

## Union of India and Others Vs Asit Kumar Biswas

**Court:** Calcutta High Court

**Date of Decision:** Feb. 10, 2010

**Hon'ble Judges:** Pranab Kumar Deb, J; Pranab Kumar Chattopadhyay, J

**Bench:** Division Bench

**Advocate:** C.R. Bag and Mr. Dilip Kumar Chatterjee, for the Appellant; Kashi Kanta Moitra and Mr. B.C. Sinha and Mr. C. Sinha for the Respondent No. 1, Mr. Asit Banerjee and Mr. Jasojeet Mukherjee for the Respondent Nos. 2 to 9, for the Respondent

**Final Decision:** Dismissed

### Judgement

Pranab Kumar Chattopadhyay, J.

Petitioners herein are aggrieved by and dissatisfied with the judgment and order dated 8th July, 2008

passed by the learned Central Administrative Tribunal, Calcutta Bench in O.A. 864 of 2007 whereby and whereunder the said learned Tribunal

quashed the order of repatriation issued to the respondent No.1 herein and allowed the said respondent No.1 to work in the EDP centre on ex-

cadre basis.

2. From the records we find that the respondent No.1 herein worked in the EDP centre from 16th July, 1989 to 20th January, 1996 and

thereafter, the said respondent No.1 joined the EDP centre afresh on 13th May, 2005. It is not in dispute that in terms of the circular dated 27th

March, 2007 issued by the Senior EDP Manager of the South-Eastern Railway, respondent No.1 herein opted for absorption in the same grade of

Sr. Console Operator. The senior EDP Manager of the South-Eastern Railway issued the aforesaid circular dated 27th March, 2007 following the

instructions of the Railway Board.

3. Even though the respondent No.1 opted for absorption in the same grade of Sr. Console Operator, the prayer for retention in the I.T.

Department was rejected by the Senior EDP Manager of the South-Eastern Railway on the ground that the said respondent No.1 was not eligible

to apply for I.T. cadre since he did not hold ex-cadre post in the EDP centre on 1st April, 2005 and accordingly, the respondent No.1 was

repatriated to the parent cadre of Senior Personnel Inspector, Group I.

4. Mr. Bag, learned counsel representing the authorities namely, the petitioners herein submitted that the respondent No.1 herein was not at all

eligible to apply for absorption in the I.T. cadre as the said respondent No.1 did not join in any post of the EDP on regular basis before 1st April,

2005. According to the petitioners, the claim of the respondent No.1 for retention in the EDP centre even on ex-cadre basis could not be

considered since the said respondent No.1 was not on the roll of the EDP centre on the cut off date i.e. on 1st April, 2005.

5. The Railway authorities issued a circular on 22nd January, 2007 relating to reorganisation of staffing pattern of EDP centres. In the said circular,

following instructions have been specifically issued in relation to absorption/deployment of existing staff in new I.T. cadre:

Absorption/deployment of existing staff in new IT cadre: (a) Selection test for D.E.O.: - the DEOs working in grade Rs. 4500-7000 will be

considered for absorption/placement the post of JE(IT) Grade-II (Rs. 5000 - 8000) through the modified selection procedure based on scrutiny of

service records/confidential reports. Those found suitable will be granted proforma benefit of promotion from 1/4/05 and actual payment will be

admissible from the date they physically start discharging duties of the higher grade post.

(b) Minimum service condition: - Minimum service for the existing staff for eligibility for absorption in the reorganised cadre been revised as 5

years. However, staff willing for absorption in reorganised cadre but having less than 5 years service, will be allowed to work in ex-cadre capacity

upto 5 years and considered for absorption after completion of 5 years.

6. The respondent No.1 requested the competent authority to allow him to work in ex-cadre capacity for a future absorption in reorganised cadre

after completion of five years service as per the instructions mentioned in the aforesaid circular dated 27th January, 2009.

7. Mr. Bag, learned counsel of the petitioners, however, submitted that the respondent No.1 herein cannot get the benefit of the aforesaid

condition mentioned in the circular dated 22nd January, 2007 since the said respondent No.1 was not on roll on 1st April, 2005 which, according

to Mr. Bag, was the cut off date.

8. Mr. Kashi Kanta Moitra, learned senior counsel representing the respondent No.1 invited our attention to the office order dated 27th March,

2007 issued by the Senior EDP Manager of the South-Eastern Railway wherein the principles of absorption, deployment of existing staff in the

new I.T. cadre have been mentioned. Para 5(ii) & (iii) of the aforesaid office order dated 27th March, 2007 are very much relevant for the

purpose of deciding the issues raised in this application. The said Para 5(ii) & (iii) are reproduced hereinbelow:

5.....

(i).....

(ii) Option to join the IT Cadre : Staff willing for absorption in the reorganised cadre but having less than 5 years of service would be allowed to

work in the ex-cadre capacity up to 5 years and considered for absorption after completion of 5 years.

(iii) Those not exercising the option : Those who do not opt for the new IT Cadre would be repatriated to their cadre in due course. As they

vacate the posts, new incumbent would be inducted against the vacant posts through promotion or direct recruitment as applicable based on the

scheme contained at para 3 above.

9. There is no dispute that the respondent No.1 herein is willing for absorption in the reorganised cadre but having less than five years of service.

Therefore, the respondent No.1 requested the authorities namely, the petitioners herein to allow him to work in the ex-cadre capacity so that he

can be considered for absorption after completion of stipulated five years period. Furthermore, the said respondent No.1 exercised option for

absorption in the same grade of Sr. Console Operator and for this purpose he had also qualified himself in the aptitude test.

10. Mr. Moitra, learned senior counsel representing the respondent No.1 submitted that the order of repatriation could be made only in respect of

those staff who did not exercise the option in view of the specific condition mentioned in Para 5(iii) of the office order dated 27th March, 2007.

11. Mr. Bag, learned counsel of the petitioners further submitted that the respondent No.1 was posted at the EDP centre afresh on 13th May,

2005 on tenure basis and can be repatriated to the parent post on expiry of the tenure period in view of the specific undertaking given by the said

respondent No.1 before joining the said EDP centre.

12. On examination of the undertaking of the respondent No.1 we find that the said respondent No.1 herein can be repatriated to the parent post

on expiry of the tenure or even before it if the administration finds it to be in public interest. In the present case, however, the authorities concerned

did not repatriate the respondent No.1 in public interest as would appear from the order of repatriation issued by the concerned authority.

13. Furthermore, the Chief Works Manager, Kharagpur Workshop by the written communication dated 18th August, 2007 informed the FA &

CAO, South-Eastern Railway that due to repatriation of the experienced technical staff from the EDP centre, a shortage of man power to the

extent of around 50% would arise and, therefore, requested to depute support staff from the headquarter to avoid disruption of work and also to

carry on the existing work.

14. Mr. Bag repeatedly urged before this Court that the claim of the respondent No.1 cannot be considered in view of the fact that the said

respondent No.1 was not on the roll on the cut off date i.e. on 1st April, 2005, but no circular was produced before us to the effect that unless

anyone is on roll as on 1st April, 2005, cannot be considered to be eligible for absorption in the reorganised cadre or for retention in the ex-cadre

capacity for future absorption. The respondent No.1 herein admittedly, worked for a considerable period of almost 7 years in the EDP centre

before 2005 and again was deputed in EDP centre in view of exigency of service on 13th May, 2005 i.e. only a few days after 1st April, 2005.

15. The authorities herein issuing a circular on 22nd January, 2007 made specific provision for the staff willing for absorption in recognised cadre

to work in ex-cadre capacity upto five years in order to be considered for absorption in future after completion of five years of service.

Furthermore, as mentioned earlier in terms of the office order dated 27th March, 2007 [Para 5(ii)], those who did not opt for the new I.T. cadre

can be repatriated to their cadre whereas in the present case, the respondent No.1 being a willing staff opted for absorption in the reorganised

cadre and since did not complete the requisite five years of service, has rightly prayed for allowing him to work in the ex-cadre capacity as per the

policy of the authority, which the concerned authority unfortunately rejected.

16. The learned counsel representing the added parties also urged before this Court that their future promotional prospect will be affected in the

event, the respondent No.1 is allowed to be absorbed. In our opinion, the aforesaid apprehension is speculative one since the respondent No.1

herein only requested the authority concerned to allow him to work in the ex-cadre capacity in order to fulfill the eligibility condition for future

absorption in the reorganised cadre whereas the private respondents have already been absorbed in the cadre. On the basis of the apprehension,

legitimate right of the respondent No.1 to work in the ex-cadre capacity under the existing policy and guidelines framed by the authorities cannot

be curtailed.

17. Having heard the learned counsel of the respective parties and considering the records available before this Court and further considering the

impugned judgment and order passed by the learned Tribunal we find that the learned Tribunal considered the issues raised before it in an

appropriate manner and rightly upheld the claims of the respondent No.1 to continue on ex-cadre basis for future absorption as per the specific

circular issued by the Railway authorities. We do not find any error and/or irregularity and/or illegality in the findings of the learned Tribunal.

18. For the aforementioned reasons, we affirm the judgment and order passed by the learned Tribunal and dismiss this petition as we do not find

any merit in the same.

19. There will be, however, no order as to costs.

Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Pranab Kumar Deb, J.

20. I agree.