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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 2027/89.

DATE OF DECISION: 19.12.91.

J.K. Kapoor

... Applicant.

Versus

U.O.I.

... Respondent.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A).

For the Applicant. ... Shri K.N.R.
Pillai, Counsel.

For the Respondent. ... Shri Inderjit
Sharma, Counsel.

Judgement of the Bench
delivered by Hon'ble Mr. Justice V.S.
Malimath, Chairman.

The applicant in this case joined service as Assistant Station Master. He had some medical problem which made it difficult for him to function as an Assistant Station Master. On his being medically examined from time to time, it was suggested that he should be given light duty. Accordingly, he was given light duties in other jobs. He was also being medically examined to determine as to whether his claim that he is not fit to continue as Assistant Station Master and whether he is fit to function as Ticket Collector. When he was, thus, functioning in jobs which were much more comfortable, he made a request in January, 1969 followed by a further request on 11.2.1969 praying that he should be transferred to the cadre of Ticket Collectors. On his request and on an undertaking to agree for being placed at

the bottom of the seniority list of the Ticket Collectors and further forgoing his claim for any benefit of absorption on the ground that he was medically incapacitated, at a later stage. This request made by him in January, 1969, and reiterated in his representation dated 11.2.1969, was accepted on 2.2.1970 and he was posted as a Ticket Collector and placed at the bottom of the seniority list. A few days after he gave his request on 11.2.1969, on the basis of his medical examination ~~there was~~ report of the Medical Board to the effect that he is permanently incapacitated to function as an Assistant Station Master. The applicant has continued in the cadre of Ticket Collector and earned his further scales of pay on that basis.

In April, 83, he made a representation for his being absorbed in the appropriate scale of Ticket Collector taking into consideration the scale in which he was functioning as Station Master and relying upon the provisions of the Rules applicable to Railway servants, who have been found to be permanently incapacitated to function in the posts in which they have been appointed. He appears to have made once again a representation in April, 1988 claiming that he should be given similar benefit of absorption in a higher scale as has been given to other similarly situate persons. No relief having been granted, he has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

We shall not consider as to whether the application is barred by limitation for the reason, we find on merits that there is no case made out for interference for the reasons to be stated presently. The applicant having sought voluntary transfer from the cadre of Assistant Station Masters to the cadre of Ticket Collectors, he is bound by the relevant provisions, which say that a person seeking voluntary transfer to other cadre has to take place at the bottom of the seniority list. It has ^{been} pointed out that the applicant was transferred to the cadre of Ticket Collectors on his formal request, he became part of that cadre, and, therefore, the question of his being transferred to the cadre of Assistant Station Master on his being found permanently unfit did not arise. He has to work out his rights on the basis that he is junior most in the cadre. It is further submitted by Shri Pillai, learned counsel for the applicant, that on the date he made a request for voluntary transfer, there was no finding by the Medical Board about his being permanently unfit to hold the post of Assistant Station Master. That came only after he made his request for voluntary transfer. But then he did not make any request after the Medical Board gave its opinion, withdrawing the request he had made for voluntary transfer, subject to certain conditions. He tried to make his claim in this behalf ^{only in 1983.} The authorities

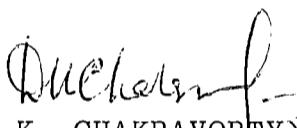
having acted upon the request made by the applicant to give him certain transfer to the cadre of Ticket Collector, he has to blame himself for the situation in which he has landed himself. As already stated, the applicant has to work out his rights on the basis of the decision dated 2.2.1970 acceding to his request of voluntary transfer.

It was next submitted by the learned counsel for the applicant that the applicant has been discriminated and others similarly situate persons found unfit by the Medical Board have been fitted at a higher scale whereas the applicant was fitted in the lowest scale. He, therefore, submits that there is discrimination. The claim on the ground of discrimination could have been acceded to only if the applicant was able to establish that he was similarly situate. They ~~were~~ all transfers made following the rules governing the transfer of persons who are found medically unfit ^{and not transfers on request} to hold the particular post. So far as the applicant is concerned, there is no mistake committed which is required to be set right. Granting of the lowest scale in the cadre of Ticket Collector was justified having regard to the rules governing voluntary transfer which say that such a person should be placed at the bottom of the list. Besides, he gave an express undertaking to be fitted in the scale of Rs.110-180 and has further declared that he will not claim absorption [✓] at a later stage on the basis of his not being medically

fit. As the applicant cannot be regarded as similarly situate, the question of holding that the applicant has been discriminated does not arise.

However, we are left with the impression that the applicant, if he had not sought voluntary transfer, would have possibly been in a better position today. The applicant has to thank himself for this situation. Even though, the Tribunal cannot grant any relief, we are inclined to observe that the authorities may on a further representation made by the applicant see how best they can accommodate the request of the applicant on sympathetic considerations particularly having regard to the fact that he has only three years of service left.

For the reasons stated above, this O.A. is dismissed subject to the above observations. No costs.


(D.K. CHAKRAVORTY)

MEMBER(A)



(V.S. MALIMATH)

CHAIRMAN

SRD