

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 2132/98

New Delhi, this the 21<sup>st</sup> day of May, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)  
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Ms. Nishi Pal, U.D.C.  
W/o Shri Dinesh Pal,  
R/o 20/612, DDA Flats,  
Kalkaji,

New Delhi-110019.

(By Advocate: Sh. B.K.Pal)

..... Applicant

Vs.

1. Union of India through its Secretary,  
Ministry of Civil Aviation,  
Rajiv Gandhi Bhawan,  
New Delhi-110001.

2. Commission of Railway Safety,  
through its Commissioner,  
Northern Circle,  
Chanakya Puri,  
New Delhi.

3. The Army Headquarters  
through the Engineer-in-Chief/EIC(1),  
Kashmir House,  
DHQ P.O.,  
New Delhi.

4. HQ. Western Command  
through its Chief Engineer,  
Chandi Mandir.

5. Smt. A.B.Kalra, L.D.C.  
C/o Commissioner,  
Northern Circle,  
Chanakya Puri,  
New Delhi.

6. Shri R.N.Singh, L.D.C.  
C/o Commissioner,  
Northern Circle,  
Chanakya Puri,  
New Delhi.

7. Shri Sudhir Sachdeva, L.D.C.  
C/o Commissioner,  
Northern Circle,  
Chanakya Puri,  
New Delhi.

(By Advocate: Mrs. P.K.Gupta)

..... Respondents

*[Signature]*  
21.5.99.

## ORDER ON INTERIM RELIEF

By Hon'ble Shri T.N.Bhat, Member (J)

The applicant, who was appointed on transfer-on-deputation basis as UDC in the Commission of Railway Safety at New Delhi and is now sought to be repatriated to her parent department, namely, MES Western Command, has come to the Tribunal seeking permanent absorption in the Railway Safety Commission and for quashing the order by which she has been ordered to be repatriated back to her parent office even before the completion of 3 years period of deputation. By our order dated 6.11.98 we had directed the respondents to maintain status quo as on that date in respect of the applicant. The official respondents as well as the private respondents have filed their counter replies, to which the applicant has also filed her rejoinders.

2. We have heard the learned counsel for the parties at length on the question of interim relief. It is not disputed that the applicant was appointed on deputation basis in the Railway Safety Commission on 10.11.95 initially for a period of 2 years which was later extended by another year. It is further not disputed by the respondents that at the relevant time the eligible persons working in the Northern Circle, North Eastern Circle and other circles were not willing to come to Delhi on transfer. It was in these circumstances that the applicant was appointed on the basis of transfer on deputation.



3. More importantly, it is not disputed that some time later at the request of the applicant process was started to permanently absorb her in the Railway Staff Commission. And for this purpose the parent department of the applicant had also given a no objection. It further appears that some people who are working as LDCs in the Railway Safety Commission had later represented against the permanent absorption of the applicant on the ground that the chances of their promotion would be marred. It was in pursuance of the aforesaid representations that the official respondents had changed their stand and had directed that the applicant should be reverted back to her parent department.

4. The learned counsel for the applicant, relying upon the judgment of the Apex Court in R.S.Rawat vs. Union of India & others, reported in (1996) 6 SCC 319, urges before us that the official respondents having once initiated the process for permanent absorption of the applicant they cannot be allowed to turn round, particularly in view of the fact that the applicant had on transfer on deputation to the Railway Safety Commission already given up her claim of seniority in her parent department, as contended by the respondents in para 4.7 of the counter.

5. After careful consideration of the rival contentions we are of the view that the interim order in this case should continue till the disposal of the OA, as in our view the applicant has a good prima facie case and the balance of convenience is also in her favour. This is particularly so in view of the fact that the pleadings in

*[Signature]*

the OA being complete, this OA can be finally disposed of on merits at the admission stage itself after hearing the learned counsel for the parties.

6. We accordingly direct that this matter be listed for possible final hearing after the vacations on 26.7.99 and till the disposal of the OA status quo in respect of the applicant shall continue to be maintained. The interim order dated 6.11.98 is, therefore, extended till the disposal of the OA.

*S.P. Biswas*  
( S.P. BISWAS )  
Member (A)

*T.N. Bhat*  
( T.N. BHAT )  
Member (J)

sd/

(65)

26/7/99

Present:-

~~Applicant~~ Applicant in person  
Mrs A B Kalia, repd. No. 5 in person.

5-8-99

Adjourned to 05/8/99 for  
appearance of parties.

J.R.

OA not admitted  
Pleading complete by  
R-1, 2, 5 to 7

Reply not filed by  
R-3 & 4

*End*

5.8.99

OA 2132/99

Present: Shri B.K. Pal, Counsel for the Applicant  
Shri Harin Singh, Proxy Counsel for P. K. Gupta, Counsel  
for Respondent No 1 to 4.  
Sh. P. K. Khanna, Counsel for the respondent No. 5 to 7.

Arguments Heard and concluded.

Order Reserved

Present:  
Hon'ble Mr Justice V. Rajagopala Reddy  
Hon'ble Mr R. K. Arora, Member

B.O.  
*B.O.*  
a.o. cm

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No.2132/98

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

New Delhi, this the 21<sup>st</sup> day of August, 1999

Ms. Nishi Pal, U.D.C.  
W/o Shri Dinesh Pal  
R/o 20/612, DDA Flats  
Kalkaji, New Delhi 110 019

....Applicant

(By Advocate: Shri B.K. Pal)

Versus

1. Union of India  
through its Secretary  
Ministry of Civil Aviation  
Rajiv Gandhi Bhawan  
New Delhi
  2. Commission of Railway Safety  
through its Commissioner  
Northern Circle  
Chanakyapuri, New Delhi
  3. The Army Headquarters  
through the Engineer-in-Chief/EIC(I)  
Kashmir House  
DHQ P.O., New Delhi
  4. HQ Western Command  
through its Chief Engineer  
Chandi Mandir
  5. Smt. A.B. Kalra, LDC  
C/o Commissioner  
Northern Circle  
Chanakyapuri, New Delhi
  6. Shri R.N. Singh, LDC  
C/o Commissioner  
Northern Circle  
Chanakyapuri, New Delhi
  7. Shri Sudhir Sachdeva, LDC  
C/o Commissioner  
Northern Circle  
Chanakyapuri, New Delhi
- ....Respondents

(By Advocate: Shri Harvir Singh, Proxy of Sh.P.K. Gupta  
for Respondents 1-4.  
and Shri P.P.Khurana for Respondents 4-7)

O R D E R

[ Hon'ble Shri R.K. Ahooja, Member(A) ]

The applicant who was working as an LDC in M.E.S.  
since 25.4.1986, applied for the post of UDC in the  
Office of the Commissioner of Railway Safety, Northern

22

Circle, New Delhi, in response to an advertisement dated 28.7.1995 in the Employment News. The post was to be filled up on transfer on deputation basis. The applicant was selected and appointed as UDC in the Office of the Commissioner of Railway Safety by an order dated 13.11.1995 (copy at Annexure A-3B). The appointment was on deputation basis for a period of two years. She applied for permanent absorption in the office of the Commissioner of Railway Safety vide her representation dated 9.1.1997, which was again repeated by representation dated 27.8.1998. She claims that the Commissioner of Railway Safety, Respondent No.2, initiated action by writing to the Army Headquarters for obtaining their no objection. Vide Annexure A5 the Army Headquarters conveyed their no objection "for the permanent absorption of the applicant in the office of Commissioner of Railway Safety" and also advised the latter to obtain her technical resignation from M.E.S. from the date she was permanently absorbed in the office of the Commissioner of Railway Safety. The grievance of the applicant is that instead of absorbing her as per the aforesaid correspondence and undertaking Respondent No.2 as by the impugned letter, intimated the Army Headquarters that she will be repatriated to her old office before completion of three years period of deputation.

2. By an interim order dated 21.5.1999 the Tribunal ordered the maintenance of status-quo in respect of the applicant till the disposal of the O.A.

3. The relief sought for by the applicant, namely, her permanent absorption as UDC in the office of the

*Dr*

Commissioner, Railway Safety has been resisted by the official respondents as well as by Respondents No.5 to 7 who are working as LDCs in the office of the Commissioner of Railway Safety.

4. We have heard the parties. It has been argued on behalf of the applicant that when she was inducted as UDC on deputation, no LDC in the office of the Commissioner of Railway Safety was eligible for promotion as UDC. Of the private respondents no one was even in the office of the Commissioner of Railway Safety as they were inducted as LDC either directly or by transfer much later. It was also argued that in the past there had been cases where Respondent No.2 had adjusted the deputationists by absorption. In the case of the applicant, moreover, Respondent No.2 had not only agreed to her absorption but had also conveyed the decision to the Army Headquarters who had also furnished their no objection and had asked for the technical resignation of the applicant in order to complete the formalities. In the event, the applicant was rendered virtually jobless as she was not expected to go back to her old post in the M.E.S. Our attention was also drawn to the fact that the applicant had been working as an LDC since 1986 while the official respondents were only recent entrants into Government service and thus much junior to her.

5. The question which has to be decided is whether the applicant has any vested right to be considered for absorption in the office of the Commissioner of Railway Safety. In so far as the recruitment rules for

appointment of UDCs in the office of the Commissioner of Railway Safety are concerned, the notification dated 6.1.1998 published in the Gazette dated 30.1.1998 (Annexure R1) shows that the vacancies of Upper Division Clerk are to be filled in in the following manner:-

"By promotion 50% by seniority-cum-fitness and 50% on the basis of a limited competitive examination for Lower Division Clerks."

6. It will be seen that there is no provision in these rules for recruitment by 'transfer'. Such a provision exists in respect of LDCs wherein the mode of recruitment is by direct recruitment, failing which, by transfer. The learned counsel for the applicant contended that Rule 7 of the notification dated 6.1.1998 provides for relaxation as follows:-

"Power to relax:- Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order, nor reasons to be recorded in writing, relax any of the provisions of these rules in respect of any class or category of person."

7. It was argued that this power of relaxation had been exercised in respect of certain officials who had come on deputation to the office of the Commissioner of

On



Railway Safety and since no eligible persons were available at the time the applicant came on deputation, the applicant was also entitled to the same concession. We are unable to agree to this contention. Admittedly, there is no provision in the rules for recruitment of UDCs by transfer method. The rules provide for promotion either on the basis of seniority or through limited departmental examination. It has not been denied that the private respondents are now eligible for promotion. In fact, one of the respondents (No.5), who has come on transfer as LDC on 1.7.97, has long service as LDC to her credit. Even if were not so, Respondent No.2 cannot be compelled to resort to relaxation for absorption of the applicant or even to fill up the vacancy at all. The applicant as a deputationist from M.E.S. has clearly no vested right in the post of UDC in the office of the Commissioner of Railway Safety whether on the basis of her seniority in M.E.S. or on the basis that she has already put in service as UDC on deputation.

8. The learned counsel for the applicant vehemently argued that Respondent No.2 could not go back on the commitment to absorb the applicant under pressure from the private respondents. The applicant had made a representation for her absorption and the same had been accepted and action taken to obtain the requisite no objection from applicant's original employers. This was too late a stage for the Respondent No.2 to change their decision. We do not find any merit in this argument. There can be no estoppel against Respondent No.2 from changing their view till a final decision was taken and the necessary notification issued. Till that

on

stage ~~as~~ the applicant's case <sup>could</sup> at best be considered as to be under examination. The mere fact that a no objection had been granted by the Army Headquarters does not show that the applicant's connection with M.E.S stood severed and that she ceased to be an employee of the Army Headquarters. Therefore, the contention that she was now left without any job does ~~not~~ stand to reason. The Respondent No.2 could, as they have done, consider the representation of the private respondents and take a decision not to absorb the applicant by relaxing the recruitment rules as the applicant has not acquired any indefeasible right to continue permanently in the office of the Respondent No.2.

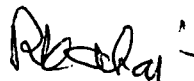
9. We also do not find that the non-availability of sufficiently senior LDCs in the office of Respondent No.2 in November, 1995 when the applicant came on transfer on deputation or the fact that in the past Respondent No.2 have resorted to relaxation of the rules, give any special right to the applicant to be permanently absorbed now that LDCs are available who are eligible or will soon become eligible for consideration for promotion to the post of UDC.

9. The learned counsel has in this connection, cited the case of Shri R.S. Rawat Vs. UOI 1999 SCC 319. In that case the appellant who was working as a Havaldar in ITBP had come on deputation with the Intelligence Bureau and was later absorbed. His claim that he should have been given the credit for his past service in his

*On*

parent department was rejected. He thereafter came to the Tribunal and failing to get the relief, approached the Supreme Court. The Supreme Court directed the IB to protect the seniority and past service of the appellant in the parent department. We do not see as to how the decision in this case could be of any help to the applicant since the controversy in Rawat's case was not one of absorption but of seniority in regard to the service rendered in the parent department.

10. In the result, the O.A., fails and is dismissed. The interim order regarding status quo in regard to the repatriation of the applicant also stands vacated. No Costs.

  
(R.K. AHOOGA)

MEMBER (A)

  
(V. RAJAGOPALA REDDY)

VICE CHAIRMAN (J)

sc\*