

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00124/2017

With

Miscellaneous Application No. 290/00123/2017

Reserved on : 07.01.2020

Jodhpur, this the 16th January, 2020

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Jetha Ram s/o Shri Kesa Ram, aged 59 years, bycaste Jat, R/o Village Jaton Ki Dhani, Amla, Tehsil Phalodi, District – Jodhpur (Rajasthan)

.....Applicant

By Advocate : Mr M.S. Godara.

Versus

1. Union of India through General Manager, North-Western Railway, Jaipur.
2. Senior Divisional Personnel Officer, In the office of DRM, North-Western Railway, Jodhpur (Rajasthan).
3. Senior Divisional Manager, In the office of DRM, North-Western Railway, Jodhpur (Rajasthan)
4. Senior Section Engineer, North-Western Railway, Jaisalmer (Rajasthan).
5. Assistant Divisional Engineer, North-Western Railway, Jaisalmer (Rajasthan).

.....Respondents

By Advocate : Mr Salil Trivedi.

ORDER

Per Smt. Hina P. Shah

This Original Application has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985, seeking following reliefs:

- i) That this joint application may kindly be allowed.
- ii) That the respondents may be directed to restore the applicant back to his original post of Mate with immediate effect by withdrawing dated 21.07.2014 (Annex. A/1) with all consequential benefits.
- iii) Any other relief which this Hon'ble Tribunal deems just and proper in favour of the applicant may be passed.

2. Brief facts of the case are that the applicant while working on the post of Mate in the respondent-department submitted an application dated 02.04.2014 (Annex. A/2) requesting the respondents to change his post to Trackman on the ground that he is unable to work on the post of Mate due to family circumstances. Considering application filed by the applicant, respondents demoted the applicant from the post of Mate to Trackman and posted him vide impugned order dated 21.07.2014 (Annex. A/1). The case of the applicant is that he is illiterate and not acquainted with his rights and he without taking into consideration future effects and consequential benefits, submitted the application dated 02.04.2014. Since there is provision for giving the appointment to one ward subject to fulfilment of certain conditions under the LARSGESS Scheme, he should have submitted the

application for demoting him either to avail the benefits of LARSGESS Scheme or due to personal problem. The applicant further submitted that he has given the application for demoting him to the respondents at the someone's instance despite there being no provision under the Rules for seeking wilful demotion by an employee. But the respondents without counselling him passed the order dated 21.07.2014 causing him financial losses. Applicant thereafter submitted representations dated 05.04.2016 (Annex. A/3) and 21.11.2016 (Annex. A/4) to the respondents following by legal notice dated 08.02.2017 (Annex. A/5) but no answer has been received. Hence, the applicant has filed the present Original Application challenging impugned order dated 21.07.2014 (Annex. A/1).

3. In reply, respondents have stated that the applicant without any pressure in clear terms submitted the application on 02.04.2014 showing his inability to discharge the duties of Mate because of his family circumstances. The hidden intent sought to be pleaded now in the Original Application is that said application was submitted to avail the benefits of LARSGESS Scheme cannot be accepted by any stretch of imagination. It is very strange on the part of the applicant to contend that the application was submitted by him at the instance of someone. The application filed by the applicant was exceeded to by the respondents on

account of the fact that the applicant in clear terms showed his inability because of his family circumstances to discharge the duties of Mate. On his request, he was posted as Trackman and thereafter the applicant has joined the post of Trackman pursuant to the order dated 21.07.2014 and he is continuously working as such since then. Thereafter, application dated 05.04.2016 was submitted by him seeking withdrawal of earlier application which is not permissible as applicant simply cannot be allowed to aprobate and reprobate at his sweet will after having worked as Trackman for more than two years. This will create many complications with regard to seniority etc. He voluntarily submitted the application to post him as Trackman and the same was accepted. Hence, respondents prayed to dismiss the OA.

4. The applicant filed Miscellaneous Application No. 290/00123/17 alongwith the Original Application seeking condonation of delay in filing the present OA on the similar grounds as have been averred in the OA itself. Respondents filed reply to the said Miscellaneous Application on 09.08.2018 stating that the applicant has not given sufficient reasons for the delay to be condoned in filing the OA.

5. Heard rival contentions of the parties and considered the material available on record.

6. During course of the hearing, learned counsels for the respective parties agreed to the fact that similar controversy has been decided by this Tribunal by order dated 17.12.2019 passed in OA No. 290/00082/2017 with MA 290/00074/2017. In para 22 of the said order, this Tribunal took cognizance of the fact that applicants therein requested the authorities to discharge the duty of Mate because of family circumstances and observed that “It cannot therefore be stated that the applicants are being punished by way of demotion as it is on their personal request and on the ground of inability to perform duties of ‘Mate’ owing to personal reasons.” and accordingly, this Tribunal dismissed the OA being barred by provisions of Section 21 of the Administrative Tribunals Act, 1985.

7. In the present case also, we find that the applicant himself vide application dated 02.04.2014 requested the respondents to post him on another post other than ‘Mate’ due to family circumstances. Acceding to his request, respondents vide impugned order dated 21.07.2014 (Annex. A/1) demoted him to the post of ‘Trackman’. The applicant after working on the post of ‘Trackman’ for almost two years, submitted his representation for the first time on 05.04.2016 (Annex. A/3) stating therein that he wishes to revert back to his substantive post, i.e. ‘Mate’ from the

post of Trackman, without assigning any reason. The applicant's contention that he is illiterate and made application dated 02.04.2014 on someone's behest cannot be accepted on the ground that he actually worked on the post of 'Trackman' for almost two years prior to backtracking from his earlier request. As such, we noticed that reasons put forth by the applicant for delay do not merit to be sufficient reasons for condonation of delay and at the same time, Original Application itself lacks merit as the respondents conceded the request of the applicant to any how accommodate him on the job as they positively considered the request of the applicant to place/post him on the post other than 'Mate' in view of his family circumstances. Accordingly, present Original Application is devoid of merit also. The judgment of Hon'ble High Court of Rajasthan at Jodhpur in the case of Kheta Ram & Anr Vs Union of India & Ors passed in D.B.C.W.P. 12317/2016 dated 14.12.2016 (Annex. A/6) annexed by the applicant can be distinguished on the fact that petitioner therein requested to be relegated on lower post of Keyman or Trackman from Mate under the LARSGESS Scheme whereas in the present case, the applicant requested to be relegated to the lower post due to his family circumstances. Hence, the same is not applicable in the facts and circumstances of the present case.

8. In view of discussions hereinabove made, OA alongwith MA for condonation of delay is dismissed with no order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-