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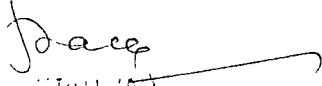
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

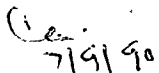
Regn. No. C.A. 790/88. Date of Decision: September 7, 1990

Jai Narain	Applicant.
Shri R.L. Nimroth	Counsel for the Applicant.
	V/s.	
Union of India & Ors.	Respondents.
Shri Jagjit Singh	Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
 Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgment? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their lordships wish to see the fair copy of the judgment? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*


(J.P. SHARMA)
Member (J)


7/9/90
(P.C. JAIN)
Member (A)

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Shri P.L. Mimroth Counsel for the Applicant.
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Shri Jagjit Singh Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).

JUDGMENT

The applicant, who was selected for appointment as Commercial Clerk under the Western Railway, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, assailing order dated 23.2.88 (annexure A-1) whereby he was informed that he was selected for appointment as Commercial Clerk in the scale of Rs.975-1540 and reallocated to the Bombay Central Division instead of Jaipur Division. He has prayed that -

- (i) he should be offered appointment against regular post of Commercial Clerk in Jaipur Division of Western Railway;
- (ii) he should be deemed to have been appointed to the aforesaid post from the date his junior was appointed in Jaipur Division on the basis of the panel forwarded by the Railway Recruitment Board, Bombay;
- (iii) his pay in the aforesaid post should be fixed from the said deemed date of appointment and also allowed to earn increments accordingly;
- (iv) his seniority be protected according to his position in the panel;
- (v) all other benefits such as leave, gratuity of service for pension etc., consideration for higher posts etc. should be given to him as due from the deemed date of appointment;

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- (vi) the question of age bar etc. for appointment to Government service should be considered not with reference to his deemed date of appointment; and
- (vii) the validity or otherwise of the panel due to lapse of time should not be reckoned to the disadvantage of the applicant as he is in no way responsible for any delay etc.

2. We have perused the documents on the file and have also heard the learned counsel for the parties.

3. It is not in dispute that the applicant applied for the post of Commercial Clerk under the Western Railway in response to Employment Notice No.1/82 issued by the Railway Recruitment Board, Bombay and that he was duly selected and recommended by the Railway Recruitment Board, Bombay for appointment to the post of Commercial Clerk. It is also not in dispute that the applicant attended the required training course from 16.9.87 to 15.12.87 and was declared successful therein, and that he also underwent successfully four weeks' practical training at Bandikui, Jaipur and Alwar Railway Stations. This practical training was ordered by Office Order dated 29.12.87 (Annexure A-12). His posting order was issued on 23.2.88 (Annexure A-1), which is under challenge.

4. The applicant's case is that initially he was allotted the Jaipur Division, for which he had given his preference, but in the impugned posting order, he has been reallocated to the Bombay Central Division, and that this change in the Division is arbitrary and against the instructions contained in O.M. dated 24.6.1985, issued by the Department of Personnel & Training (Annexure A-2) and O.M. dated 12.8.1986 (Annexure A-3), also issued by the Department of Personnel & Training. The learned counsel for the applicant also drew our attention to the Railway Board's letters dated 14.1.75 and 8.7.78 and reiterated in letter dated 24.12.1985, which are referred to in

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Annexure R-II. According to these Railway Board's letters, employees belonging to SC/ST should be transferred very rarely and for very strong reasons only and that even at the time of initial appointment, the SC/ST candidates should as far as practicable be posted nearer to their home towns or at a place where the administration can provide them quarter subject to their eligibility. The Department of Personnel & Training O.M. dated 24.6.1985 (Annexure A-2) emphasises that Government servants should desist from any act of discrimination against members of SC/ST communities on grounds of their social origin. O.M. dated 12-8-1986 reiterates the instructions and states that it is absolutely necessary that officials belonging to SC/ST are not subjected to any harassment or discrimination.

5. The applicant has also taken the plea that according to letter dated 24.9.1985 from the office of D.R.M., Jaipur, he was allotted to Jaipur Division and his training and practical training were also conducted at places under the Jaipur Division.

6. The case of the respondents, in brief, is that as per the Railway Rules, it is not necessary that the applicant should be allotted to the Division for which he had opted and he could be posted anywhere in the Western Railway. The posting at a particular Division is stated to be always dependent on the availability of the post in that Division. It is further stated that no vacancies are available under the Jaipur Division in view of the appointments made in pursuance of the judgment of the Jodhpur Division of the Central Administrative Tribunal in T.A. No.2463/1986 and a number of other connected T.A.s, decided on February 10, 1987. It has also been stated that all the 62 candidates selected through Railway Recruitment Board were sent for training at Zonal Training School, Udaipur in batches in accordance with letter dated 3.8.85 from the Headquarters Office of the

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respondents.

7. Here, it may be stated that the applicant has not yet reported for duty in accordance with his posting order dated 23.2.1988. Misc. Petition No.335/89 filed on 8.2.89, in which the applicant prayed for interim relief to the effect that the respondents be directed not to fill up any vacancy in the post of Commercial Clerk in Jaipur Division till the disposal of the application or in the alternative, he may be appointed as Commercial Clerk under Jaipur Division or other adjoining Divisions provisionally as an exceptional measure, was dismissed by the Tribunal on 10.8.89. Another M.P. 2434/89 filed by the applicant on 24.10.89 praying for a direction to the respondents to consider his case sympathetically and to post him under Jaipur Division and in case of non-availability of vacancy in that Division to adjust him in the adjoining Divisions provisionally, was also not allowed, but his prayer for early hearing of the case was granted by the Hon'ble Chairman on 8.5.90.

8. The Department of Personnel & Training O.M.s dated 24.6.1985 and 12.8.1986 are on the subject of harassment and indiscrimination on grounds of social origin of the Government servants belonging to SC/ST. The applicant has neither given in his application any details of alleged discrimination, nor any such details have been given by the learned counsel for the applicant during his oral submission at the bar, to substantiate this allegation. It has not been shown that any other candidate out of the panel recommended by the Railway Recruitment Board and who might have opted for his posting in Jaipur Division, has been posted to that Division. Thus, the plea of discrimination is not tenable. The plea of harassment also remains unsubstantiated inasmuch as the respondents have unambiguously stated in their counter-affidavit that the vacancies in the category of Commercial Clerk, which had occurred, were filled up from the candidates who were already trained prior to the

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applicant in terms of the orders of the Central Administrative Tribunal, Jodhpur, in T.A. 2463/1986 (supra). The applicant has not refuted this contention with any facts; in his M.P., he stated that some vacancies have since occurred in which the applicant should be accommodated.

9. It is true that the Railway Board's letters dated 14.1.75, 8.7.78 and 24.12.1985, referred to in Annexure R-II, are shown to have laid down that even at the time of initial appointment, the SC/ST candidates should, as far as practicable, be posted near to their home towns. The case before us is not a case of transfer, but of initial appointment and these instructions cannot be easily ignored. However, in view of the categorical statement made by the respondents that no vacancy in the post of Commercial Clerk was available in pursuance of the implementation of the judgment of the Central Administrative Tribunal, Jodhpur Bench, in the Transferred Application cited above, it cannot be held by us that it was practicable for the respondents to give to the applicant straightway posting under the Jaipur Division. The Railway Board's letters under reference make it very clear that this policy is to be carried out to the extent it is practicable. The learned counsel for the applicant fairly conceded at the bar that the applicant does not claim to have a legal right to be posted only under the Jaipur Division.

10. In view of the above discussion, we are unable to uphold the contention of the applicant that the order^e reallocating him to the Bombay Central Division of the Western Railway instead of the Jaipur Division of the Western Railway is either illegal or arbitrary or discriminatory or in violation of the existing instructions of the Government on which he has relied. If the applicant wants to serve the respondents in pursuance of his selection and appointment to the post of Commercial Clerk under the Western Railway, he should report for duty in pursuance

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of the posting order dated 23.2.1988. If he does so within a period of one month from the date of this order, the respondents shall allow him to join the post irrespective of the considerations, if any, in regard to the applicant having become over-age by now, or the panel on the basis of which he was offered appointment having outlived its validity. In view of what we have stated above, the applicant cannot be granted any other relief. The applicant himself is responsible for not joining the post for which he was given appointment and, therefore, cannot claim that he should be deemed to have been appointed from a date earlier than the date on which he actually joins; nor can he claim the monetary and other benefits for the period prior to the date of his actual joining. After he joins the Bombay Central Division of the Western Railway, and in case he has any genuine problems, he can represent to the appropriate authorities for his transfer to the Jaipur Division, for consideration. We hope that such a request, as and when made after the applicant has joined the service of the respondents, would be considered by the concerned authorities sympathetically in accordance with the relevant instructions. The application is disposed of accordingly. We leave the parties to bear their own costs.

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(J.P. SHARMA)
Member (J)

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(P.C. JAIN)
Member (A)