

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 29466 of 2011

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

K. Lalitendu Kumar Petitioner

-Versus-

Union of India and Ors. Opp. Parties

For Petitioner : M/s. N.R. Routray, S. Mishra,
T.K. Choudhury and
S.K. Mohanty, Advocates

For Opp. Parties : Mr. P.K. Parhi, ASGI along with
Mr. D. Gochhayat, CGC

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MR. JUSTICE SANJAY KUMAR MISHRA**

Date of Judgment: 04.08.2022

DR. B.R. SARANGI, J. The Petitioner, who was then working as Chief Diesel Power Controller under Chief Mechanical Engineer, East Coast Railways, Bhubaneswar, has filed this Writ Petition seeking to quash the common order dated 24.10.2011 passed by the Central Administrative

Tribunal, Cuttack Bench, Cuttack, in O.A. Nos.245, 250 and 251 of 2009 in Annexure-1, by which the prayer of the Petitioner and two others to quash the order of repatriation dated 08.05.2009 and the order of approval dated 10.04.2009 was rejected. The Petitioner further seeks for a direction to the Opposite Parties to absorb him regularly in East Coast Railway Headquarters at par with similarly situated employees.

2. The factual matrix of the case, in brief, is that the Petitioner initially joined in South Eastern Railway on 19.09.1995 as Assistant Loco Pilot under Senior D.M.E., Sambalpur and at the time of filing this Writ Petition, he was working as Chief Diesel Power Controller under Chief Mechanical Engineer, East Coast Railway, Bhubaneswar.

2.1 The Government of India, Ministry of Railways, vide R.B.E. No.117/2002 dated 19.07.2002, issued a Notification calling upon options from staff to serve in the Headquarters of the newly created Railway Zones. As per the Notification, the then South Eastern Railway was bifurcated and the East Coast Railway was carved out.

The Headquarters of East Coast Railway is situated at Chandrasekharpur, Bhubaneswar, Orissa.

2.2 After formation of East Coast Railway, Opposite Party No.2, vide order dtd.02.01.2003, called upon options from staff to serve in the Headquarters of the New Railway Zones and with regard to determination of seniority of staff on transfer to the new Zones with reference to Railway Board's letter dated 19.07.2002. Accordingly, in the said order dated 02.01.2003 option was called for from the employees working in South Eastern Railway for posting to Headquarters office of East Coast Railway in terms of Railway Board's letter dated 19.07.2002.

2.3 The Petitioner submitted his option, pursuant to the Notification dated 02.01.2003, along with other staff to serve in the newly created Zonal Headquarters, namely, East Coast Railway. After receiving options from the eligible staff, the then Deputy Chief Personnel Officer, vide order dated 21.02.2003, prepared two lists of optees, i.e., one was optees from other than Headquarters Office

of South Eastern Railway, and also adjacent Divisions of South Eastern Railway and another was optees of Foreign Railway other than South Eastern Railway. The name of the Petitioner along with the others found place at Annexure-II of the list of optees of the first category.

2.4 Opposite Party No.2, vide order dated 13.03.2003, prepared a list of six optees with approval of the Competent Authority and issued the option transfer orders to Power Control under Mechanical Department of East Coast Railway Headquarters in the interest of Administration. In the said list, the name of the Petitioner found place at Sl.No.5. Request was also made for release of the staff within 10 days. Accordingly, the Divisional Railway Manager (P), Sambalpur, vide Office Order No.20/2003 dated 03.04.2003, released six optees from his control as per order dated 13.03.2003 issued by Opposite Party No.2. In the said order, the name of the Petitioner found place at Sl. No.4. The Petitioner on 25.04.2003 reported to his duty and posted to the Mechanical Department of East Coast Railway Headquarters. In the said order, it was mentioned that

his lien will be maintained in his Parent Division/ Lien Unit till such time the cadre of East Coast Railway Headquarters is finally formed.

2.5 Sri. P. K. Pattnaik and Shri S.C. Behera, whose name respectively found place at S1.Nos.1 and 2 of the order dated 13.03.2003 and 03.04.2003, were regularly absorbed in the East Coast Railway Headquarters immediately just after their posting. As such, the Petitioner and other optees placed their grievance before the Competent Authority for their regular absorption in East Coast Railway Headquarters and fixation of their cadre. Pursuant to the same a joint meeting was held with CPO along with CEE and CME on 29.08.2005. As per the discussions made in the said Meeting, finally it was decided on 01.09.2005 vide a Note Sheet stating therein that the staff presently working against the posts concerned, will continue to work against the down-graded posts of L.Is. until they get promoted. Since it was a long pending issue, CPO was requested to issue necessary memorandum accordingly without any further delay.

2.6 On 21.02.2008, Opposite Party No.2 regularly absorbed eight optees in the newly created East Coast Railway Headquarters as per the order dated 02.01.2003. The name of the Petitioner and the optees of 21.02.2008 were found place at Annexure-II of the order dated 21.02.2003, but they were not absorbed. Accordingly, an Appeal was preferred by the Petitioner, along with two others, before the Chief Mechanical Engineer with a request to absorb them under East Coast Railway after cutting off their lien from their Parent Division. In the said Appeal, it had been categorically stated that they had submitted their options to serve in the newly created East Coast Railway Headquarters and in the meantime similarly placed optees/staff have already been regularly absorbed. There was no valid and justifiable reason not to absorb them against the post available. However, Opposite Party No.2, instead of regularly absorbing them, vide order dated 19.03.2009, approved for repatriation of the Petitioner and two others to their Lien Unit i.e. Sambalpur Division, on the ground that they had already completed their tenure in terms of R.B.E. No.162/2004.

In the said order, it was mentioned that on repatriation of the Petitioner and others, fresh options, if required, may be called upon against the vacant posts. On 10.04.2009, vide Office Order No. 92/2009, the A.P.O. (HQ)-1 issued order to release the Petitioner and two others on the same ground as taken vide order dated 19.03.2009.

2.7 The Chief Operating Manager, being aggrieved by the order of repatriation dated 10.04.2009, issued an order on 20.04.2009 raising the question regarding operation of the order dated 10.04.2009. It is also stated that the order dated 10.04.2009 was passed without consulting the Executive Authority. As such, the order dated 10.04.2009 was cancelled. Opposite Party No.5, on 08.05.2009, issued an order for repatriation of the Petitioner and others on the ground that they had completed the tenure of five years. In the said order, it was requested to call upon options from the running staff of three Divisions to perform the duties of Power Controller at Headquarters. It was also stated that RBE No.162/2004 was a bar for continuance of the Petitioner in the Headquarters. The Railway Board issued RBE

No.162/2004 dated 23.04.2004, regarding tenure of posting of running staff drafted to perform the duties of power/ Crew Controllers. As per RBE No.162/2004, the General Manger of the concerned Zonal Railway was empowered to extend the maximum period i.e. (3+1+1) keeping in view the administrative requirement. But the Petitioner, who was posted in the newly created Zonal Headquarters of East Coast Railway on basis of the options called for vide order dtd.02.01.2003, should have been regularly absorbed in the newly created Zonal Headquarters.

2.8 Without doing so, when steps were taken for repatriation of the Petitioner to his Parent Zone, the Petitioner approached the Central Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No.250 of 2009. While entertaining the said Original Application, the Tribunal passed an interim order, pursuant to which the Petitioner, instead of being repatriated, continued at East Coast Railway Headquarters, at Bhubaneswar. But after due adjudication, the Tribunal, without any application of mind, passed an order on 24.10.2011 by

observing that the Petitioner and two others, who were Applicants in O.A. Nos.245, 250 and 251 of 2009, were continuing on temporary transfer basis in the East Coast Railway in ex-cadre posts and upon completion of their tenure, they can have no claim to be absorbed and absorption of any other employees cannot give a right to the present Petitioner and two others to claim such absorption dehors the Rules. The Tribunal further recorded that meanwhile the Petitioner had been repatriated to his Parent Unit. Therefore, if the Opposite Parties so required, they are free to invite fresh options against the posts in which the Petitioner was continuing in the East Coast Railway Headquarters. The Tribunal however made it clear that in case the Petitioner and two other Applicants apply pursuant to the fresh Notification, the Opposite Parties should also consider their case along with others in accordance with Rules. Challenging such order of the Tribunal, the Petitioner has approached this Court in the present Writ Petition.

3. Mr. N.R. Routray, learned Counsel appearing for the Petitioner, contended that once the option was

called for from the staff, pursuant to which the Petitioner had exercised the same and he was posted at East Coast Railway Headquarters, it cannot be construed that he had been drafted to the East Coast Railway. Rather, on exercise of such option, he had been allowed to continue in East Coast Railway. It is further contended that if other similarly situated persons, who had come to East Coast Railway on exercise of option, have already been absorbed in East Coast Railway, there is no justifiable reason to repatriate the Petitioner to his Parent Division, i.e. Sambalpur Division. Applying same analogy, since the Petitioner stands on the same footing with them, he should have been absorbed in East Coast Railway and extended all the benefits, as due and admissible to him, in accordance with law.

4. Mr. P.K. Parhi, learned Assistant Solicitor General of India appearing along with Mr. D. Gochhayat, learned Central Government Counsel for the Opposite Parties, contended that since the Petitioner was transferred on temporary basis for a specific period, after expiry of the five year tenure, he had to be repatriated to

his Parent Division. As a consequence thereof, pursuant to the orders passed under Annexures-A/9 and A/11 to the Original Application, he had to go back to his Parent Department at Sambalpur. More so, it has been specifically observed by the Tribunal that if any option is invited by East Coast Railway in future and the Petitioner applies for the same, his case will be considered and his service may be placed under East Coast Railway and may be regularized. Therefore, he contended that the Tribunal has not committed any error on the face of record, so as to call for interference at this stage.

5. This Court heard Mr. N.R. Routray, learned Counsel appearing for the Petitioner, and Mr. P.K. Parhi, learned Assistant Solicitor General of India appearing along with Mr. D. Gochhayat, learned Central Government Counsel for the Opposite Parties, by hybrid mode, and perused the records. Pleadings having been exchanged between the parties, with the consent of learned Counsel for the parties, this Writ Petition is being disposed of finally at the stage of admission.

6. In the above premises, the sole question falls for consideration by this Court is:-

“Whether the Petitioner is an optee as per RBE No. 123 of 1996 followed by letter dated 02.01.2003 issued by Opposite Party No.2-Chief Personnel Officer or drafted to East Coast Railways Headquarters as per RBE No. 9/1998 ?”

7. It is not in dispute that East Coast Railway was carved out and created from South Eastern Railway after bifurcation. The Headquarters of East Coast Railway is situated at Chandrasekharpur, Bhubaneswar, Orissa. After formation of East Coast Railway, Opposite Party No.2, vide order dated 02.01.2003, called upon options from staff to serve in the Headquarters of the New Railway Zones and the determination of seniority of staff on transfer to the New Zones with reference to Railway Board's letter dated 19.07.2002. In the said order, the option was called for from the employees working in South Eastern Railway for posting to Headquarters office of East Coast Railways in terms of Railway Board's letter dated 19.07.2002. The Petitioner submitted his option, pursuant to the Notification dated 02.01.2003, along with other staff to serve in the newly created Zonal

Headquarters of East Coast Railways. After receiving the options from the eligible staff, the then Deputy Chief Personnel Officer, vide order dated 21.02.2003, prepared two lists of optees, i.e., one was optees from other than Headquarters office of South Eastern Railway, and also adjacent Divisions of South Eastern Railways and another was optees of Foreign Railways other than South Eastern Railways. The name of the Petitioner along with the others found place at Annexure-II of the list of optees of first category. Opposite Party No.2, vide order dated 13.03.2003, prepared a list of six optees with approval of the Competent Authority and issued the option transfer orders to Power Control under Mechanical Department of East Cost Railways Headquarters in the interest of Administration. In the said list, the name of the Petitioner was found place at Sl.No.5. As such, request was also made to release the staff within 10 days. The Divisional Railway Manager (P), Sambalpur, vide office order dated 03.04.2003, released six optees from his control, as per order dated 13.03.2003 issued by Opposite Party No.2. In the said order, the name of the Petitioner found place at

Sl. No.4. Therefore, there is no iota of doubt that in exercise of option by the Petitioner, his service had been placed in East Coast Railway after parting from South Eastern Railway.

8. It is further revealed that on 06.12.1996, the Ministry of Railways desired that options may be called for from the staff for the purpose of manning of posts in the new Railway Zones at their Headquarters offices. The Ministry of Railways, vide RBE No. 9/1998, issued the modified Scheme for filling up of the post of Loco Running Supervisors (Loco Inspector) and Power Controller/ Crew Controller. On 19.07.2002, the Railway Board, vide RBE No. 117 of 2002, issued further instructions calling for options to serve in the newly created Zones and determination of seniority. Opposite Party No.2 called for options on 02.01.2003, basing upon which, the Petitioner exercised his option to serve in the newly created Headquarters Office of East Coast Railway. Once he had exercised such option and persons similarly situated, who also opted, like the Petitioner, had already been absorbed in the East Coast Railway, there is no valid and justifiable

reason not to absorb the Petitioner in the same Division. As such, the Tribunal without considering the above facts in its proper perspective, came to a conclusion to the following effect:-

“At the cost of repetition, it is mentioned that the Applicants were continuing on temporary transfer basis in the ECoRly in ex cadre posts and upon completion of their tenure they can have no claim to be absorbed and absorption of any other employees cannot give a right to the applicants to claim such absorption de hors the Rule. Meanwhile the applicants have been repatriated to their parent unit. Hence, Respondents, if so required are free to invite fresh options against the posts in which the applicants were continuing in the ECoRly Hqrs. However, we make it clear that in case the Applicants apply pursuant to the fresh notification, the Respondents should also consider the case of the Applicants along with others in accordance with Rules.”

9. The contention of Mr. Routray, learned Counsel for the Petitioner is that the finding of the Tribunal to the above extent is absolutely erroneous inasmuch as once the Petitioner has come to East Coast Railway in exercise of option called for by the Authority, it cannot be construed that he has been drafted to the East Coast Railway and cannot be absorbed and after completion of his tenure, he would be repatriated to his Parent Division. This Court finds ample force in the contention of learned

Counsel for the Petitioner made in that regard on the basis of the factual matrix, as discussed above.

10. In view of such position, the impugned order passed by the Tribunal cannot sustain in the eye of law and, as such, pursuant to the orders under Annexure-A/9 and A/11 to the Original Application, no repatriation can be made. Rather, the Petitioner has to be absorbed in the East Coast Railway, as similarly situated persons have already been absorbed, without inviting any fresh options from him.

11. As a consequence thereof, the orders dated 10.04.2009 and 08.05.2009, under Annexures-A/9 and A/11 to the Original Application, cannot sustain in the eye of law and the same are liable to be quashed and are hereby quashed. The impugned order passed by the Tribunal dated 24.10.2011, in Annexure-1, relying on the orders passed under Annexure-A/9 and A/11 to the Original Application, also cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The Opposite Parties are directed to absorb the

Petitioner in East Coast Railway without causing any further delay and without inviting any fresh option from him, as he has already opted for continuance in East Coast Railway, pursuant to the letter dated 02.01.2003. The entire exercise shall be completed within a period of two months from the date of communication of this order.

12. The Writ Petition is accordingly allowed. No order as to costs.

S.K. MISHRA, J. I agree.

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DR. B.R. SARANGI,
JUDGE

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S.K. MISHRA,
JUDGE

Orissa High Court, Cuttack
The 4th August, 2022, Arun/GDS