

Central Administrative Tribunal  
Principal Bench

O.A. 18/1999

New Delhi this the 30 th day of June, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Narender Pratap Singh,  
Stenographer, Budget Committee-I,  
Railway Board, New Delhi. .... Applicant.

(By Advocates Shri A.K. Bhardwaj and Shri B.S. Mainee)

Versus

Union of India through

1. The General Manager/Secretary,  
Railway Board,  
Rail Bhawan, New Delhi.
2. The Under Secretary (Admn.),  
Govt. of India,  
Ministry of Railways,  
(Railway Board), Rail Bhawan,  
New Delhi.
3. The Sr. D.P.O.,  
Eastern Railway, Danpur Division,  
Danpur (VB). .... Respondents.

( None present)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 1.7.1998 placing his services back as Stenographer in his parent cadre i.e. Eastern Railway and relieving him of his duties from the Railway Board's office with effect from that date. In this order, he was also directed to report to the Eastern Railway for further orders.

2. The brief facts of the case are that the applicant was appointed as Stenographer Grade 'D' (English) through Railway Recruitment Board, Patna in Eastern Railway and posted in DRM's office, Danapur in December, 1995. As

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his parents were at New Delhi, the applicant had requested the respondents to transfer him from the Eastern Railway to Railway Board at New Delhi. He relies on the letter issued by the Railway Board dated 22.4.1996 (Annexure A-8), in which it has been conveyed that a decision of appointing the applicant as Junior Stenographer in the Railway Board on ad hoc basis has been taken, subject to certain conditions mentioned therein. Learned counsel for the applicant has submitted that as the applicant had been transferred to the Railway Board at his own request, he had to accept the bottom seniority in his new place of posting in accordance with the Rules. He has relied on the representation made by the applicant to the General Manager, Eastern Railway, Calcutta further to the Railway Board's letter dated 22.4.1996 requesting that he should be transferred to the Railway Board, New Delhi at bottom seniority in accordance with the extant Rules. He has also relied on the Office Order dated 31.12.1997 issued by the Eastern Railway (Annexure A-14), in which it has been stated that the applicant has been transferred to the Railway Board's office in his existing scale of pay of Rs.1200-2040 on his own request with bottom seniority. The learned counsel has emphasised that this letter is stated to have been issued with the approval of the competent authority. The applicant joined the Railway Board's office w.e.f. 1.1.1998. In the circumstances, he has contended that the applicant having been transferred at his own request and with the approval of the competent authority to the Railway Board Office, there is no question of the Railway Board issuing the impugned order dated 1.7.1998 addressed to the General Manager (P), Eastern Railway, Calcutta and to place his

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services back with the parent cadre with effect from that date. The learned counsel for the applicant has submitted that in the circumstances of the case as the applicant has been transferred to the Railway Board from Eastern Railway permanently, he could not be repatriated to the parent department.

3. The applicant has stated that against the aforesaid order dated 1.7.1998, he made a representation but had not received any reply. He has also stated that after the transfer order was passed, he became unwell and reported for duty in respondents' office only on 5.11.1998 but he was not allowed to join the duty and was told that he has been transferred to Danapur. According to him, he had reported in the office of Danapur on 6.11.1998 when he was sent for another medical check up in the Eastern Railway Hospital and was declared fit for duty on 9.11.1998. The applicant has stated that from 9.11.1998, the senior DPO, Eastern Railway had kept him waiting for orders/posting, but did not allow him to mark his attendance. According to him, he worked in that office till 17.11.1998 and thereafter he was told that as he had already been transferred to Railway Board on bottom seniority, he was no longer in the strength of that office and, therefore, he could not join and be posted in Eastern Railway.

4. Although at the time of final hearing of the case, none had appeared for the respondents, Shri S.K. Sharma, Sr. Counsel with Shri Rajiv Bansal had been heard earlier and the case had been listed as part heard. I have also carefully perused the counter affidavit filed by the respondents. They have stated that the applicant's request

for transfer from the Eastern Railway to Ministry of Railways (Railway Board) had been sympathetically considered and this was allowed on temporary basis w.e.f. 1.1.1998. One of the conditions of his transfer was that he will be considered for all promotions/selections in Eastern Railway till such time he is permanently absorbed in the Railway Board's office. They have, therefore, submitted that he continued to have his lien with his parent office and, therefore, he cannot claim immunity from transfer/repatriation to his parent office. They have also submitted that as the applicant was an employee of the Eastern Railway as he was still holding a lien there and since they were contemplating taking action against him for alleged misconduct, they had decided to transfer him back to his parent department. They have contended that the order of repatriation is accordingly legal and is not a punishment as contended by the applicant. They have also stated that as regards his conditions of service in the Eastern Railway after his repatriation from the Railway Board, he will be restored to his original seniority and other benefits which accrued to him in that Railway. They have accordingly prayed that the O.A. may be dismissed.

5. In pursuance of the Tribunal's order dated 29.3.2000, the Senior Divisional Personnel Officer, Danapur Division has filed an additional affidavit. In this, it is, inter alia, stated that the applicant reported to that office on 6.11.1998, he had concealed the fact that he was directed by the Railway Board to report to the General Manager (P) Office, i.e. Chief Personnel Officer, Eastern Railway Headquarters at Calcutta and after ascertaining the position that the applicant had to report at Headquarters office, he was advised to report there vide their letter dated

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13.11.1998 which the applicant had refused to accept. The respondents have also stated that the applicant was clearly told to report to Headquarters, Eastern Railway and had been denied to report to Railway Board. In the rejoinder filed by the applicant, he has, on the other hand, alleged that the senior DPO, Danapur has tried to conceal the fact with which I do not agree having regard to the facts and circumstances of the case. It is also relevant to note from the letter dated 11.12.1998 (Annexure R-7) from Eastern Railway, Danapur to their Headquarters office at Calcutta that the applicant has been advised/directed to report to Headquarters, Calcutta, but instead of doing so he has left for Delhi.

6. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. The main contention of the learned counsel for the applicant is that since the Railway Board had accepted the request of the applicant for transfer from the Eastern Railway to the Railway Board at New Delhi vide their letter dated 22.4.1996, and he had also later clarified to them that he was prepared to accept the bottom seniority as per the extant Rules in transfer cases, the respondents ought to have agreed to this and could not, therefore, repatriate him to the parent department. Much reliance has been placed by the applicant on the office order dated 31.12.1997 issued by the Eastern Railway for his transfer to Railway Board at his own request with bottom seniority. However, it is noticed from the Railway Board's letter dated 22.4.1996 that the applicant's appointment in the Board's office was purely on ad hoc and temporary basis and all appointments/selections were to be made in the Eastern Railway till such time he is

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permanently absorb him in Board's office. It is not the case of the applicant that any further order has been passed by the Railway Board to permanently absorb ~~the xxxxxxxx~~ in the Board's office. Para 2 of this letter has also stipulated that if the applicant accepts the offer on the terms and conditions mentioned therein, he may be relieved of his duties, subject to the Eastern Railway having no objection and directed to report in the Board's office. In the facts and circumstances of the case, the Office order issued by the Eastern Railway dated 31.12.1997 with copy to the Railway Board cannot be taken to be in supersession of the terms and conditions mentioned in the letter dated 22.4.1996. It is also relevant to note that the applicant was not to be paid any deputation allowance or any other special pay and his promotions and selections were to be done in his parent cadre in the Eastern Railway till such time he is absorbed in the Board's office which has not taken place. In the representation made by the applicant to the General Manager (P) Eastern Railway with reference to the Railway Board's letter dated 22.4.1996 requesting for transfer to the Railway Board, he has also clearly stated that his lien is in the Danapur Division, i.e. Eastern Railway although he had mentioned that he is prepared to take bottom seniority in case of his transfer to New Delhi. From these facts, it is, therefore, seen that the Railway Board had agreed to the appointment of the applicant in their office on purely ad hoc and temporary basis till his absorption in their office. In the facts and circumstances of the case, the transfer of the applicant to the Railway Board's office could be considered as a special kind of deputation which the applicant had accepted, although he had requested the competent authorities for something more by way of a permanent transfer. It is

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settled law that a deputationist cannot escape from going back to the parent cadre unless he has been absorbed in the borrowing department which is not the position in the present case (See the observations of the Supreme Court in State of Punjab & Ors. Vs. Inder Singh & Ors. (1997(8) SCC 372), C. Rangaswamaiah & Ors. Vs. Karnataka Lokayukta & Ors. (JT 1998(5) SC 64). In C. Rangaswazmaiah's case (supra), the Supreme Court has held that the police officers of the State Government of Karnataka on deputation continue to remain as public servants in the service of the State Government, as long as they are not absorbed in the Lok Ayukta. In Rati Lal B. Soni Vs. State of Gujarat (AIR 1990 SC 1132), the Supreme Court has held that a deputationist can be reverted to his parent cadre at any time and he has no right to be absorbed on the deputation post (See also Rameshwar Prasad Vs. Managing Director, U.P. Rajkiya Nirman Nigam Ltd. (2000(1) SLJ 137).

8. Having regard to the settled position of law and the facts in this case, since the applicant has not been absorbed in the Railway Board's office further to his transfer from Eastern Railway to the Railway Board in terms of their letter dated 22.4.1996, I find no illegality in the impugned order repatriating him to his parent cadre in the Eastern Railway w.e.f. 1.7.1998. In terms of this order, he was relieved of his duties from the Railway Board's office w.e.f. 1.7.1998 and was directed to report in Eastern Railway for further orders which he has not complied with. It is also seen from the facts that the applicant had been correctly directed to report to the Headquarters office of the Eastern Railway at Calcutta which is also in terms of the order passed by the Railway Board dated 1.7.1998 for further

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orders which would be passed by the Eastern Railway. Learned counsel for the applicant has referred to certain cases in the written submissions. Those cases will not assist the applicant in the facts and circumstances of the case, as no ground of mala fide has been established against the actions taken by the respondents nor can the impugned repatriation order dated 1.7.1998 be termed as a punishment. As the orders passed by the respondents are legal, there is no justification to interfere in the matter.

9. In the result, for the reasons given above, I find no merit in this application. The O.A. is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)  
Member(J)

'SRD'