

Court No. - 39

Case :- WRIT - A No. - 15197 of 2023

Petitioner :- Union Of India And 4 Others

Respondent :- Ashutosh Kumar And 5 Others

Counsel for Petitioner :- Vivek Kumar Singh

Counsel for Respondent :- Alok Kumar Dave

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Rajendra Kumar-IV,J.

1. Heard Shri Vivek Kumar Singh, learned counsel for the petitioner and Shri Sudhanshu Kumar, Advocate, holding brief of Shri Alok Kumar Dave, learned counsel for the respondent.

2. Present petition is directed against the order of the Central Administrative Tribunal, Allahabad Bench, Allahabad dated 24.05.2023 passed in Original Application No. 836 of 2019 (Ashutosh Kumar and other Vs. Union of India and others). By that order, the learned Tribunal has allowed the Original Application and granted following relief :

*"19. In view of the above quoted deliberations, we are of the considered opinion that the instant original application is liable to be allowed and is accordingly, **allowed to the extent that the competent authority amongst the respondents is hereby directed to grant notional promotion to the applicants w.e.f. 02.07.2018 thereby giving them all the consequential benefits as accrued. The said exercise shall be completed within a period of three months from the date of this order.**"*

3. Undisputedly, the private-respondents were appointed and served at Integral Coach Factory, Chennai (ICF in short). Pursuant to letter dated 12.09.2013 issued by Coach Mid Life Rehabilitation Workshop (CMLRW in short), Jhansi, the respondents applied for

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deputation from ICF to CMLRW. Relevant portion of the letter dated 12.09.2023 inviting such deputation, reads as below :

"1. The lien of the transferred staff to Mid Life Rehabilitation Workshop will be continued to be maintained in the Parent Railways /Production Units till closure of the cadre and accordingly all promotion aspects will progress there.

2. The last date of submission of option is fixed for 30.11.2013. No option shall be entertained after the stipulated date.

3. The administration will have the right to short list the candidates after screening as per its own requirements and reviewing their working knowledge & experience. Hence, merely opting for this Unit will not confer any right on them for automatic register on option.

4. Opening of application conducted immediately after the cut off date i.e. 30.11.2013 and acceptance will be issued as per existing policy guidelines up to desired vacancies are filled up. Quantum of such vacancy will be decided by North Central Railway Administration.

5. Class-IV staff of concerning departments who are minimum matriculates or ITI or ex-Act Apprentice may apply.

6. Staff with experience in coach/EMU PDH workshop or coach manufacturing PUS would be preferred, however other workshop staff (locomotive or wagon POH) would also be considered in case of shortage of in specific trades where there is a shortage.

7. Staff whose options are accepted would not normally be returned on administrative account unless there is serious reason of misconduct etc.

It is hereby requested to please circulate to all concerned units under your control inviting options from willing staff and the same to be forwarded to this office, it should be ensured that the option once exercise by the willing staff and acceptance issued by this organization will be treated as final and staff will have to be released without fail."

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4. Undisputedly, all the respondents were accepted on deputation at CMLRW in 2013. They have served there without any complaint. Their services have been found to be satisfactory both at ICF and CMLRW. On 11.7.2018, the private-respondents applied to CMLRW to be repatriated at ICF, Chennai. That application was forwarded by CMLRW on 6.9.2018. Yet, it was rejected by the ICF on 1.10.2018 for the only reason disclosed in that communication that no valid or substantive reason had been disclosed for the repatriation sought.

5. In such circumstances, the private-respondents moved another application dated 24.10.2018 seeking repatriation at ICF for reason of their promotion having become due in their parent department namely ICF. That application was forwarded by CMLRW on 1.12.2018. Yet, before any promotion may have been granted, cadre of Technician Grade-I/promotional post at ICF, was closed. Therefore, the respondents have continued on the post of Technician Grade-II at CMLRW.

6. It is this grievance that was carried by the respondents to the Tribunal. They claim entitlement to promotion to Technician Grade-I (which promotion has been eventually granted to them at CMLRW on 22.11.2022).

7. Submission of learned counsel for the Union/petitioner is, the Tribunal has erred in reasoning that the delay that led to the promotion being denied to the respondents is attributable to the Union. According to him, CMLRW had done everything to repatriate the respondents as per their wish. However, the ICF rejected the first application on 1.10.2018. That order was never challenged by the private-respondents. The second application was moved by the private-respondents on 24.10.2018. The same was

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forwarded by CMLRW on 1.12.2018. However, the Tribunal has erroneously noted that the application made by the private-respondents was forwarded by CMLRW after the cadre of Technician Grade-I had closed at ICF on 3.12.2018.

8. Second, reference has been made to Clause-7 of the letter dated 12.9.2013 issued by the Ministry of Railways inviting applications for appointment on deputation at CMLRW. It has thus been submitted that the private-respondents could not be normally returned to ICF. Since the private-respondents failed to establish any just ground for their repatriation at ICF and since they never challenged the communication dated 1.10.2018 issued by the ICF, they were not entitled to the relief granted.

9. Responding to the above, the learned counsel for the private-respondents would contend, it was not a condition of deputation that they could not be repatriated to their parent department. In absence of any complaint with respect to their working either at ICF or CMLRW and further in face of no prohibition existing in law against their repatriation to ICF, the private-respondents were wholly enabled to seek such repatriation in the year 2018 since they had become entitled to promotion to Technician Grade-I at ICF. That reason was clearly stated in the application moved by the private-respondents dated 24.10.2018.

10. Thus, neither ICF was right in rejecting the application made by the private-respondents dated 11.7.2018, and further the ICF was not right in keeping pending application dated 24.10.2018, and further the petitioners were not right in denying the joining to the respondents at ICF till existence of cadre of Technician Grade-I, at that establishment.

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11. Third, it has been submitted, whether it is ICF, Chennai or CMLRW, Jhansi, both are establishments owned, run and managed by the Indian Railways, a department of the Union of India. Therefore, the communications dated 6.9.2018 (issued by the CMLRW), 1.10.2018 (issued by the ICF) and 1.12.2018 (issued by the CMLRW) are all internal communications from one authority of the Union of India to another within the same department. By merely delaying the repatriation of the respondents by either consuming time in forwarding the request for repatriation or by rejecting the same for oblique reason, the petitioner/Union of India could not escape the responsibility or the consequences of such actions. Therefore, the order of the Tribunal does not warrant any interference.

12. Having heard learned counsel for the parties and perused the record, while it may be technically true that the finding recorded by the Tribunal may not be correct that delay had been caused at CMLRW in not forwarding the application of the respondents dated 24.10.2018, within time as may have allowed the ICF to consider the same before closure of cadre of Technician Grade-I at that establishment, on 3.12.2018, that fact inaccuracy in the order of the Tribunal may not be decisive.

13. As submitted by the learned counsel for the respondents, the Indian Railways does not have a separate entity or existence distinct from the Union of India. It is an inseparable part of the Union of India. Then, within the department of Railways, there exist various establishments including the ICF, Chennai and CMLRW, Jhansi. The letter dated 12.9.2013 relied upon by the learned counsel for the Union does not create a prohibition as may have prevented the private-respondents from seeking repatriation

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to their parent establishment. To the contrary, Clause-1 of that letter clearly provides for maintenance of lien in favour of the respondents at ICF till existence of cadre. In the undisputed facts of the case, noted above, that cadre continue to exist till the respondents joined back i.e. 3.12.2018. The further provision made in Clause-7 of the letter providing that those serving on deputation may not be normally returned to their parent establishment, is not a rule to disable the promotions or to disable repatriation. It only appears to be a clause as may not allow frequent switch of preference made by any officer who may first seek deputation.

14. In any case once promotion avenues became open to the private-respondents, it was wholly logical for them to have sought that promotion. Since that promotion may not have been availed by them while continuing to serve on deputation at CMLRW, they appear to have applied for repatriation.

15. Therefore, Clause-7 of the letter dated 12.9.2013 may never be read to an officer on deputation to prevent him from availing such promotion that may have become available at his parent establishment, in normal course.

16. Seen in that light, we find no legal impediment having existed with ICF to allow the request made by the respondents to be permitted to be repatriated. Seen, thus both ICF and CMLRW are two arms of the same department of the Union of India. Delay caused by one and arbitrary action taken by another may not be relied any benefit accruing to the respondents. Ultimately, it is the department of the Railways, under the Union of India that remains primarily responsible and liable for the mistake committed either by ICF or CMLRW or both.

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17. Therefore, in absence of any doubt seen to exist with respect to the claim made by the respondents to join back at ICF pursuant to their request dated 11.7.2018, the same having forwarded on 6.9.2018 by the CMLRW, we are of the firm view that only ministerial act for allowing the respondents to join back at ICF, remained to be performed. To that extent, the denial offered to the respondents to join back and being forced to wait till the cadre itself closed, was an act wholly arbitrary and indefensible at the hands of the Indian Railways, a department of Union of India.

18. Seen in that light, we find no good ground to exist to interfere with the order of the Tribunal dated 24.05.2023. The writ petition lacks merit and is accordingly **dismissed**.

Order Date :- 27.9.2023

SA

(Rajendra Kumar-IV, J.) (S.D. Singh, J.)