

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/266/2014

Cuttack this 12th day of December, 2018

CORAM:

THE HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
THE HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

A.Satyanarayan, aged about 55 years, S/o. A.Venkati – at present working as EBS Grade-I, O/o. SSE(W), East Coast Railway, Berhampur, residence of Railway Quarter No.EL /68/1 in front of GRP Thana, Railway Station, Berhampur, Dist-Ganjam, Odisha

...Applicant

By the Advocate(s)-M/s.N.R.Routray
Smt.J.Pradhan
T.K.Choudhury
S.K.Mohahty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharapur, Bhubaneswar, Dist-Khurda.
2. Senior Divisional Engineer(South) & Appellate Authority/East Coast Railway/Khurda Road Division, At/PO-Jatni, Dist-Khurda.
3. Asst.Divisional Engineer & Disciplinary Authority/East Coast railway, At/PO-Berhampur, Dist-Ganjam.
4. Senior Section Engineer (P.Way) & Inquiry Officer/East Coast Railway, At/PO-Sompeta, Via-Kanchili, Dist-Srikakulam, Andhra Pradesh.
5. Senior Section Engineer (Works)/East Coast Railway, At/PO-Berhampur, Dist-Ganjam.
6. Senior Section Engineer (P.Way), East Coast Railway, At/PO-Berhampur, Dist-Ganjuam.

...Respondents

By the Advocate(s)-Mr.M.K.Das

ORDERSWARUP KUMAR MISHRA, MEMBER(J):

Applicant presently working as EBS Grade-I under the Senior Section Engineer (W), East Coast Railways, has filed this Original Application under Section 19 of the A.T.Act, 1985, seeking for the following reliefs:

- i) To quash the Memorandum of Charges dtd. 05.04.2010, inquiry report dtd. 27.11.2012, order of punishment dtd. 07.02.2013 and order of rejection of appeal dtd. 31.07.2013 under Annexure-A/5 , A/9 series, A/11 series & A/13.
- ii) And to direct the Respondents to restore the applicant in pay of Rs.14,2000/- (Band Pay Rs.11,400/- + Grade Pay of Rs.2800/-) and pay the arrear salary.

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

2. The facts of the matter as revealed from the O.A. are that while working as EBS Grade-I, O/o. SSE(W), East Coast Railway, Berhampur, applicant was promoted as Senior Technician vide order dated 25.1.2009 and posted under SE(P.WAY), BAM. The applicant on 2.12.2009 submitted a representation to the Senior Divisional Engineer(Coord) citing his health problems with a request to post him anywhere in Khurda Division. On being advised, the applicant submitted medical certificates in support of his illness on 10.12.2009. However, he was placed under suspension in contemplation of disciplinary proceedings on 5.4.2010. Following to this, applicant served with a Memorandum of Charge for his unauthorized absence from duty and on conclusion of the disciplinary proceedings, vide order dated 7.2.2013, the Disciplinary Authority imposed punishment of reduction of his existing pay of Rs.14,200/- to Rs.13780/- for a period of two years with cumulative effect. The appeal preferred by the applicant was rejected by the Appellate Authority thereby upholding the punishment as imposed by the Disciplinary Authority.

Hence, by filing this O.A., the applicant has prayed for the reliefs as referred to above.

3. On the other hand, the respondent-railways by filing a detailed counter have opposed the prayer of the applicant inter alia submitting that consequent upon his promotion as Sr.Tech(EBS), the applicant was posted to SSE(PWay), Berhampur. By submitting a representation dated 2.12.2009, he requested for his posting in any works unit on medical ground, i.e., hearing problem. It is the case of the respondents that since the applicant requested for his retention in the same unit by means of refusal for promotion (which was conditional) the same was not considered by the competent authority. At the time of release from SSE(Works). BAM he had sent his sick report (PMC) through his spouse. Since he was in occupation of railway quarters at Berhampur the same was not accepted. Respondents have submitted that as per existing Rules the employee having railway accommodation/railway medical facility should intimate the Railway Medical Authority before undergoing treatment in private medical/nursing home. According to respondents, transfer order in respect of the applicant was issued on his promotion within the same headquarters. Therefore, his request for retention on promotion as Sr.Tech(EBS) under the same unit was not possible. With these submissions the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard the learned counsels for both the sides and perused the records.

5. A departmental proceeding was initiated against the applicant due to his unauthorized absence from duty from 30.12.2009 to 5.4.2010. The background and circumstances in which the departmental proceeding was

started against the applicant has to be looked into. The applicant had submitted one representation dated 2.12.2009 vide A/2 to the Senior Divisional Engineer (Coord), inter alia mentioning about the health condition and had requested the authorities to post him in any work unit anywhere in Khurda keeping in view his health problems. He had mentioned that otherwise he will be compelled to forgo his promotion. In this context, it was submitted by the learned counsel for the respondents that the applicant had not given any categorical undertaking or letter/communication to the authorities mentioning specifically that he is going to forgo his promotion. Be that as it may, the authorities in their wisdom gave promotion to the applicant as Senior Technician and he was transferred and posted to SE(P.Way) BAM. Subsequently due to his unauthorized absence, a departmental proceeding was initiated and a Memorandum of Charge was served on him. In his show cause, the applicant inter alia mentioned his health condition and the fact that he was unwilling to take up promotion in case he was not adjusted at Khurda. In the said show cause he also mentioned specifically that "I am refusing my promotion because of my health problem especially hearing problem as it is a high risk for my life on track though it was a heavy loss to me in financial way". He also mentioned that his children have not completed the education (1st son in 3rd year in Engineering Diploma and 2nd son in +2 Science). In the above background the applicant requested the Assistant Divisional Railway Engineer, East Coast Railway, Berhampur (Res.No.3) to exonerate him from the charges. The applicant had also submitted medical certificates to the effect that he was ill for which he could not attend duties. In this context, learned counsel for the Respondents submitted that the medical certificates submitted by the applicant have been issued by the Private Medical

Practitioner although the applicant who was occupying the Railway quarters was supposed to obtain necessary medical certificates if any from the concerned Railway Doctors. The genuineness of the medical certificates has not been specifically disbelieved by the Inquiry Officer. The said aspect assumes importance in view of the specific claim made by he applicant/delinquent that the letter of intimation in this regard sent by him by Registered Post was returned back without being received by the concerned authorities.

6. There is much force in the submission of the learned counsel for the applicant that the letter vide A/2 submitted by the applicant clearly shows his intention of the applicant to forgo promotion incase he is not adjusted at Khurda by taking into consideration of his health condition. In this regard he has relied upon the instructions of the Railway in Para-224 of IREM the extract of which has been filed in this case. The said instruction clearly mentions that "the employee refusing promotion expressly or otherwise (i.e., that he does not given in writing his refusal but also does not join the post for which he has been selected) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection". Thus it is quite clear that the provisions of the above instructions of have been given a complete go bye and the intention of the applicant as reflected in A/2 was not duly considered vis-a-vis the said instructions issued under IREM but the respondents jumped to a conclusion thereby initiating departmental proceedings against the applicant. This Tribunal is of the view that there was no justification or necessity in initiating any such departmental proceedings

against the applicant when it was incumbent upon the respondents to comply with the provisions of Para-224 of IREM and they ought not to have disturbed the applicant from Khurda Road and should have waited for a period of at least one year before taking any such harsh decision. Besides that the punishment as given to the applicant vide order dated 7.2.2013 (A/11 series) under the circumstances and background of this case appears to be harsh and the said punishment shocks the conscience of the Tribunal as the same is disproportionate to the alleged misconduct as attributed against the applicant. Accordingly, this Tribunal quash and set aside the Memorandum of Charges dated 05.04.2010, inquiry report dated 27.11.2012, the order of punishment dated 07.02.2013 and order dated 31.07.2013 of the Appellate Authority rejecting his appeal vide A/5, A/9 series, A/11 series & A/13 respectively. Consequently, the applicant is entitled to all consequential financial service benefits. Respondents are therefore, directed to take necessary steps in this regard within a period of three months from the date of receipt of this order.

7. The O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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