

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. 1. OA-1009/89
2. CCP- 223/89

Date of decision: 17.7.1992

Shri S.K. Mehta

.... Applicant

Versus

Union of India through
the General Manager,
Northern Railway & Ors.

.... Respondents

For the Applicant

.... Shri G.D. Bhandari, Advocate

For the Respondents

.... Shri B.K. Aggarwal, Advocate

CCRAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who is presently working as Station Master ~~xx~~ ^{*a*} at Railway Station, Kandaghat, under the Northern Railway, is aggrieved by the impugned order dated 22.11.88, whereby he has been transferred on promotion to Panjkosi, which is ^{*a*} ~~is~~ wayside station adjoining the Indo-Pakistan border in Punjab. The application was filed in the Tribunal on 10.5.1989. On 23.5.1989, when the application came up for

hearing, the learned counsel for the applicant stated that the applicant had not so far been relieved of his post, and that he had not relinquished the charge of his office at Kandaghat. In view of this, the Tribunal passed an ex parte interim order to the effect that the applicant may be allowed to perform his duties at Kandaghat. The applicant was eventually allowed to join duty at the above station only on 17.1.1990. In between, he had filed CCP-140/89 which was disposed of by order dated 19.10.1989 with the observation that as the applicant was willing to work in the present post and pay, he should be accommodated in the post of Station Master, Kandaghat in the lower scale of Rs.1400-2300 without prejudice to the rights and contentions of both parties in the main application. The applicant filed CCP-223/89 thereafter in which he alleged that the respondents did not comply with the order of the Tribunal dated 19.10.1989. The said C.C.P. is also being disposed of by the present order.

2. The admitted factual position is that the impugned order dated 22.11.1988 is a promotion-cum-transfer order.

The applicant was in the pay-scale of Rs.1400-2300 and he was promoted and transferred in the pay-scale of Rs.1600-2660.

3. We have heard the learned counsel for both the parties and have considered the rival contentions. The applicant had been working as Station Master at Kandaghat since 1986. The post of Station Master there is in the pay-scale of Rs.1400-2300. The applicant has stated that on 16.9.1987, the respondents asked for options from the employees to work in the Delhi Division/Ambala Division after the bifurcation of the Delhi Division. He had opted for the Delhi Division on 5.12.1988, which was after the impugned order of transfer had been issued. The applicant has stated that his wife is a heart patient and she is being treated at the Railway Hospital in Delhi. He has alleged that no medical facilities are available at the Indo-Pakistan border, where he has been transferred by the impugned order. The representations submitted by him to consider posting him in the Delhi Division, have not been acceded to by the respondents.
4. The learned counsel for the applicant argued that the impugned order has been passed out of mala fides. He submitted that the applicant was a trade union worker and is the Vice-President of the Northern Railway Workers Union.
5. In our opinion, the allegation of mala fides made against the respondents has not been substantiated.

Admittedly, the applicant has worked for more than six years at Kandaghat though a part of the period is covered by the interim order passed by the Tribunal. The personal difficulties such as the sickness of the wife of the applicant, and the education of his children, are matters for the respondents to consider and it will not be appropriate for the Tribunal to quash an order of transfer on those grounds.

6. Taking an overall view of the matter, we are of the opinion that the respondents should consider the option exercised by the applicant for being treated as under the Delhi Division and pass an appropriate order thereon expeditiously. In case, his option is found to be in order, he should be accommodated in the Delhi Division. The respondents will be at liberty to post him anywhere in the Delhi Division, subject to the condition that the place to which he is posted, will have adequate medical facilities for the treatment of his wife as also educational facilities for his children. Pending this, the applicant should be accommodated at Kandaghat in the post carrying the lower pay-scale of Rs.1400-2300. OA-1009/89 is disposed of on the above lines. The interim order passed on 23.5.1989 is hereby made absolute.

7. We may now consider the CCP-223/89 filed by the applicant. He filed CCP-140/89 in which he had alleged

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that the respondents had not complied with the interim order passed by the Tribunal on 23.5.1989. The said C.C.P. was disposed of by order dated 19.10.1989 after hearing both the parties. The Tribunal observed that as the applicant was willing to work in his present post and grade, the respondents should accommodate him in the post of Station Master at Kandaghat in the lower pay-scale of Rs.1400-2300 during the pendency of the main application. This would, however, be without prejudice to the rights and contentions of both the parties. The respondents were directed to comply with the direction on the receipt of a copy of the order.

8. The non-compliance of the order dated 19.10.89 is the subject matter of CCP-223/89. The respondents have stated in their counter-affidavit that the applicant had resumed duty on 17.1.1990 which was only after the Tribunal passed an order on 15.1.1990 directing the respondents to release the salary and allowances of the applicant in the lower scale of Rs.1400-2300 for the period for which he had not been paid any salary and allowances, that the respondents allowed the applicant to resume duty at Kandaghat. The respondents have stated that the applicant never gave in writing that he should be allowed to join at Kandaghat in the lower scale, and that he would not claim his promotion. The respondents

were not clear whether the applicant should be appointed at Kandaghat in the lower scale of Rs.1400-2300. On 10.12.1990, the learned counsel for the applicant stated that the respondents took several months to comply with the directions given by the Tribunal and that the respondents should be directed to pay interest for the period of delay in payment of salary from the due date till the same was released to him.

9. We have considered the matter carefully. In there was any ambiguity in the order of the Tribunal as to whether the applicant should be allowed to join duty at Kandaghat in the lower pay-scale of Rs.1400-2300, the respondents should have sought the further directions of the Tribunal within a reasonable period. That was not done by them. The applicant also, on his own, did not inform the respondents in writing that he was willing to join duty at Kandaghat in the said lower scale of pay. Thus, it cannot be said that the delay in allowing the applicant to join duty at Kandaghat is entirely attributable to either party alone. In these circumstances, it would not be appropriate to award any interest on the pay and allowance which were released to the applicant, though belatedly. We, however, make it clear that the pay and allowances released to the applicant will not be liable to any adjustments by

the respondents. The C.C.P. is dismissed and the notice of contempt is discharged with the above observation. There will be no order as to costs.

10. Let a copy of this order be placed in OA-1009/89 and in CCP-223/89.

(B.N. Dhoundiyal)
Administrative Member

(P.K. Kartha)
Vice-Chairman (Judl.)

True Copy
Attested

(P. K. CHAND)

Central Administrative Tribunal
Prinsep Road, Lucknow
Uttar Pradesh, New Delhi