

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. NO. 050/00012/2015

CORAM

HON'BLE SHRI JAYESH V. BHAIRAVIA, MEMBER (JUDICIAL)
HON'BLE SHRI DINESH SHARMA, MEMBER (ADMINISTRATIVE)

RESERVED ON 30.04.2019

DATE OF ORDER.21.05.2019

1. Ganesh Kumar Bhatat, son of late Prakash Chandra Bhagat, Resident of Mohalla-Kashipur, P.O.- Samastipur, P.S.- Samastipur, District-Samastipur.

By Advocate : Shri S.K.Bariar

Versus

1. The Union of India through the Chairman, Railway Board, New Delhi.
2. The General Manager, East Central Railway, Hazipur.
3. The General Manager (P), East Central Railway, Hazipur.
4. The General Manager (C), East Central Railway, Hazipur.
5. The Chief Commercial Manager, East Central Railway, Hazipur.
6. The Chief Commercial Superintendent, East Central Railway, Hazipur.
7. The SPO/ESM, East Central Railway, Hazipur.
8. The Divisional Railway Manager, East Central Railway, Samastipur.
9. The Divisional Railway Manager (P), East Central Railway, Samastipur.
10. The Divisional Railway Manager (C), East Central Railway, Samastipur.
11. The Senior Divisional Personnel Officer, East Central Railway, Samastipur.
12. The Senior Divisional Commercial Manager, East Central Railway, Samastipur.
13. The Assistant Personnel Officer-III, East Central Railway, Samastipur.

By Advocate : Shri b.k. Choudhary and Shri S.P. Singh

ORDER

Jayesh V. Bhairavia, Member (Judl.) :- In the instant O.A., the applicant is aggrieved by the order/letter dated 27/28.10.2014 (Annexure A/12) whereby the lien and seniority has been affected by the respondent authority therefore the applicant has filed this O.A. for quashing and setting aside the said order.

2. The brief facts, as submitted by the applicant is as under :-

[i] The applicant was initially appointed as office clerk on 26.04.1984 in the Commercial department Samastipur Division. Thereafter the applicant was promoted as Claim Treasure in the pay scale of Rs. 1220-2040/- thereafter as a Commercial Inspector Grade-III (pay scale of Rs.5000-8000/-) and Commercial Inspector Grade-II) (Pay Scale Rs.5500-9000/-) on 25.09.1996.

[ii] On creation of the East Central Railway, the railway vide letter dated 19.06.2007 options were sought for newly created East Central Railway. Since the applicant was belonging to Samastipur division hence he given option for Samastipur Division which was approved by the competent authority i.e the General Manager (Commercial), East Central Railway, Hazipur. Accordingly, the applicant was intimated vide letter dated 20/23.07.2007 the GM(P) E.C. Railway has been requested to issue office order for releasing and posting of

the applicant to the post of Commercial Inspector Gr.-I in the pay scale of Rs.6500-10500/- (Annexure A/5 refers).

- [iii] The applicant, was transferred from Zonal Office, Hazipur to Samastipur Division vide office order dated 23.07.2007(Annexure A/6). However, in the letter dated 23.07.2007, it was clearly mentioned that the Lien and Seniority of the applicant would be maintained in the Samastipur Division and subsequently the lien of applicant was terminated from Zonal HQ office, Hazipur and it was transferred to Samastipur Division.
- [iv] The applicant was posted vide letter dated 30.07.2007 in Samastipur Division and his seniority was fixed from 24.07.2007 (date of relieving) since the applicant had given the joining report to the office of DRM(P), Samastipur on 25.07.2007. The seniority of applicant had been fixed vide letter dated 29.08.2008 and the applicant was placed at sl.no.3 of seniority list of Commercial Inspector Grade-I in the Pay Scale of Rs.6500/- - 10,500/- in Samastipur Division. (Annexure A/8 refers).
- [v] The l/c for applicant further submitted that the respondents vide order dated 06.02.2008 issued a promotion order from Commercial Grade-I to Chief Commercial Grade in the pay scale of Rs.7450-11500/- wherein the name of applicant was not mentioned. The respondents, vide order dated 29.06.2010 (Annexure A/10) repatriated/transferred the applicant from Samastipur Division to Zonal HQ Office, Hazipur without any rhyme and reason. Since the applicant's lien has already been terminated from Zonal HQ office, Hazipur and in the present

place his juniors have been promoted to the post of Chief Commercial Inspector in the pay scale Rs. 7450-11500/- he approached this Tribunal vide O.A 380/2010. The Tribunal vide order 20.12.2013 quashed the order dated 29.06.2010 which are as follows :-

“The OA is allowed. The transfer and repatriation order dated 29.06.2010 (Annexure -10) and 27.08.2008 (Annexure - 11) are hereby struck down being illegal and irrational and not sustainable in the eye of law. It is also clarified that if there was any bonafide mistake in fixation of lien of the applicant at Samastipur Division, the same may only be re-considered as per rules and after following the principles of natural justice. In that event, the applicant will also have to be considered for promotion at par with his juniors at Headquarters with effect from retrospective date at least on notional basis. The instant order shall not prejudice correction of bonafide mistake as per law. No costs.”

[vi] The applicant was again repatriated/transferred from Samastipur Division to Zonal HQ Hazipur vide office order dated 27/28.10.2014 issued by the APO/ESM, Office of GM(P), EC Railway, Hazipur. The l/c for applicant further submitted that prior to the creation of EC Railway, the applicant was in Samastipur Division and in response of letter/order/notice dated 19.06.2007 the applicant had given their option. On receipt of option, the employee were directed by the respondent authority to report at Zonal HQ, Hazipur. The office order dated 23.07.2007 was not cancelled and without cancelling the earlier order, another order dated 27/28.10.2014 was issued . He further

submitted that the order dated 27/28.10.2014 was issued by the APO as the earlier order dated 23.07.2007 (about 8 years back) was issued by the Higher authority and transfer of lien order was also issued by the competent authority i.e the Chief Commercial Manager, E.C Railway. The l/c for applicant further submitted that the has not been given opportunity to defend his case he has been repatriated/transferred, hence; the present O.A.

3. The respondents have filed their written statement and rebutted the contention of applicant. The l/c for respondents further submitted that :-

[i] the applicant was transferred from HQ office/Hazipur to Samastipur Division against existing vacancy on option vide order dated 23.07.2007 wherein it was mentioned that lien and seniority of applicant will be maintained in Samastipur Division. The applicant joined in Samastipur Division on 25.07.2007. The partial modification of order dated 23.07.2007 was issued by the GM(P)/Hazipur vide order dated 27.08.2008 wherein it was mentioned that the transfer of applicant may be treated on deputation for the period of two years and the lien will be maintained in ECR/HQ. Applicant was repatriated from Samastipur Division to CCM office/Hazipur vide order dated 29.06.2010. The applicant thereafter approached this Tribunal through O.A 380/2010 for quashing the office order dated 29.06.2010 and 27.08.2008. The OA was disposed of vide order dated 20.12.2013 which are as follows :-

“The OA is allowed. The transfer and repatriation order dated 29.06.2010 (Annexure -10) and 27.08.2008 (Annexure -

11) are hereby struck down being illegal and irrational and not sustainable in the eye of law. It is also clarified that if there was any bonafide mistake in fixation of lien of the applicant at Samastipur Division, the same may only be re-considered as per rules and after following the principles of natural justice. In that event, the applicant will also have to be considered for promotion at par with his juniors at Headquarters with effect from retrospective date at least on notional basis. The instant order shall not prejudice correction of bonafide mistake as per law. No costs.”

Accordingly, the case of applicant was examined and after due consideration and rectifying the mistakes occurred in fixation of lien and thereafter the lien of applicant has been fixed in CCM office, Hazipur and subsequently consequential benefits has been given vide memo dated 29.12.2014. It is further contended that both Raxaul and Banmankhi are under Samastipur Division and Master Circular No. 24 (Transfer of Non-gazettted Railway Servants) has conferred power to the administration to transfer the employee due to administrative exigency hence there is no infirmity to issue office order dated 08.01.2014. It is further submitted that the relief sought by the applicant is not teneable therefore the O.A is liable to be dismissed.

The l/c for respondents also filed an M.A 210/2017 for deletion of the name of Chairman, Railway Board.

4. Rejoinder to the O.A has been filed by the applicant reiterating the earlier submissions and additionally he submitted that since the seniority and lien was

fixed at Samastipur Division and it is also pointed out here that the applicant was absorbed against the vacant post of Commercial Inspector Gr.-I in the pay scale of Rs.6500/- in Samastipur Division. Moreover, the name of the applicant was struck off from the HQ, Hazipur and he was granted next promotion at HQ, Hazipur alongwith juniors and no objections were raised against the seniority position of applicant. The l/c for applicant further contended that the applicant was absorbed in Samastipur Division against the vacant post and after taking option by the competent authority and terminated his lien at EC Railway HQ Hazipur and same was transferred to the Samastipur Division where his lien and seniority is still maintained. He further submitted that due to personal biasness the impugned order has been issued.

4. Heard the parties and perused the material available on records.

5. The only relief sought by the applicant is that the order dated 27/28.10.2014 (Annexure A/12) and order dated 08.01.2014 (Annexure A/13) be treated illegal and be quashed.

(Dinesh Sharma)
Member (Admn.)

(Jayesh V. Bhairavia)
Member (Judl.)

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