



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A No. 2012/2017

Reserved on : 24.01.2020

Pronounced on : 12.02.2020

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Ajay Pal,
S/o. Shri Jai Ram Solanki,
R/o. Village Baprolla
P.O. – Najafgarh, Tehsil – Najafgarh
Delhi.

Aged around 46 years
Group "C"Applicant

(By Advocate : Mr. Sourabh Ahuja)

Versus

1. Union of India
Through General Manager/General Manager (P)
Northern Railway,
Headquarters Office,
Baroda House, New Delhi.

2. Chairman,
Railway Board
Ministry of Railways
Union of India,
Rail Bhawan, New Delhi – 110 001.

3. Chief Personnel Officer
Northern Railway
Headquarters Office
Baroda House, New Delhi.Respondents

(By Advocate : Mr. A. K. Srivastava)

ORDER

Ms. Aradhana Johri, Member (A):

The applicant Sh. Ajay Pal served in Indian Army with effect from 09.04.1990 and was injured in a mine



blast. In view of his disability he was transferred to Pension Establishment with effect from 30.04.2007. In response to an advertisement by the respondents he applied for the post of Gateman, Helper, Cleaner and Gangman but on not being considered, he filed O.A No. 2927/2011. This O.A was allowed with the following directions :

"10. In view of the above facts and circumstances, we allow this O.A. Consequently, we direct the Respondents to consider the application of the Applicant as a Physically disabled Ex-Servicemen as provided under the aforesaid Rules and Government of India's instruction issued thereunder and if he is otherwise found eligible, he shall be appointed against a suitable post. In this regard we also note that the Respondents themselves have stated that as against the 2116 posts available, they could get only 2113 persons who have qualified for appointment. Thus, three more vacancies are still available with them. In the event of the Applicant found eligible to be appointed for the aforesaid post, he shall be so appointed and he shall also be given all the consequential benefits as his batch-mates have been given except back wages. As regards the failure on the part of the Respondents in not adhering to their own instructions in the advertisement with regard to reservation for SC/ST/OBC/PH, it is not necessary for us to go into that aspect in this O.A, as there is only one Applicant in this O.A and admittedly there are three unfilled vacancies."

2. On non compliance of the same, the applicant filed C.P. No. 245/2014, during the course of which orders in O.A No. 2927/2011 were complied with and the applicant was posted as Helper at Ambala Division against the existing vacancy. Accordingly, the applicant joined as Helper in Ambala Division with effect from 09.06.2015. Thereafter, he submitted several applications on 03.12.2015, 20.12.2015, 20.08.2016 and 07.11.2016



requesting to be transferred to Delhi, his native place. He relied on DoP&T OM No. 36035/3/2013-Estt.(Res) dated 31.03.2014 which stipulates that a person with disability should be given preference in place of posting. After some delay, the respondents posted the applicant as Carriage Cleaner in Delhi Division in C&W Cadre vide order No.940-E/245/IDT/P-5 dated 21.11.2016.

3. The applicant has prayed for setting aside the order of 21.11.2016 and for directing the respondents to transfer/post him at Delhi Division on the post of Helper. He has stated that the duties of Helper and Cleaner are different and in view of his physical disability there will be a problem in carrying out the duties of a Cleaner. He has also stated that more than 20 posts of Helper are lying vacant in New Delhi Railway Station against which respondents can easily post him. He has further stated that as per policy of Government and several OMs issued from time to time and specifically O.M. of DoP&T dated 31.03.2014, he should be given his choice of place of posting.

4. The respondents have controverted the claim of the applicant. They have stated that the applicant himself gave a choice for posting at Delhi Division on several posts



including Gangman, Helper, Gateman and Cleaner. The respondents have transferred him vide Divisional Railway Manager (P) Northern Railway letter dated 21.11.2016 as Carriage Cleaner in Delhi Division in C&W cadre.

5. Heard Mr. Sourabh Ahuja, learned counsel for applicant and Mr. A. K. Srivastava, learned counsel for respondents.

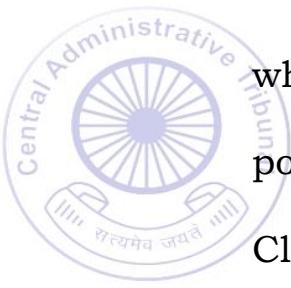
6. There is no doubt that when a person joins government service he cannot have a choice of posting all the time. However, the circumstances of each matter have to be seen. In this case the applicant has served in the Army and he is disabled. The relevant paras of DoP&T O.M. No. 36035/3/2013-Estt.(Res) dated 31.03.2014 pertaining to preferences in transfer/posting in respect of person with disability reads as follows :-

“H. Preference in transfer/posting.

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilised.”

7. The spirit of this O.M is certainly for giving the choice posting to disabled people. In order to get Delhi, it



may well be that the applicant, in desperation, not knowing which posts were available in Delhi, gave options for several posts including post of Helper, and as a last choice, for Cleaner as well. However, he has now stated that 20 posts of Helper are vacant at Delhi Division. This has since not been substantially controverted by the respondents who nowhere in their reply have stated that there are no vacancies of Helper in Delhi Division. In case this is true and there are vacancies of Helper in Delhi Division then, the respondents are directed to consider the case of the applicant for the same within a period of six weeks from the date of receipt of a certified copy of this order.

8. With the above directions, the O.A is disposed of.
No order as to costs.

(Aradhana Johri)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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