

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00595/2016

Jabalpur, this Tuesday, the 26th day of February, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Arun Joshi, S/o Late Shri S.N. Joshi, aged about 50 years, presently working as Divisional Boiler Inspector, West Central Railway, Bhopal (M.P.), R/o 401, Sector – 3, Shakti Nagar, Habibganj, Bhopal (M.P.) – 462001

-Applicant

(By Advocate – Shri Manoj Sharma)

V e r s u s

1. Union of India through its Secretary, Ministry of Railway, Rail Bhawan, New Delhi – 110001.
2. Chairman, Railway Board, Rail Bhawan, New Delhi – 110001.
3. Member Staff, Railway Board, Rail Bhawan, New Delhi – 110001.
4. General Manager, West Central Railway, Opposite Indira Market, Jabalpur (M.P.) – 482001.
5. General Manager, Central Railway, Chhatrapati Shivaji Terminus, Mumbai (M.H) – 200001.
6. Divisional Railway Manager, Habibganj, Bhopal (M.P) – 462024.
7. Chief Personnel Officer, West Central Railway, Opposite Indira Market, Jabalpur (M.P.) – 482001.
8. Chief Mechanical Engineer, West Central Railway, Opposite Indira Market, Jabalpur (M.P.) – 482001

- Respondents

(By Advocate – Shri Vijay Tripathi)

(Date of reserving order : 11.09.2018)

ORDER

By Navin Tandon, AM.

The applicant is aggrieved that his lien in West Central Railway has not been fixed w.e.f. the date of formation of Railway. Also, he has not been granted promotion to the post of Assistant Mechanical Engineer (Group 'B').

2. The applicant has submitted as under:-

2.1 He was initially appointed on 19.07.1989 as Apprentice Mechanic in Central Railway under Workshop Stream, Panel, Mumbai. He was promoted as Chargeman-B, Chargeman-A and Section Engineer on 19.07.1991, 22.12.1992 and 22.12.1994 respectively in the Workshop Parel, Mumbai.

2.2 He was promoted and posted as Divisional Boiler Inspector (DBI) in Jhansi Division under Central Railway on 23.09.1998/05.10.1998.

2.3 He was transferred to Bhopal Division as Boiler Inspector of Central Railway on 25.05.2000, and lien was maintained at Parel Workshop, Mumbai, Central Railway.

2.4 After formation of new zones w.e.f. 01.04.2003, he gave his option dated 01.11.2002 to join West Central

Railway Headquarter. It has been stated in Para 4.4 of the O.A that the name of the applicant is included in the seniority list (Annexure A-4) of West Central Railway (WCR).

2.5 Despite clear option given by him for WCR, his lien was not fixed despite several representations and reminders.

2.6 He was assigned workshop cadre of WCR in CRWS (workshop stream), Bhopal vide order dated 05.06.2014 (Annexure A/5), but seniority has not been decided.

2.7 WCR had conducted an examination on 23.03.2005 under 30% LDCE quota for selection of Assistant Mechanical Engineer (AME) Group 'B', where his application was erroneously treated under the Loco Stream (Annexure A-6) despite the fact that he was under workshop stream right from beginning.

2.8 He protested against inclusion of his name under Loco Stream before the competent authority, but no heed has been paid towards the same.

2.9 One of the employee of WCR recently got the final statement showing the names of all the candidates called for viva voce examination on the post of AME examination of 2005. In that statement (Annexure A-7), he has secured 269

marks in Loco stream, whereas the two selected candidates in workshop stream have got 250.9 and 247.8 marks respectively. If his candidature was considered properly under the workshop stream, then he ought to have been selected. Since he was erroneously placed in Loco stream, he could not be selected for the post of Assistant Mechanical Engineer in the year 2005.

2.10 Though his lien in Coach Repair Workshop (CRWS) Bhopal has been fixed on 05.06.2014 (Annexure A/5), his seniority has not been fixed, even though he was in Workshop Stream at all times. His seniority should be decided as per RBE 62/2004 (Annexure A-8).

2.11 In response to a query dated 29.09.2015 raised by WCR regarding lien and seniority of the applicant, Central Railway (CR) has replied on 05.11.2015 (Annexure A-10) that since he has given his option on 01.11.2002 for continuing on WCR, his name has been deleted from the seniority list and immediate junior employee Sri K.N. Venugopal was promoted as SSE in Parel Workshop, at C.R.

2.12. He reported on 15.06.2015 (Annexure A-9) to Member Staff, Railway Board (Respondent No.3) to

consider his case for promotion as AME in 2005 selection as per Para 208.3 and 228 of IREM.

2.13 Since there was no response from respondent No.3, he approached this Tribunal in OA No.200/84/2016, which was disposed of on 03.02.2016 (Annexure A/12) directing the competent authority of the respondents to decide the representation.

2.14 The representation has been decided by respondent No.7 (Chief Personnel Officer/West Central Railway, or CPO/WCR for brevity) with the approval of respondent No.8 (Chief Mechanical Engineer/West Central Railway, or CME/WCR for brevity) vide order dated 24.05.2016 (Annexure A/1) wherein not only the representation for promotion to the post of AME in 2005 selection was rejected, he was ordered to be repatriated to Parel Workshop, Central Railway.

2.15 The appointing authority in case of AME is the General Manager/WCR (respondent No.4). Since, the challenge was to the procedure of the selection, hence it should have been dealt with by one staff higher than respondent No.4, i.e. respondent No.3. It was erroneous that

the representation was decided at the level of CPO/CME (respondents Nos.7/8 respectively).

2.16 The name of the applicant features in the combined integrated seniority list of Mechanical Department of WCR for selection of AME as circulated on 08.04.2015 (Annexure A/13).

3. The applicant has sought for the following reliefs in this O.A:

“8. RELIEF SOUGHT:

Applicant, therefore, humbly pray that this Hon'ble Court may kindly be pleased to:

8.i) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal;
8.ii) Quash and set aside the impugned order dated 24.05.2016 (Annexure A-1) and also quash the transfer order dated 25.05.2016.

8.iii) After quashing the impugned orders direct the Respondent Authorities to restore the lien of applicant as fixed vide letter dated 5.6.14 and after fixing the lien and fix seniority of applicant in the CRWS, Bhopal under Workshop Stream from the date of formation of New Railway Zone (West Central Railway) and thereafter direct the respondents' authorities to review the panel of 30% LDCE quota for selection to the post of Assistant Mechanical Engineer Group-B in the pay scale of Rs.7,500-12,200/- held on 04.05.2005 on the basis of lien fixed at Workshop Stream and promote application to the post of Assistant Mechanical Engineer Group-B in the pay scale of Rs.7,500-12,000/- alongwith all consequential benefits of pay perks and status,

retrospectively and arrears thereon with interest on all outstanding sums.

8.(iv) Grant any other relief/s, which this Hon'ble Tribunal deems fit and proper.

8.(v) Award the cost of the instant lis to applicant."

4. The respondents have made following submission in their reply:

4.1 The applicant was promoted as Divisional Boiler Inspector (ex-cadre post) on adhoc basis by Central Railway on 11.06.1998 and posted in Jhansi Division. There is no question of regularisation of the applicant on promotion against ex-cadre post of DBI.

4.2 His headquarter was changed from Jhansi to Bhopal by order dated 25.05.2000. However, his administrative control vested with Jhansi Workshop. He was continuously drawing his salary from Jhansi Workshop till his transfer on administrative control to WCR vide Jhansi Workshop's letter dated 07.07.2005.

4.3 The applicant was not eligible for option transfer as per Railway Board's letter dated 06.12.1996 (Annexure R/1) to HQ of new zone. The relevant para of this letter reads as under:

“2.2 Staff in workshop, stores depots and RPF are not included in the scheme of calling options for transfer. There is, however, no bar for the clerical staff posted in workshop and stores depots borne in Divisional seniority, exercising their option along with other staff of respective Divisions for the new zonal railways.

5.1 It should also be ensure that option are accepted from staff for posting only in a grade in which he/she is already working on regular basis after completion of due process of selection/suitability list.”

4.4 His application was never forwarded to WCR by the competent authority of CR till closure of cadre of WCR. The acceptance was also never issued by WCR for the applicant.

4.5 The applicant was transferred through North Central Railway’s (NCR’s) letter dated 07.07.2005 as Divisional Boiler Inspector (DBI) on ex-cadre post and was posted at Bhopal Division/WCR for just to have administrative control of Boiler Inspector in Bhopal Division as per CME/WCR’s letter dated 11.07.2003 and NCR’s letter dated 09.06.2005. But his seniority and lien was not transferred from CR to WCR because he was not eligible for exercise of option.

4.6 After receiving the applications of the applicant, WCR decided to fix his lien in CRWS/Bhopal but could not

implement it due to administrative reasons and objections raised by recognised Railway Union.

4.7 WCR had notified on 21.12.2004 for selection of AME (30% LDCE quota) for six posts (2 posts each of Loco, Workshop and C&W stream). Cut off date for submission of application in HQ office was 01.02.2005. It was stated that “only application of those staff whose lien is in West Central Railway is to be forwarded to HQ office”. Erroneously, Bhopal Division forwarded his application to the HQ office, when he was under administrative control of Jhansi Workshop/NCR and lien was on Central Railway.

4.8 In his application, he mentioned/chosen AME/Loco/WS i.e. he applied for two wings instead of applying for one wing to which he belongs. His application was treated for 1st choice i.e. Loco wing. He accepted the result of written test under Loco wing and appeared in interview under the Loco wing. He never objected regarding his name being considered under Loco wing. There was no protest during the entire selection process.

4.9 The representation was decided by CME/WCR who is competent to decide lien, seniority and transfer of the applicant. For Group ‘B’ selection, General Manager/WCR

is fully competent. Hence, there is no question of it being decided by Member Staff/Railway Board.

5. The applicant has filed his rejoinder in which he has made following submissions:-

5.1 CR has informed WCR on 20.06.2007 (Annexure RJ/1) that his name has been deleted from lien of CR.

5.2 There are several communication between CME and CPO of WCR regarding fixing of his lien (Annexure RJ/2 colly).

5.3 He went on deputation to RITES on 13.08.2008 from Bhopal Division/WCR and returned back to WCR on 12.08.2012 (Annexure RJ/3).

5.4 He had been approaching authorities of WCR repeatedly in June, 2003 regarding refixing his lien and seniority (Annexure RJ/5).

5.5 Series of communication between CR, NCR, WCR are annexed at Annexure RJ/6 and RJ/7, whereby posts of Divisional Boiler Inspector were transferred to WCR.

5.6 The applicant's promotional hierarchy in post of SSE in Parel Workshop fell vacant within 6 days of his joining as Divisional Boiler Inspector, Jhansi. This shows he was clear in promotional avenue in his parent cadre.

5.7 The WCR authorities have taken 11 years on 05.08.2014 to fix his lien and seniority.

5.8 WCR in their reply have wrongly written that he had applied for AME selection in Loco Stream, whereas he had applied for Workshop Stream. The applicant has received information through RTI (Annexure RJ/11) that all the records pertaining to AME selection have been destroyed on 02.07.2014 after taking approval of competent authority.

6. Heard the arguments of learned counsel of both the parties and perused the pleadings available on record.

7. It has been explained to us that prior to 01.04.2003, the jurisdiction of Central Railway (Head Quarter Mumbai) included Bhopal, Jabalpur, Jhansi Divisions and workshops at Parel (Mumbai), Jhansi and Bhopal. After reorganisation of Railways on 01.04.2003, Bhopal, Jabalpur Divisions and Bhopal workshop came in West Central Railway (Headquarter Jabalpur) and Jhansi Division and Jhansi workshop went to North Central Railway (Headquarter Allahabad).

7.1 Seniority groups of Divisions and Workshops for technical staff is separate.

7.2 Selection for the post of AME (Group 'B') is done on the basis of integrated seniority list for whole of West Central Railway.

8. While Stating facts of the case around the years 2002 & 2003 in para 4.4 of the O.A, it has been stated that name of applicant is included in the seniority list of WCR (Annexure A/4). However, no such seniority list is available in Annexure A/4.

9. Learned counsel for the applicant started his argument with the point that every permanent employee in public service is to have a lien. In this case, a peculiar situation has arisen that the Central Railway (CR) is no longer maintaining his lien whereas West Central Railway (WCR) has not fixed the same. This is causing great injustice to the applicant.

9.1 The applicant has given his option to join WCR Headquarters on 01.11.2002, much before the last date of exercising such option. WCR always assured him that his interest will be taken care of, but suddenly impugned order dated 24.05.2016 (Annexure A/1) has been issued sending him back to Parel Workshop, from where his lien has already been removed. This has created uncertainty in the career of the applicant.

9.2 He highlighted the fact that the applicant should have been promoted as AME in the 2005 selection, but for the mistake done by the respondents in placing him in different stream (Loco) rather than his assigned stream (workshop). This mistake can be corrected by the respondents in terms of Para 208.3 and 228 of IREM.

10. Learned counsel for the respondents argued that the applicant was not eligible to give options as per Railway Board's letter dated 06.12.1996 (Annexure R/1) and, therefore, the request of the applicant to provide lien in WCR is baseless.

10.1 Regarding the AME selection, he reiterated that firstly, the applicant's candidature was accepted by mistake as he did not have his lien in WCR. Secondly, he never objected to his name being in Loc stream during the period of selection process. Having participated in the process without protest, now he cannot raise this point.

11. Perusal of Railway Board's letter dated 06.12.1996 (Annexure R/1) clearly indicates that options are being asked for serving in the headquarters of new Railway Zone. The applicant has submitted his option on 01.11.2002 for joining the headquarters

office of WCR (Annexure A/3). So, the action of filling up this option is in line with Annexure R/1.

12. CR in its letter dated 20.06.2007 (Annexure RJ/1) has communicated to WCR that the applicant has exercised his option on 01.11.2002 and is now an employee of WCR. This has not been challenged by WCR at any time.

13. WCR headquarters was holding monthly meeting of Divisional Boiler Inspectors (DBI) in 2004 and 2005. The first item of the agenda on 14.09.2004 (Annexure A/4) is “to include the name of DBIs in seniority list of WCR zone for appearing in Group ‘B’ exam.”

14. The applicant in his application dated 08.06.2003 and 09.06.2003 (Annexure RJ/5) have brought it to the notice of CPO/WCR that he has given his option for WCR on 01.11.2002. Further, he requested for transferring his lien and fix seniority either in CRWS/Bhopal or Headquarter office.

15. Normally, an employee is sent to deputation from his parent unit and returns to the same unit where his lien is maintained. The applicant joined RITES on deputation on 13.08.2008 from WCR and was repatriated on 13.08.2012 to WCR (Annexure RJ/3).

16. The applicant was given the lien and seniority of CRWS/Bhopal vide orders dated 05.06.2014 (Annexure A/5).

17. The name of the applicant appears at Sl. No.77 of the provisional integrated seniority list of Mechanical Department of WCR issued on 08.04.2015 (Annexure A/13).

18. Perusal of minutes of monthly meetings of DBIs (Annexure A/4 and RJ/2), letters written by CME/WCR on 11.07.2003 (Annexure R/4), 16.03.2004, 03.09.2004 (Annexure A/4), clearly indicates that WCR was actively pursing the transfer /cadre cases of DBI's.

19. From the foregoing, it is very clear that WCR considered the applicant as its employee whose lien is in WCR – right from 2003 to 2015.

20. Therefore, the contention of WCR in para 1 of its order dated 24.05.2016 (Annexure A/1) that WCR never considered the case of the applicant for absorption in WCR sounds hollow and devoid of logic. Had it not been for the applicant's representation for promotion to AME, he would have still been continuing in WCR.

21. We have no hesitation in quashing and setting aside the impugned order dated 24.05.2016 (Annexure A-1) and transfer order dated 25.05.2016 (Annexure A-1-A) as it is clearly breach of trust and gross injustice to the applicant. Accordingly, we do so.

22. The applicant had requested for transferring his lien and seniority in CRWS/Bhopal in his application dated 08.06.2003 and 09.06.2003 (Annexure RJ/5). Respondents had also fixed his lien and seniority in CRWS/Bhopal on 05.06.2014 (Annexure A/5). The applicant, in the present O.A, has sought relief of fixing his lien and seniority in CRWS/Bhopal from the date of formation of New Railway zone.

23. It would serve the ends of justice if the applicant is fixed his lien in CRWS Bhopal and seniority is fixed on 08.06.2003.

24. As far as review of selection of AME in 2005 selection is concerned, we are in agreement with the arguments of the learned counsel for the respondents that the applicant never objected to his name being put in the Loco stream. It is only after he found out that he would have succeeded in the selection has his name been in “workshop stream” that the representation was made. The applicant

has not produced any document to show that he protested about including his name in Loco stream.

25. It is a settled principle of law that approbation and reprobation cannot be pleaded at the same time. Since the applicant has participated in the entire process of selection under loco stream without any murmur of protest, therefore, he cannot claim for a review now.

26. Accordingly, the relief sought by the applicant regarding review the panel of AME in 2005 selection is rejected.

27. In the result, the O.A is partly allowed. No costs.

**(Ramesh Singh Thakur)
Judicial Member**

am/-

**(Navin Tandon)
Administrative Member**