

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 1336 of 2013

1. Union of India; through the General Manager, South Eastern Railway, Garden Reach, Kolkata-700043.
 2. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-700043.
 3. The Additional General Manager and Director (PG), South Eastern Railway, Garden Reach, Kolkata-700043.
 4. The Chief Electrical Engineer (Construction), South Eastern Railway, Garden Reach, Kolkata-700043.
 5. The Divisional Railway Manager, South Eastern Railway, Chakradharpur Division, P.O. & P.S.- Chakradharpur, Dist. West Singhbhum.
 6. The Senior Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, P.O. & P.S.- Chakradharpur, Dist. West Singhbhum.
 7. The Deputy Chief Electrical Engineer (Construction), South Eastern Railway, Chakradharpur Division, P.O. & P.S.- Chakradharpur, Dist.- West Singhbhum.
 8. The Divisional Railway Manager, Hatia, P.O. and P.S.- Hatia, District-Ranchi.
 9. The Divisional Personnel Officer, South Eastern Railway, Ranchi Division, P.O. & P.S.- Hatia, Ranchi. Respondents/Petitioners
- Versus
- Biswajit Sen Applicant/Respondent

CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioners : Mr. Mahesh Tewari, Advocate
For the Respondent : Mr. Amit Kumar Verma, Advocate
Mr. Vijay Kant Dubey, Advocate

09/19.04.2022 This writ petition is by the Railways, who are respondents in O.A. No. 216 of 2009, being aggrieved by the order dated 11th January, 2011, passed by learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Court at Ranchi) (Annexure-1).

2. The instant O.A. is the second round of litigation relating to the claim of lien and seniority by the applicant/respondent herein. Learned Calcutta Bench of the CAT vide order dated 6th January, 2005 (Annexure CA/2), passed in O.A. No.512 of 2000, directed the respondent authorities to consider and dispose of the representation filed by the applicant dated 18th February, 1999 addressed to the respondent No.3 therein, if rule permits and treat the period of retention as a lien and all service benefits be released within four months from the date of communication of the said order.

Pursuant thereto, the Deputy Chief Personnel Officer (HQ), for Chief Personnel Officer, passed an order contained in letter No. EL/Con/CKP/CAT/B.Sen dated 14th September, 2005 (Annexure-8 to I.A. No.1621 of 2022), whereby the applicant was granted lien in Group-D

category under the DRM/RNC i.e. erstwhile Adra Division. Since he had been working at different units of Electrical Construction Organization located in South Eastern Railway, more particularly in Ranchi Area since his initial appointment, his lien was fixed in Electrical Cadre at Ranchi Unit as KSI (Khalasi) in Group D in the scale of Rs.750-940 w.e.f. 3rd February, 1989 as also communicated by DRM (P) Dhanbad Division, erstwhile Eastern Railway, (now East Central Railway), vide letter No.E/Elect/TRS/89 dated 3rd February, 1989. It was ordered that the applicant would get service benefits at par with his juniors in Group D Electrical Cadre at Ranchi Unit w.e.f. 3rd February, 1989. Due to exigencies at work, he would continue to work in Electrical Construction Organization, for the time being, in his present status and pay under Deputy Chief Electrical Engineer (CON/CKP) keeping his lien in Ranchi Division. He was granted notional promotion and benefit at par with his juniors. This is the reason for the applicant to approach the learned CAT in the instant O.A. No. 216 of 2009. He also sought payment of financial benefit since 3rd February, 1989 and setting aside of the order dated 1st December, 2001, by which he has been reverted from Fitter Grade I to Fitter Grade II. The case of the applicant has been taken note of in the impugned order at paragraph Nos. 2 to 7, which are being extracted hereunder.

“2. The applicant had first applied for appointment as Casual Fitter in the Electrical Department of South Eastern Railway on 10.5.1987, and thereafter, he was called through Annexure A/1 dated 3.11.1987, for verification of his certificates for appointment in the Artisan Cadre in the Electrical Department in the Railway Electrification Project Ranchi. He was ultimately engaged as Casual Fitter through Annexure A/2 dated 09.11.1987. He was later on ordered, alongwith 48 others, to be screened for the post of Class IV Category in the scale of Rs.750-940/-, and was declared to be suitable through Annexure A/3 dated 03.02.1989. He was directed through this letter dated 03.02.1989, to join at Gomoh, which is now in Eastern Railway. However, since he was not spared from the Bokaro Steel City Railway Station, for administrative reasons at that time, he continued to work as staff of Adra Division, South Eastern Railway, at Bokaro Railway Station itself.

3. He even got promotion, with the pay scale of Casual Fitter-II on temporary status, in the pay scale of Rs.1200-1600/-, and was posted at Tata Nagar w.e.f. 1.7.1990. Thereafter, vide order dated 15.1.1993 (Annexure A/4), the applicant was promoted to the post of Highly Skilled Fitter Grade-I in the scale of Rs.1320-2040 in the existing vacant post, as ordered by the Dist.

Elect. Engineer (E) South Eastern Railway, Tatanagar. The applicant joined as such on 15.1.1993, and after almost 8 years of service, when he was enjoying pay scale of Rs.4500-7000/-, suddenly, through letter dated 01.12.2001, (Annexure A/5), issued by the Deputy Chief Elect. Engineer (Const.) South Eastern Railway, Chakradharpur, the applicant stood reverted as officiating Highly Skilled Grade II in the pay scale of Rs.4000-6000/-.

4. *The applicant has submitted that he knew that since he had continued to serve at Bokaro Railway Station in Adra Division of South Eastern Railway, and had not been released to join at Gomoh under the Dhanbad Division of Eastern Railway, his lien and seniority were not being properly maintained at the place where he was working, and he had represented to the concerned official respondents repeatedly, and when his grievances were not redressed, he had filed O.A. No.512/2000 before the Calcutta Bench of this Tribunal. When the Calcutta Bench passed an order dated 6.1.2005, the Bench observed that since the applicant had not been released to join in the open line on account of administrative reasons, the respondents should have treated the period as lien and asked him to join by giving appropriate posting thereafter. The Bench had therefore ordered the respondents to treat the period of applicant's retention as lien and release all service benefits to him within a period of 4 months from the date of communication of the order.*

5. *However, the applicant is aggrieved that when the Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata (Respondent No.2) decided the representation of the applicant through his order dated 14.9.2005 (Annexure A/7), in obedience of the order of the Calcutta Bench, his lien has been fixed w.e.f. 3.2.1989 in the Electrical Cadre at Ranchi Unit in the scale of Rs.750-940/- considering the fact that he could not go and report in the open line for availing of his promotion. It has been further ordered that the applicant will be given service benefits at par with his junior in Group-D Electrical Cadre at Ranchi Unit w.e.f. 03.02.1989, and his lien in Ranchi Division will be fixed, and he will be given seniority and notional promotion and benefits at par with his juniors from that date onwards.*

6. *The applicant has stated that thereafter he had approached the authorities of Ranchi Division, Respondent No.9, Divisional Personnel Officer, Ranchi Division, Ranchi, who has informed him that since the Ranchi Division has been created recently only, it cannot give Lien and Seniority to the applicant from 03.02.1989, as ordered by the Tribunal and as ordered by the Deputy Chief Personnel Officer (H/Q) acting on behalf of the Chief Personnel Officer, South Eastern Railway through order dated 14.9.2005. He has accordingly had to represent to the respondent authorities through letters dated 20.3.2006 (Annexure A/8), 15.1.2007 (Annexure A/9), 13.10.2008 (Annexure A/10), but to no avail. He had even given a legal notice to the respondent authorities on 5.12.2008 (Annexure A/14), but has got no positive response. The applicant is aggrieved that even though the order dated*

14.9.2005 have been passed obeying the orders of the Calcutta Bench of this Tribunal, the order as such has not been implemented in its letter and true spirit till date. But, since the order has been obeyed he has not been in a position to file a Contempt Petition to receive the financial and other benefits flowing from that order. Hence he has justified filing of the present O.A., and prayed that the lien and seniority of the applicant has not been decided in the positive spirit, for no fault of his, and the financial benefits have not been paid to him till date.

7. In view of this, the applicant once again prayed to direct and command the respondents to give the applicant benefits of lien and seniority w.e.f. 03.02.1989, to quash the order of his reversion dated 1.12.2001 (Annexure A/5), and to command the respondents to provide pay protection and relaxation in age limit and other financial benefits, apart from costs of litigation.”

3. Respondents took the plea that in compliance of the order of the learned CAT Calcutta Bench, the seniority list of Khalasi in Ranchi Division was prepared on 21st October, 2009 where the name of the applicant appeared at serial No. 3, above 37 candidates and also in the common provisional seniority list of Khalasi/Helpers on the same date at the same serial number. They have justified the order dated 1st December, 2001 stating that the applicant, while working as casual Fitter on temporary status, was promoted to officiate as Casual Fitter Grade II on 29.06.1990 and further promoted to officiate as Highly Skilled Fitter Grade I vide order dated 15th January 1993 and as such got two adhoc promotions without any regular examination which is a violation of Railway Board instructions. According to them, the adhoc promotion of employees of construction department were reviewed and all second or more adhoc promotions granted to staff in violation of the Railway Board instructions were terminated w.e.f 1st December, 2001. The applicant filed a rejoinder stating that his reversion after 9 years of long service on Fitter Grade I was arbitrary and illegal and deserves to be quashed.

4. Learned Tribunal in the operative part of the order opined that while fixing the lien of the applicant in Group D category under DRM, Ranchi, the respondents had not taken into account that the Division did not apparently exist in the year 1989 as it was in the erstwhile Adra Division. Therefore, there were some incongruity in fixing of the lien of the applicant w.e.f. 3rd February, 1989 in a Division which did not exist at that time. This needed to be looked into by the administrative authorities and could not be adjudicated by the tribunal. As such, the learned tribunal found merit in the

first prayer of the applicant and directed respondent to give the benefits of lien and seniority to the applicant w.e.f. 3rd February, 1989 in the Division where he was retained by decision of the appropriate authority and was not allowed to join as a Fitter at Gomoh.

The learned Tribunal also opined that he should be given the benefits of both lien and seniority by treating him as a Fitter w.e.f. 3rd February, 1989 at the place he was working and retained by the Superiors. The impugned order of reversion was also set aside with liberty to the respondents to work out the entitlements of the applicant and pass fresh orders as per rules.

The contention of the respondents that policy of the Railways did not allow two adhoc promotions to any employee was upheld. At the same time, the respondents were directed to work out the entitlement of regularization of the applicant's first adhoc promotion as per his eligibility before coming to the conclusion that he should not have accorded two adhoc promotions together. Directions were to be complied within a stipulated period by a reasoned order. Being aggrieved thereby Railways is before this Court.

5. During pendency of the writ application, upon leave being granted without any objection by the applicant/respondent, through I.A. No. 1621 of 2020, Railways have brought on record several documents such as photocopy of the office order dated 3rd February, 1989 showing that applicant was posted as Khalasi at Serial No. 39 in the pay scale of 750-940-R.P. and given a temporary status (Annexure 2) in the scales of 950-1500 as a casual Fitter under construction project and on his request reported on 19th January, 1990 against the existing vacancies in the P.L.R. of construction vide Office order dated 30th January, 1990 bearing No. 8/90 (Annexure 3). The order of officiating promotion as Casual Fitter Grade II in temporary status in the scale of 1200-1800 under T.F.O. (Con)/TATA bearing No. 41/90 dated 29th June, 1990 has been brought on record as Annexure 4 to show that the promotion was stop gap in measure in the currency of the post. The petitioners have also brought on record the office order No. 01/93, dated 15th January, 1993 wherein the applicant was promoted to officiate as H.S. Grade I Fitter in the scale of 1320-2040 RP with the stipulation that the promotion will not confirm any claim or seniority or title to continue and is purely stop gap in measure (Annexure 5). Further, letter dated 13th November, 2001 has been brought on record wherein the competent authority had directed to terminate the adhoc promotions to the employees

(Annexure 6). The petitioners have also enclosed the order of the learned C.A.T., Calcutta Bench, Calcutta dated 6th January, 2005 (Annexure 7), the letter dated 14th September, 2005 by Divisional Personnel Officer, South Eastern Railway fixing his lien and seniority in Electrical (General) Unit of Ranchi Division w.e.f. 3rd February, 1989 and granting him notional promotion and benefit at par with his juniors (Annexure 8). A provisional seniority list dated 21st October, 2009 has been brought on record as Annexure 9 wherein applicant was shown as Khalasi at Serial No. 3. Photocopy of letters dated 09.09.2013 and 19th September, 2013 (Annexure 10 series) have been brought on record to show that the applicant was called for trade test for promotion in Tech III (Power) in the pay band of 5200-20200, Grade Pay Rs.1900/-, where he refused to take part on the ground that his case is pending before this Court. According to the petitioners, the applicant failed to appear in the re-examination test again. It is the case of the petitioners as pleaded in this I.A. that the applicant did not come to open line in Ranchi Division as a Khalasi and therefore, remained as a Khalasi in the construction projects.

It appears that these documents which have a material bearing on the case have been brought on record for the first time during proceedings of the instant writ application, a fact which the applicant/respondent has also not controverted. It, therefore, appears that while deciding the case of the applicant the learned tribunal was not apprised of relevant documents relating to the controversy of fixation of his lien and seniority w.e.f. 3rd February, 1989 whether in the Electrical cadre or in the Construction cadre.

6. These material documents go to the root of the matter and since have been brought on record for the first time, we deem it proper to remand the matter to the learned CAT to consider and decide the issue afresh. Accordingly, the order dated 11th January, 2011, passed in O.A. No. 216 of 2009, Ranchi is set aside as it may not come in the way of the learned tribunal to take a decision afresh. The petitioners Railways shall bring on record the documents, which have been placed before this Court, before the learned C.A.T. in O.A. No. 216 of 2009. Applicant shall be granted an opportunity to rebut the same before deciding the said O.A.

7. Writ petition is allowed by remanding the matter as indicated above.

7.

8. Needless to say, any observation made hereinabove shall not act to the prejudice of either of the parties. It will be open to the learned C.A.T. to take a fresh decision on merits in accordance with law.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

sm/ pramanik