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Central Administrative Tribunal, Principal Bench

Original Application No.1747 of 2001
M.A.No.1489/2001

New Delhi, this the 18th day of July, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member(A)

V.N. Atrolia son of Shri L.N. Mathur
aged about 57 years
resident of B-13, Mansarovar Park,
G.T. Road, Delhi Shahdara,
at present employed on the post of
Assistant Engineer(P&D), Northern Railway Hqrs.
Baroda House, New Delhi - Applicant

(By Advocate: Dr. Sumant Bhardwaj)

Versus


1. Union of India through General Manager
Northern Railway, Baroda House,
New Delhi
2. Shri K.P. Singh,
Executive Engineer (Erstwhile Senior Engineer)
Concrete Silver Plant, Khalispur (UP)
N/Rly - Respondents

O R D E R (ORAL)

By Justice Ashok Agarwal, Chairman

Applicant who was working as an Assistant Engineer (Construction) in the Northern Railway, had earlier instituted O.A. 124/98 seeking to impugn an order of transfer from Samdari to Delhi dated 19.2.98. Applicant had earlier been transferred from Samdari to Jaisalmer on 16.9.96. From Jaisalmer, he was transferred to Samdari on 19.5.97 and from Samdari to Delhi on 19.2.98. The last order of transfer to Delhi was set aside by the Jodhpur Bench of the Tribunal in the aforesaid OA No. 124/98 by observing as follows:

"5.....From the various documents filed by the applicant alongwith the O.A. it appears that applicant who was at that time working on the post of Assistant Engineer (Construction), was transferred to Jaisalmer in the same capacity vide order dated 16.9.1996 (Annex.A/3). From Jaisalmer the applicant was transferred along with his post vide order dated 19.5.1997



(Annex.A/4) to Samdari and again he was shifted to Delhi vide order dated 19.2.1998 and was spared by the Divisional Railway Manager vide its order dated 4.3.1998 (Annex.A/2). Thus, it appears that applicant has been subjected to frequent transfers during the past year and a half. It is also borne out from the documents that the respondent No.4 who was working in January 1998 as Assistant Engineer (Lines), Jodhpur, was transferred as Assistant Bridge Engineer, Jodhpur, in place of Sukhdev Singh who was on leave, vide order dated 7.1.1998 (Annex.A/6). Thereafter, he was adjusted by way of transfer in place of the applicant. The post at Jodhpur on which the respondent No.4 was working is said to have been abolished. It is not clear from the record as to when Shri S.N.Sharma was posted at Jodhpur but it appears that this is a case in which Shri S.N.Sharma has been adjusted while the applicant was disturbed by way of transfer.

6. There is nothing on record to support that the applicant was found working against the rules in certain respects, therefore, it cannot be gainfully said by the respondents that the applicant has been shifted in order to run the office of the A.E.N. by a more competent person than the applicant. In our opinion, this statement of the respondents amounts to causing stigma on the applicant and his working. There is no material as to when the applicant has been proceeded with departmentally for his not working as per the rules, therefore, this cannot be also said that a more efficient person was required to be posted vice the applicant. If a person is not working as per the rules and is also not efficient in the eye of administration then frequent transfer would hardly improve the situation. In such case something other than transfer was required to be adopted by the department but the department cannot justified frequent transfer of the applicant by bringing on record such statement as they have made in their reply without any supportive documents. In our opinion, this is a case where certainly the applicant has been transferred only to accommodate Shri S.N.Sharma. We are conscious of the legal position that transfer made in administrative exigencies cannot be quashed unless the same has been made malafidely and in colourable exercise of power. In the instant case, frequent transfers of the applicant, adjusting Shri S.N.Sharma once at Jodhpur and then at a nearest point from Jodhpur i.e. Samdari, by alleging in efficiency against the applicant without any supportive document and material and finally alleging working of the applicant in breach of the rules without any material on record, go



to show that the action of the respondents No.1 and 2 is not a bonafide action. It smacks of colourable exercise of power.

7. Shri B.S.Kapur, Chief Engineer, Northern Railway, Jaipur has been made a party respondent against whom there are allegations of malafidely adjusting the respondent No.4 to Jodhpur and then to Samdari has preferred not to file any reply to the allegations of the applicant, therefore, there is no reason to dis-believe the allegations of the applicant as mentioned in the O.A. In absence of reply of respondent No.3, it can be inferred that the allegations of the applicant against the respondent No.3 in respect of adjustment of respondent No. 4 by way of transfer in his place, are correct and for the reasons stated above, the same cannot be held to be a transfer on administrative reasons.

8. From the foregoing discussion, we come to the conclusion that the transfer order dated 19.2.1998 (Annex.A/1) and the consequent order sparing the applicant from his present post dated 4.3.1998 (Annex.A/2) cannot be sustained as legal and bonafide. The O.A. deserves to be accepted and the orders deserve to be quashed."

2. After passing of the aforesaid order, a chargesheet of 24.2.99 (Annexure A-4) was issued against the applicant containing the following imputations of misconduct:

- "1. He called nine (09) employees for trade test for only three (03) posts of Blacksmiths Grade III, in clear violation of the extant rules for calling employees on one-to-one basis; and
2. He changed the category of four (04) employees of P.Way side to Works, without the approval of the Competent Authority. The employees are Shri Ramu Ram s/o Shri Somaji, Shri Dhana Ram s/o Shri Bhik Ram, Shri Goga Ram s/o Shri Jetha Ram and Shri Multania s/o Shri Rama."


3. By an order passed on 3.5.99 (Annexure A-5), a minor penalty of withholding of increments for two years without cumulative effect was issued against the applicant. He was due for his next increments on 1.11.99 and

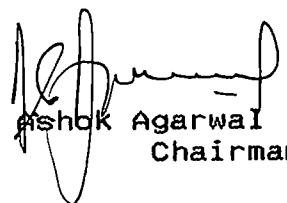


1.11.2000. Aforesaid penalty thus expired w.e.f. 1.11.2000. Certain candidates junior to applicant were granted promotions on 17.6.99. Applicant was not granted promotion as the aforesaid penalty was pending against him. Applicant, however, submitted a representation on 28.4.2000 at Annexure A-7 for claiming promotion w.e.f. 17.6.99. The same was rejected by an order of 26.5.2000 at Annexure A-2. The aforesaid order is impugned by the applicant in the present OA.

4. We have heard Dr. Bhardwaj who has appeared in support of the OA and find that the applicant cannot legitimately claim promotion w.e.f. 17.6.99 as he was under the cloud of penalty imposed upon him on that date. The impugned order denying him promotion w.e.f. that date, we find cannot be successfully faulted. Applicant, at best, will be entitled for promotion w.e.f. 1.11.2000 and thereafter depending upon the vacancies available.

5. Present OA, in the circumstances, is rejected in limine. It goes without saying that it will be open to the applicant to submit fresh representation claiming promotions w.e.f. 1.11.2000 and onwards.


(V.K. Majotra)
Member(A)


(Ashok Agarwal)
Chairman

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