

20

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.A./T.A. No. 1489 of / 1992 Decided on:

K.P. Suman

(By Shri B.S. Mainee)

..... APPLICANT(S)

Advocate)

VERSUS

U.O.I. & Ors.

..... RESPONDENTS

(By Shri B.K. Aggarwal)


Advocate)

CD RAM

THE HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)

THE HON'BLE MRS. LAKSHMI, SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No


(S.R. ADIGE)
Vice Chairman (A)

21

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

DA No. 1489/92

New Delhi: this the 27th ~~December~~ ^{JANUARY} 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri K.P. Suman,
Office Superintendent - II,
under Controller of Stores,
Rail Coach Factory,
Tilak Bridge,
New Delhi.

..... Applicant.

(By Advocate: Shri B.S. Mainee).

Versus

1. Union of India through
the General Manager (P),
Northern Railway,
Baroda House,
New Delhi.
 2. The General Manager (P),
Rail Coach Factory,
Kapurthala.
 3. The Deputy Chief Controller of Stores,
Northern Railway,
Shakurbasti,
New Delhi.
- Respondents.

(By Shri B.K. Agarwal, Advocate)

JUDGMENT

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A)

Applicant impugns order dated 14.5.92

(Annexure-A1) issued on behalf of Respondent No. 2 calling upon him to appear in the selection for the post of OS Grade II in RCF Kapurthala and seeks a direction to Respondent No. 2 to make available his working report to Respondent No. 1 as desired by the latter in his letter dated 23.3.92 (Annexure-A7) and to direct Respondent No. 1 to place applicant in the panel of OS Gr. II after scrutinising his working reports.

2

2. Applicant who belongs to the SC community joined Northern Railway as an LDC on 22.11.75 and upon promotion as Sr. Clerk was deputed to RCF, Kapurthala w.e.f. 26.12.86 but was put to work in one of its offices located in New Delhi. On 22.3.91, he opted for permanent absorption in RCF Kapurthala (Annexure-A2). In the said option form, he specifically prayed that his lien in his parent office be terminated. In the option form, it was also stated that the optee understood that his absorption and retention in RCF Kapurthala depended upon the acceptance by the screening committee and if found unsuitable for retention, he would be repatriated back to his parent Railway. On 12.10.91, Respondent No.1 initiated selections for the post of OS Grade-II in Northern Railway (Annexure-A3) through written test and viva voce test. Respondent Nos. 1 and 3 in their reply state that not being aware that applicant had sought permanent absorption in RCF Kapurthala, they allowed him to appear in the said written test and viva voce. Meanwhile, applicant who had obtained permission to appear in the written test from his immediate controlling authority in New Delhi, appeared in the same on 18.11.91 (Annexure-A4). Upon clearing the same vide letter dated 6.3.92 (Annexure-A5), he also obtained permission to appear in the viva voce test on 23.3.92 (Annexure-A6). Thereupon, when Respondent No.1 asked Respondent No.2 to send them applicant's working report for the previous three years for finalisation for selection for the post of OS Gr.II vide letter dated 7.3.92, Respondent No.2 wrote back

2

on 13.3.92 (Annexure -A 8) that as applicant had opted for retention in RCF Kapurthala, the question of sending his service book did not arise. On 30.3.92 applicant submitted a letter to RCF Kapurthala confirming his request dated 17.3.92 for withdrawal of option of permanent absorption in RCF Kapurthala. By letter dated 30.4.92 from RCF to Northern Railway, the latter were informed that RCF had closed its cadre w.e.f. 31.3.90 and applicant had been accepted for permanent absorption in RCF on the same position and grade held by him in Northern Railway on 31.3.90, and his lien in Northern Railway be terminated w.e.f. 1.4.90, Northern Railway was also informed on 10.4.92 that applicant could not withdraw his option from permanent absorption in RCF at that late stage and Northern Railway terminated applicant's lien in their organisation in terms of RCF's letter dated 30.4.92 vide Memo dated 11.8.92.

3. Shri Mainee has contended that as the option forms signed by applicant on 22.3.91 clearly stated that retention in RCF would depend upon acceptance by the screening committee and the screening committee accepted applicant's retention only on 30.4.92 by which time he had withdrawn his option for absorption in RCF, Kapurthala, his lien in Northern Railway must be deemed to have continued to subsist on the date of withdrawal, i.e. 17/30.3.92, and applicant, therefore, could not be denied consideration for appointment as OS Grade -II in Northern Railway.

4. On the other hand, Shri Agarwal has argued that applicant had not been permitted by the competent authority to appear in the selections for the post of OS Grade-II held by Northern Railway, as was clear from Respondent No.2's letter dated 24.3.92. It is also stated that although applicant's option was accepted by the screening committee on 30.4.92, in actual effect RCF Kapurthala had closed its cadre on 31.3.90 vide Respondent No.2's letter dated 30.4.92 and Respondent No.1 had themselves recognised that applicant's lien with them would terminate w.e.f. 1.4.90 in terms of the aforesaid letter dated 30.4.92, as was clear from the letter dated 11.8.92 (Annexure-R2). It has been emphasised that mere withdrawal of option by applicant did not give him any right till the same was accepted by the competent authority, and nothing had been shown by applicant to establish that the withdrawal of option had been accepted. It is argued that as the withdrawal of option was never accepted by Respondent No.2 and Respondent No.1 was also not aware of this fact, applicant had no right to be considered for appointment as OS Grade-II in Northern Railway. It is averred that had applicant informed Respondent No.1 that he had exercised his option for permanent absorption in RCF Kapurthala, he would not have been permitted to appear in the selections held by Northern Railway. It is alleged that applicant was playing a dual policy to achieve success both in RCF as well as in office

of Respondent No.3, and concealed the material fact of his option for permanent absorption in RCF on 22.3.91. Had he got his application forwarded from the office of Respondent No.1 (GM RCF Kapurthala) where all the records were maintained instead of at local level the full picture would have emerged. It is further stated that coming to know of applicant exercising his option for permanent absorption in RCF, consideration of his candidature for appointment as OS Grade-II in Northern Railway was dropped. It is therefore stated that Respondent No.2 was justified in refusing to send applicant's dossier for consideration for promotion as OS Grade- II in Northern Railway.

5. We have given the matter our careful consideration. Respondents No.1 and 3 have stated on affidavit that when they permitted applicant to appear in the written test for promotion as OS Gr.II they were not aware that he had opted for permanent absorption in RCF, Kapurthala, for had they known so, they would not have permitted him to appear. We have no reason to doubt this statement. Furthermore, the wording in the option form submitted by applicant upon which Shri Mainee relied heavily, makes it clear that while applicant's absorption and retention in RCF, Kapurthala depended upon acceptance by the Screening Committee, it nowhere provided that at any time before such acceptance, ~~applicant~~ ^{applicant} could withdraw his prayer for retention and absorption. While applicant's signature on the option form on 22.9.91 signified his unconditional

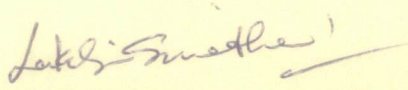
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option for absorption and retention in RCF Kapurthala, on the part of RCF Kapurthala it was conditional upon his acceptance by Screening Committee, which makes it clear that having signed the option form, applicant could not subsequently opt out.

6. That being the position, and applicant having become a member of the cadre in RCF Kapurthala we hold that he had no enforceable legal right to compel Respondent No.2 to make available his working report to Respondent No.1 for absorption as OS Gr.II under Respondent No.1. The ruling in B.Chandwani's case 1995(1) ATJ 89 relied upon by Shri Mainee has no relevance to the facts and circumstance of this particular case, as it is clearly distinguishable on facts.

7. That apart, Northern Railway's letter dated 11.8.92 had terminated applicant's lien in their organisation in terms of RCC's letter dated 30.4.92 and the said letter dated 11.8.92 has not been impugned. Unless that is set aside, applicant would not have any lien in Northern Railway on the basis of which he has an enforceable legal right to be considered for promotion as O.S. Gr.II in Northern Railway.

8. For the aforesaid reasons we find ourselves unable to grant the relief prayed for by applicant. The OA is dismissed. No costs.


(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)


(S.R. ADIGE)
VICE CHAIRMAN(A)