 01.04.1999 and 01.04.2015 which shows that junior typist namely Smt. Chaitali Awasthi and Ranjit Gopal Raman Pandey who were below in Post/grade of applicant but they have been granted promotion to the post of Senior typist at the same place and

they are continuing in grade pay 2400 which is in fact reversion, is not sustainable.

5. Heard the parties and considered their submissions/arguments/documents. The facts/views which emerge are as below :-

[a] The applicant is aggrieved by the order dated 6.7.2016 by which the respondents no. 6 had issued letter informing the controlling authority that the applicant who was working as Senior typist in the scale 5200-20200 GP Rs. 2800, was declared surplus by order dated 23.1.2014, and further, it was directed to absorb him as commercial clerk in commercial department in the scale of Rs. 5200-20200 GP Rs. 2000 and accordingly it was ordered to relieve him from the Diesel Shed department to commercial department. But it is noticed that till date the applicant had not been relieved. Therefore, it was requested to spare the applicant for commercial department at the earliest.

[b] It is further noticed that in response to the said letter, the applicant had submitted a representation dated 19.7.2016 and requested the competent authority that he may be allowed to work either as Senior clerk or Head Clerk in any place wherever there is vacancy. It is further stated by the applicant that he is unable to work as commercial clerk in a lower grade as per the absorption order. Annexure A/3 refers.

[c] The controlling authority, in response to letter dated 6.7.2016 had informed the competent authority, Vide his letter dated 20.7.2016,

due to shortage of staff in clerical cadre at Diesel shed, Samastipur, it will be difficult to spare the applicant for absorption in commercial department. It is further stated in the said letter that the applicant has been posted against the vacant post of Typist in Diesel Shed, Samastipur. At present, there are 20 sanctioned post in clerical cadre. However, only 13 posts are filled up and out of which, two incumbents are about to retire in 2017. Therefore, it was requested to absorb the applicant in clerical cadre as senior clerk in the pay scale of Rs. 5200-20200/- with GP 2800 at Diesel Shed, Samastipur [Annexure A/4 refers.].

[d] It is noticed that the applicant has been continuing as Senior Typist in the GP 2800 at Diesel Shed, Samastipur. The copy of salary bill for the month of August, 2016 and July, 2016 are on record [Annexure A/1 refers] which corroborates the submission of the applicant that he has been allowed to continue in Diesel Shed Samastipur in the same pay scale of Rs. 5200-20200 with GP 2800 in the administrative interest. Not only that, the letter as at Annexure A/4 also suggests that the applicant has been retained in Diesel Shed due to shortage of staff in clerical cadre. The reason stated by the said controlling authority to retain the applicant in Diesel Shed appears to be logical. It is also pertinent to note here that the order declaring the applicant surplus and ordering to absorb in a lower grade in other department in 2014 was made only on paper and the same was not given effect to. The applicant has relied upon the Railway Board Order vide RBE No. 106/1989(para-

VII). The relevant portion of the said order which pertains to absorption/utilization of surplus staff reads as under:-

" The staff who cannot be immediately absorbed after retaining where necessary, against other duly sanctioned post should be allowed to continue against " special supernumerary" posts in the same grade in which the incumbents were working and they will continue to have their lien in their old cadre post so as to keep suitable machinery to review the utilization/ redeployment of staffs being born against " special supernumerary" posts" [Annexure P IV with rejoinder]

[e] The applicant's case seems to be squarely covered by the aforesaid RBE No. 106 dated 21.4.1989. After order passed in 2015, the respondents themselves have allowed the applicant to continue as Senior typist and the salary for the same was also paid to the applicant, meaning thereby that the applicant was not absorbed immediately to the lower grade post after declaring him surplus in 2014, the applicant as stated above, was retained as senior typist in his parent department. In the circumstances, the applicant became a beneficiary of the policy stipulated in aforesaid RBE order 106 of 1989.

[f] It is further noticed that other employees who were declared surplus have been retained in their original pay scale. Not only that, they were promoted to higher pay scale and they were allowed to continue to receive GP of Rs. 2800 as the details of such employees are stated in rejoinder by the applicant. The said fact has not been rebutted by the respondents during the course of arguments.

[g] Therefore, we are of the opinion that the applicant is also entitled to similar dispensation. The applicant has cited example where one Smt. Chaitali Awasthi and Ranjit Gopal Pandey who were one post / grade below the applicant have been granted promotion to the post of Senior Typist at the same place and they are continuing as such in the grade pay 2400, but the applicant although senior in all respect has been posted in lower post and grade pay which is, in fact, reversion. The said action of the respondents is not tenable. Wherever, staff are declared surplus and posted to lower post in other department, the employer should adhere to the principle that in such eventuality, the junior should be declared surplus first. In the present case, the respondents do not seem to have followed this principle.

6. In such view of the matter, it will be appropriate that the respondents should have a relook over the matter afresh in terms of the extant Railway Board's order and relevant guidelines. Accordingly, we remit the case with direction to the respondents to consider the claims of the applicant and decide his retention in Diesel Shed, Samastipur in clerical cadre in the pay scale of Senior Clerk [5200-20200 with GP 2800] or Head Clerk by passing a reasoned and speaking order, within a period of three months from the date of receipt / communication of this order. Till then, the applicant's status in diesel Shed, Samastipur shall not be disturbed.

(Jayesh V. Bhairavia) M [J]

(A.K. Upadhyay) M (A)

/mks/cbs/

