

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1273 of 1988
~~FAX No.~~

DATE OF DECISION 10th Octr. 1988

Kisen Chand Sharma ~~Petitioner~~ Applicant

Shri G.D. Bhandari Advocate for the Petitioner(s)

Versus

Union of India and anr. Respondent(s)

Shri Inderjit Sharma Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE K.S. PUTTASWAMY, VICE CHAIRMAN.

The Hon'ble Mr. AJAY JOHRI .. MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

MGIPRND-12 CAT/86-3-12-86-15,000

Ajay Johri
(AJAY JOHRI)
MEMBER (A)

K.S. Puttaswamy
(K.S. PUTTASWAMY)
VICE CHAIRMAN.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

Dated this the 10th day of October, 1 9 8 8.

Present

THE HON'BLE MR. JUSTICE K.S.PUPTASWAMY .. VICE CHAIRMAN
THE HON'BLE MR. AJAY JOHRI .. MEMBER(A)

O.A. NO. 1273 OF 1 9 8 8.

Kishen Chand Sharma .. Applicant
(By Shri G.D.Bhandari, Adv.)

-vs.-

Union of India & Anr. .. Respondents.
(By Shri Inderjit Sharma, Adv.)


Application coming on for hearing this day,
Hon'ble Vice Chairman made the following:

ORDER

On Miscellaneous Petition No.1615 of 1988 made by the respondents for vacating stay, this case was posted before us to-day for orders. But, as agreed to by both sides, this case is treated as listed for final hearing to-day and is accordingly heard.

2. This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 (Act).

3.Prior



3. Prior to 25-1-1987, the applicant was working as an Assistant Station Master (ASM) at Gurgaon Railway Station of Northern Railway. On 25-1-1987, the Divisional Personnel Officer, Northern Railway, Bikaner(DPO), promoted the applicant as Station Master(SM) and posted him to Narwasi. On that promotion and posting, the applicant by his representation made on 3-2-1987, declined the promotion and requested the DPO to retain him at Gurgaon, which was granted by him on 26-3-1987(Annexure-A5) on the terms and conditions set out in his order of that date.

4. On the expiry of one year stipulated in the order dated 26-3-1987, the DPO on 27-4-1988(Annexure-A7) had again promoted the applicant as SM and posted him to Harpalu Railway Station. But, before that order and thereafter, the applicant made representations to DPO on 3-2-1988, 30-4-1988 and 8-5-1988(Annexures A6, A8 and A9 respectively) in which he declined the promotion as SM and proceed to the new place of posting. On those representations made thereto, the DPO has made an order on 27-6-1988(Annexure A-1) refusing to accept the offer of the applicant to forego his promotion and had directed him to take charge at Harpalu as SM, the validity of which is challenged by him in this application.

5. Amongst others the applicant has urged that his offer to forego promotion was bound to be accepted by the DPO and the matters regulated on that basis, only and not otherwise.

6. In

6. In justification of the impugned order, the respondents have filed their reply.

7. Sri G.D.Bhandari, learned Counsel for the applicant, contends that on his client declining to accept the promotion accorded to him to a higher post which he was entitled to do, the DPO was bound to accept the same and regulate all other matters on that basis only and not otherwise, as done by the DPO, which is illegal and invalid.

8. Sri Inderjit Sharma, learned Counsel for the respondents, contends that the DPO had really accepted the offer of the applicant to forego his promotion and had posted him to Harpalu as ASM only and so construed the impugned order does not call for our interference.

9. When the applicant was first promoted as SM on 25-1-1987 he offered to forego the same and to remain in the lower post, which was allowed by DPO on 26-3-1987. On the expiry of the period stipulated in that order, the DPO again promoted the applicant as SM and posted him to Harpalu. Even before that and thereafter the applicant had expressed to forego that promotion and remain at Gurgaon in the lower post. On that the DPO made an order on 27-6-1988 in Hindi, which order, when translated to English, reads thus:

"NORTHERN RAILWAY: BIKANER
No.POP/729 EI/530 Dated 27-6-1988
Shri K.C.Sharma,
RG ASM
C/o SS/GGN.

Sub: Your refusal dated 30-4-1988
for promotion for the post
of Station Master Gr.1400-2300.

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The

The Competent Authority has not accepted your refusal for the above noted post for administrative reasons. Therefore, you are required to proceed immediately to the transferred station Harpalu(HR). Station Supdt. GGN to relieve him immediately for HR and intimate the date of relief.

Sd. x xxx xxx
for Sr.Divnl.Personnel
Officer,
Northern Railway."

In this order, the DPO had refused to accept the offer of the applicant to forego his promotion and has directed him to report as SM at Harpalu. Without an iota of doubt the DPO in this order, had declined the offer of the applicant to forego his promotion and had posted him as SM to Harpalu. We cannot read this order in any other manner or in the manner suggested by Shri Sharma.

10. When a civil servant is promoted to a higher post, he has a right to forego the same, for such reasons he considers that proper. On that, no authority can compel a civil servant to accept a promotion which he voluntarily foregoes. Whatever consequences will flow from such refusal, will undoubtedly flow the same, one of which will be the power of the authority to transfer him also in the very lower post. We should not confuse these with the right of the civil servant to forego his promotion as such. Every one of the circulars relied on by both the sides do not lay down a different proposition. On this view, we consider it unnecessary to refer to them in any detail.

11. When

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11. When a civil servant foregoes a promotion, by reason of that only he cannot take away the power of the authority to transfer him in the lower post to such place as it deems in the public interest. On accepting the offer of the civil servant to forego his promotion, it is undoubtedly open to the competent authority to transfer him in the lower post he earlier held.

12. On the second occasion also, the applicant had expressed his willingness to forego his promotion as SM. On that, DPO should have accepted the same and then examined his case for retention at Gurgaon or to post him to Harpalu or such other station and made a proper fresh order in that behalf. Unfortunately in the impugned order, the DPO had not done that. On the otherhand, he had compelled the applicant to accept his promotion and had regulated his posting on that basis which was clearly illegal. On this view, we are bound to interfere with the impugned order.

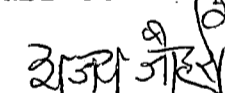
13. On our quashing the impugned order, the DPO or other competent officer has undoubtedly the power to transfer the applicant as ASM to such place as they may decide in the public interest. Whether they should do so or not is a matter for them to examine and decide. We leave that matter to the DPO or the other competent officer to decide.

14. In

14. In the light of our above discussion, we make the following orders and directions:

- (1) We declare that the applicant had validly foregone the promotion given to him as SM on the second occasion also by the DPO in his Order 27-6-1988 and that he was bound to accept the same.
- (2) We quash the order No. POP/729 EI/530, dated 27-6-1988 (Annexure-A1) of the DPO. But, this order does not prevent the DPO or the other competent officer of the Railway Administration to examine the case of the applicant for retention at Gurgaon or transfer him as ASM to such other place as may be found necessary, in the public interest and make a fresh order on that aspect, in accordance with law.

15. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.


(AJAY JOHRI)
MEMBER (A).


(K.S. PUTTASWAMY)
VICE CHAIRMAN.

10/10/88

Dated: October 10, 1988.