

Central Administrative Tribunal
Principal Bench: New Delhi

(1)

OA No. 1536/99

New Delhi this the 21st day of January 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Prem Kumar
S/o Shri Ganpat Singh,
R/o G-10, Tagore Gali,
New Usmanpur,
Shahdara, Delhi.32.

..Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Chief Personnel Officer,
Northern Railway, Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station,
New Delhi.
4. The CCS/Refund,
Northern Railway, Baroda House,
New Delhi.

....Respondents

(By Advocate: Shri B.S. Jain)

ORDER (Oral)

By Mr. R.K. Ahooja, Member (A)

The applicant was initially appointed as L.D.C/Clerk in the Delhi Division of Northern Railway. In 1987, the Delhi Division of Northern Railway was bifurcated into two Divisions, i.e. ~~is~~ Delhi Division and Ambala Division. The post held by the applicant was transferred to Ambala Division. The applicant states that he was transferred by an order dated 11.11.1987 to HQR. Division where he is at present working. In 1992,

option was asked from the applicant by respondent No.2 whether he wanted to be absorbed in the Head Quarter, or wanted to be re-transferred to Delhi Division. The applicant opted for retention in the Head Quarter and thereafter he continued to work in Baroda House. The applicant states that on 8.6.99, the DRM office New Delhi intimated the Head Quarter that the applicant and Smt. Sarika Punjabi had been promoted to the post of Head Clerk in Delhi Division. The applicant apprehends that the respondents in response to the aforesaid communication from the office of DRM New Delhi are going to relieve him. According to the respondents the repatriation of the applicant after 12 years from the Head Quarter to Delhi Division is unjust, arbitrary and contrary to the rules and also keeping in view the fact that he had already opted for retention in the Head Quarter and the said option had also been accepted by the respondents.

According to the respondents on the bifurcation of the Delhi Division the applicant was liable to be transferred to Ambala Division. In order to help the applicant, by the order dated 11.11.87 (Annexure A-2) he was temporarily posted at Baroda House. The applicant through out continued to retain his lien in the Delhi Division. According to the respondents, the applicant can be transferred to the Headquarter Division from the Office of

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DRM New Delhi on his undertaking to accept bottom seniority in terms of instructions contained in para-312 of IREM Vol-I.

We have heard the counsel. Shri Sharma learned counsel for applicant has argued that the transfer of the applicant from Delhi Division to Headquarter Division was on administrative grounds. Thereafter the respondents had sought the option of the applicant regarding his possible absorption in the Headquarter Division and the same had been accepted. The transfer of the applicant to the Headquarter Division was not at the applicant's instance and, therefore, the rule regarding bottom seniority was not applicable in his case which was to be decided in terms of Para-311 of the IREM which provides that Seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of appointment in the grade. Learned counsel also relies on the judgment of Andhra Pradesh High Court in the case of K. Sreenivasachary Vs. Andhra Pradesh State Electricity Board, Hyderabad and another 1996 (8) SLR 52 and the decision of Supreme Court in the case of Ram Prakash Makkar Vs. State of Haryana and others, AIR 1993 SC 1974.

We have carefully considered the aforesaid submissions of the learned counsel. In our view the posting of the applicant in the Headquarter Division as per order dated

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11.11.87 was purely on a temporary basis. The said order clearly states that his transfer to Headquarter Division will be subject to the condition that his lien will be maintained in Delhi Division and he will be repatriated to Delhi Division on availability of vacancies in future and further that he will also seek his further advancement in Delhi Division. The very wording of this order gives support to the contention of the respondents that the applicant was adjusted in the Headquarter quota only in order to help the applicant to stay in Delhi on the bifurcation of the Delhi Division. If it had been absorption interms of rules 311 it could neither have been on temporary basis nor subject to the repatriation of the applicant on vacancies becoming available in the Delhi Division. We, therefore, do not consider that the case of the applicant falls within the purview of para-311 of IREM.

The second contention of the learned counsel is that the applicant having been asked for absorption in 1992, and the same option having been accepted, there could be no question of retention of his lien in the Delhi Division. We find that the mere fact that his option had been sought does not automatically imply that the option had been accepted. No order has been brought to our notice which would show that on acceptance of his option the applicant services had been permanently transferred for absorption in the Delhi

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Division. We do not consider that the mere fact of his having been asked to exercise the option would automatically imply that his lien had been transferred from Delhi Division to the Headquarter Division.

We also find that the cases cited by the applicant are of no assistance to him. In the case of K. Sreenivasachary Vs. Andhra Pradesh State Electricity Board, Hyderabad and another (supra) the subject matter related to the employee who had been transferred from one department to another after the original department had been permanently closed. In the case of Ram Prakash Makkar Vs. State of Haryana and others (supra) the question before the court was whether the appointment of the employee was an appointment on deputation or an appointment on transfer basis. In that case the court held that it was an appointment on transfer. The facts of the case as well as issue raised were entirely different in the aforesaid cases compared with the case before us.

In the result, finding no merit in the OA the same is dismissed. No costs.

Recd by:
(R.K. Ahooja)
Member (A)

Mr. B. Venkateswara Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

cc.