

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL KOLKATA BENCH

No. O.A. 350/535/2015

Date of order: 24.09.2019

Present: THE HON'BLE SMT. BIDISHA BANERJEE, MEMBER (J)
THE HON'BLE MR. NEKKHOMANG NEHSIAL, MEMBER (A)

Sri Arup Chatterjee, son of, Manik Chatterjee, presently residing at Keshopur, Jamalpur, Munger, Bihar, Pin : 811214.

.. Applicant

Versus-

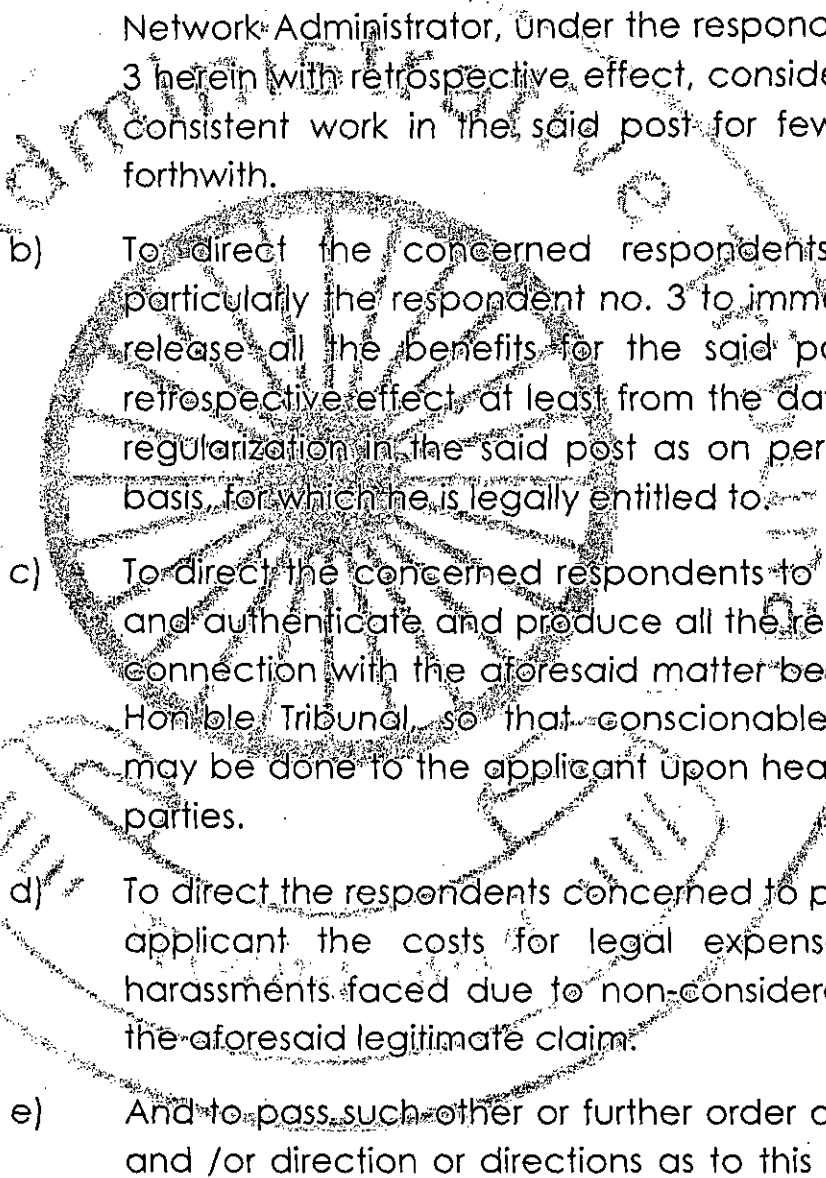
1. Union of India services through the Chairman, Railway Board, Rail Bhavan, New Delhi-110001.
2. The General Manager, Eastern Railway, Fairlie Place, Kolkata - 700001.
3. The Divisional Railway Manager, Asansol Division, Eastern Railway, Asansol, Burdwan.
4. The Director, Indian Railway Institute Mechanical & Electrical Engineering, Jamalpur, Munger, Bihar - 811214.

.. Respondents

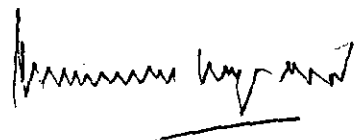
For the Applicant : Ms. B. Ghoshal
For the Respondents : Sri S.K. Das

ORDERNEKKHOMANG NEHSIAL, MEMBER (A):

The applicant by this O.A. seeking the following reliefs:-

- 
- a) To direct the concerned authority to regularize the petitioner as on permanent basis as a Network Administrator, under the respondent No. 3 herein with retrospective effect, considering his consistent work in the said post for few years, forthwith.
 - b) To direct the concerned respondents, more particularly the respondent no. 3 to immediately release all the benefits for the said post with retrospective effect, at least from the date of his regularization in the said post as on permanent basis, for which he is legally entitled to.
 - c) To direct the concerned respondents to transmit and authenticate and produce all the records in connection with the aforesaid matter before this Hon'ble Tribunal, so that conscionable justice may be done to the applicant upon hearing the parties.
 - d) To direct the respondents concerned to pay your applicant the costs for legal expenses and harassments faced due to non-consideration of the aforesaid legitimate claim.
 - e) And to pass such other or further order or orders and /or direction or directions as to this Hon'ble Tribunal may deem fit and proper.

2. Brief facts as narrated by the applicant is that he was appointed as Wireless Telecom Maintenance (WTM) by the General Manager, Eastern Railway under the Divisional Railway



Manager, Asansol Division w.e.f. 04.09.2000 and after requisite training of Signal & Telecom Department, he had been posted as W.T.M. and was working there with the highest satisfaction of the concerned authority.

3. The grounds for relief are as follows:

- (i) That it is well-known principle that if an employee works in a particular post for a considerable number of days with having all requisite qualifications as required under law, the said post has to be regularized as on permanent basis with retrospective effect, but in spite of repeated requests the said post has not yet been regularized till date for reasons best known to the respondent authorities.
- (ii) That the contention of the authorities concerned without any proper basis even after production of entire documents is nothing but a harassment to the applicant herein who being a genuine claimant, who is suffering from hardship without any fault on his part, which is absolutely bad in law and violative to the provisions as laid down in law and envisaged under several judgements passed by various court of law.
- (iii) That the action on the part of the concerned respondents is violative of Articles 14, 16 and 21 of the Constitution of India, in as much as the regularization in the post of a Network Administrator wherein he had been made to work for last few years, is not a bounty but should be a reward of best service rendered by the employee to the Government without the proper remuneration for the said post at par with the other Central Government employees and for which the applicant is legally entitled to.
- (iv) That in several judgement passed by the Hon'ble Apex Court it has been laid down that the regularization as on permanent basis in the post wherein but it is reward granted to the concerned person for the valuable service rendered to the Government and it should not be treated as a concession or reciprocal obligation, and as such this Hon'ble Tribunal should considering such contention shall direct the concerned authorities for regularization as on permanent post wherein the

[Handwritten signature]

petitioner has been made to work for a considerable days, as due to the applicant, at an early date.

- (v) That the action on the part of the concerned respondents is absolutely against the principles of natural justice, equity and fair play.
- (vi) That the non receipt of the regularization in the said post along with the proper scale of pay as prescribed under the Government Notification, as has been mentioned herein before, is causing severe hardships to your applicant serving the railways without blemish.
- (vii) That the action on the part of the respondents concerned is malafide, foul play and contrary to the settled provisions of service jurisprudence.
- (viii) That the action on the part of the respondents concerned is malafide, foul play and contrary to the settled provisions of service jurisprudence.

4. The respondent authorities submitted written statement on 16.12.2015 and brought out the following facts and arguments among others.

"(a) Shri Arup Chatterjee herein applicant, was appointed in Gr. C/Class-III staff as Wireless Telecom Maintainer, Technician III in Railways, under Divisional Railway Management, Asansol Division w.e.f. 04.09.2000. This is as per Service record of Staff concerned. It may please be noted that he is class III/Gr. 'C' staff of Railways, not Gr. A/Class-I (Officer/Direct Mech. Engineer) or, Gr. B class-II (Promoted Officer's Post from Gr. 'C' category) & this is his parent cadre.

(b) By leaving his said parent post at Asansol Division, the applicant Wireless Maintainer/Technician-III/Microwave/Asansol, after released on transfer from Asansol, was posted as WTM Technician-III at IRIMEE in his same pay, capacity and grade w.e.f. 28.11.2002. With the condition that the lien of the applicant will continue to be maintained in Central Microwave organization, Eastern Railway. This is in terms of CPO/ER/Kolkata's L. No. E 839/2/SG/L/WM/MW/Transfer, dtd. 13.11.02 and L. No. S&T/MW/61/2002 dtd. 25.11.2002. It may please be noted that IRIMEE is not the parent cadre of the applicant, his lien is being

[Handwritten signature]

cadre at Eastern Railway. This had not been communicated by the applicant to IRIMEE administration. May be the obvious reason that he was unwilling to go back to his parent cadre. However, designation should be remained as T.V. Technician (ad hoc), as this is not his Parent Post and this will confer upon him any claim to supersede his senior empanelled staff in future.

(d) On empanelment to the Post of WTM technician in his parent cadre in Eastern Railway vide ASTE/M/M/HQ, ERE's letter No. MW/M/I/25/selection/WM/ dtd. 31.05.2013 where the applicant was supposed to go back to his parent cadre of Eastern Railway, IRIMEE took pity on him and retained him at IRIMEE on request and not sending him back by providing him Cadre post of T.V. Technician/Tech-II at IRIMEE. In filed application, how Shri Chatterjee can say that he is being harassed by IRIMEE, IRIMEE neither had given any pressure to send him back to his parent cadre or retain him at IRIMEE. Whatever the decision is purely a decision of applicant to stay in ex.cadre at post IRIMEE.

go back to his parent cadre of Eastern Railway. IRIMEE took pity on him and retained him at IRIMEE on request and not sending him back by providing him Cadre post of T.V. Technician/Tech-II at IRIMEE. In filed application, how Shri Chatterjee can say that he being harassed by IRIMEE, IRIMEE neither had given any pressure to send him back to his parent cadre or retain him at IRIMEE. Whatever the decision is purely decision of applicant to stay in ex.cadre at post IRIMEE.

Answer by and

their training by the concerned section of IRIMEE. The applicant is computer knowing as he committed in his application, so he had been sent by IRIMEE for advance computer training so that he can handle the system better.

The applicant is working as T.V. Technician/Tech-II-SC 5200-20200/GP-2400/- at IRIMEE. It is a ex cadre Post, not parent post. There is no element of further promotion/regularization to be offered to applicant in this ex-cadre post. His lien is being maintained in Microwave Asansol division. The applicant should submit his willingness to go back to his parent cadre at Asansol Division in terms of CWM/JMP's letter F/Dy. CPO(W)/Estt./Misc/IRI/MEE/Pl. dtd. 14.09.06, in view of the above, **IRIMEE Authority has no Power to regularize the applicant from scale 5200-20200 Grade Pay 2400/- (Gr. 'C') to 15600-39100 Grade Pay 7600/- (Junior Administrative Grade/Gr. 'A'), may be he has acquired higher qualification. Moreover, neither such type of Post designated as Computer System Administrator and/or Net Work Administrator is exist/sanctioned at IRIMEE, nor for that post any notification was issued from IRIMEE.**

Moreover, the appointment of applicant was in Gr.C/Technician-III as wireless Telecom Maintainer at Asansol Division. At IRIMEE, the ex-cadre post (not parent post) of T.V. Technician/Technician-II which is at present holding by the applicant IRIMEE is a Grade Pay 2400/-, scale 5200-20200 and shree Chatterjee holding the post beyond his tenure against the post at IRIMEE as per his willingness. **There is also no admissibility to extend that ex-cadre post upto 15600-39100 Grade Pay 7600/- for which the applicant has claimed.** The claimed post of Computer System Administrator and/or Net Work Administrator is presume to be equivalent as Junior Administrative Grade Post in Railways of Grade Pay 7600/- Scale 15600-39100, supposed to be mannd by a Gr. A (Class-I) officer of Railway, **who is to be a direct officer/Engineer, selected by UPSC, IRIMEE cannot have the power to process any recruitment/promotion /selection/regularization to Gr. 'A' etc of its own."**

(emphasis supplied)

5. The applicant submitted rejoinder to the written statement of the respondents on 29.02.2016. In the rejoinder, the

[Handwritten signature]

applicant has not specifically responded to some of the facts stated by the respondent authorities particularly in regard to the statement made at para 4 (e) wherein they have stated that the applicant belong to a Gr. C/Technician-III in the scale of Rs. 5200-20200/- with Grade Pay of Rs. 2400/- and the scale of demanded designation is Gr. A/Junior Administrative Grade post in the scale of Rs. 15600-39100/- with Grade Pay of Rs. 7600/-. However, at para 6 suggested that he had opted for his retention since he was interested in the jobs entrusted to him which was for setting up high speed CAD/CAM Lab and LAN/WAN connections through the Institute and also maintenance of all these units, which is equivalent to the jobs done by the Network Administrator, and the Railway Board has enough jurisdiction to create the post, if not already existed, for the employees betterment. Moreover, an employee who is serving in a particular cadre cannot also been made to work in the same place throughout his life without any promotional effect as per any rules of service, which is not only bad in law but also illegal and arbitrary.

6. In addition to the rejoinder, Ms. B. Ghoshal, learned counsel for the applicant also submitted Notes of Argument dated 05.12.2018. Apart from what has been projected in the

[Handwritten signature]

O.A. as well as rejoinder, the learned counsel has posted the following questions, some of which are found not relevant in the present case.

- (i) Whether the Hon'ble Court has the inherent power to create a post?
- (ii) Whether the post wherein the applicant is made to work is to be considered as a post for "Network Administrator"?
- (iii) Whether the said post of Network Administrator exists in other departments of the Central Government?
- (iv) Whether the applicant is to be treated at par with other Network Administrators of the other departments under the same Government? If so, whether the parity is maintained herein?
- (v) Whether the concerned authorities have acted in contrary to the Articles 14, 16 and 21 of the Constitution of India?

7. We have carefully gone through the submissions and counter submissions made by both the parties and also have given detail hearings for argument of the parties on 12.06.2019. As brought out by the respondent authorities, the applicant does belong to Gr. 'C' employee of the respondent authorities under the Divisional Railway Manager, Asansol Division. Subsequently, he had gone on transfer from Asansol and posted as WTM Technician-III at Indian Railway Institute Mechanical & Electrical Engineering (IRIMEE) in the same pay, capacity and grade w.e.f.28.11.2002. Though IRIMEE is under the same

(Signature)

8. Applicant's demand is basically that since he is working and discharging very important function which is equivalent to the assignment handled by the Network Administrator in some other departments; he should be designated as 'Network Administrator' and duly compensated for the quantum of work he handled in the form of higher post. In this connection, it has to be appreciated that designations are given by the competent authorities in the Govt. by following specific guidelines and procedure depending upon the nature of post and pay scale attached to that post. Any designation

Memorandum by me.

cannot be just given only because the incumbent perceived work/job to be important and comparable with works discharged by functionaries in other departments or organizations. Moreover, it has to be a sanctioned post in the department/ organization and filling up of such post, if it exists, has to be done according to the prescribed recruitment rules.

9. Keeping in view of the above, we find that the demand of the applicant is found to be vague and is not supported by any orders/guidelines issued by the Government from time to time. Therefore, the O.A. devoid of merit and liable to be dismissed. It may also be added that creating posts of any level in the Govt. department/organization is beyond the purview of this Tribunal.

10. Accordingly, the O.A. is hereby dismissed.

11. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)