

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: 25 TH DAY OF AUGUST 1998

CORAM : HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO.499 OF 1998

R.K.Tripathi aged about 40 years
S/o Shri K.L.Tripathi, R/o
92, Laxman Ganj, Jhansi.

.... Applicant
C/A Shri R.K.Nigam, Advocate.

Versus

1. Union of India through the General Manager,
Central Railway, Mumbai CST.
2. Divisional Railway Manager, C. Rly.,
Jhansi.

.... Respondents
C/R Shri G.P.Agrawal, Advocate.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the Administrative Tribunal Act 1985 for issuing order or direction commanding the respondent no.2 to issue ^h of the posting order of the applicant as Section Engineer (Rs.6500 - 10,500) from Jhansi region and to treat the entire period beyond 11.3.1998 as on duty, salary be allowed.

J.P.A

2. There is no dispute between the parties in respect of the fact that the applicant was posted as Section Engineer at Bhopal, he applied for his transfer on his own request to Jhansi, his request was acceded vide letter dated 16.1.98 by respondent no.2, he was relieved from Bhopal vide office order No.138/1998 dated 18.2.1998, A relieving letter was issued by Senior Divisional Electrical Engineer dated 10th Mar., 1998. He reported for duty to respondent no.2 on 10.3.1998, he was not given any posting order and his representation dated 9th April 1998 but no action is being taken on it.

3. The applicant's case, in brief, is that the respondent no.2 who has acceded to his request is now stopped from posting of the applicant as section engineer, the respondent no.2 is acting under the pressure of unions for resisting the postings of the applicant, there being 7 vacancies in his cadre, Hence this application.

4. The respondents denied the existence of 7 vacancies and stated that the applicant belongs to promotional quota for which there is no vacancy at Jhansi, the total sanctioned strength of section Engineer is 30, out of which 80% is to be filled by promotion and 20% from direct recruitment. All the general category posts are filled up prior to the coming of the applicant. The applicant was informed in writing vide letter dated 26th March 1998 that there is no vacancy at Jhansi, so he cannot be absorbed there. The above letter was offered to the applicant so that the applicant may join Bhopal Division but the applicant did not accept it. The applicant again contacted Jhansi Division, Office Superintendent Shri V.M.Verma offered the said letter to the applicant but he refused to accept it. On refusal of the applicant vide letter no.E 328/IR/CRD dated 7th April

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1998 to the D.R.M.(P) Bhopal that the applicant cannot be absorbed at Jhansi. The applicant fled away. The conduct of the applicant is not worthy of rail way servant. In case if the applicant is accommodated in Jhansi a serious resentment among the direct ^{recruitment} for the post of Section Officer will arise which will disturb the smooth working of the respondent. It is pregrative of the respondent to post the applicant according to the place where the work is available. The applicant has not discharged duties since then, hence not entitled to any salary. Therefore, the respondents prayed for dismissal of the O.A. with costs.

5. It is true that vide Annexure-A1 dated 16.1.98 the respondent no.2 stated that " the above named employee can be accommodated as Section Engineer in the grade of Rs.6500 - 10500 (RS on TRD Department on the division). On the basis of the said letter the applicant was transferred vide Annexure-A2 dated 18.2.1998 and he was relieved on 10.3.98 vide annexure A3 and he reported on duty on 11.3.1998. On the basis of Annexure-A1 the applicant's counsel argued that the respondents are stopped now to say that there ~~is~~ exists no vacancy and, in fact, it is a case of after thought while the facts are otherwise. It is true that on 16.1.98 the respondent no.2 has stated that the applicant can be accommodated but what transpired between 16.1.98 till 11.3.98 cannot be over looked.

6. There is no reason to disbelieve the counter affidavit filed by the respondent that there is no vacancy at Jhansi Division. There is no ^{effective} rebuttal to it. In the circumstances, though the respondent no.2 was stopped from not accommodating the applicant but during lapse of time when the vacancies are filled up, the respondent no.2 cannot be compelled to accommodate the applicant on a post which does not exist.

J.CM/-

7. On the averment in the counter affidavit it is true that the unions has resisted the said accommodation of the applicant that may be a cause for not accommodating the applicant but it is not the sole cause for not accommodating the applicant for the reason that the unions may be careful of their future prospects and not the present situation.

8. After joining at Jhansi Division the applicant was not posted on any post from 11.3.98 till 26.3.98. It is said that the applicant has refused to accept the letter but there is no affidavit of the concern before whom the applicant has refused to accept the said letter. According to the applicant, the said letter was offered to him on 7th April 1998 as per Annexure CA 5 page 12, hence till the said date the applicant was not posted in Jhansi Division. The duty to post the applicant rests on respondent no.2 ~~cannot be~~ who failed to post the applicant. The applicant blamed for it. Hence the applicant is entitled to the salary and all consequential benefits from 11.3.98 till 7.4.98.

9. As the applicant has not performed any duty, was reluctant to accept the letter issued by the respondent no.2 and did not behave like an employee, hence in the peculiar circumstances it is ordered that the respondent no.2 shall consider the leave application of the applicant for any leave for which he has entitlement till the decision of the case.

10. In the result, the O.A, is allowed with the following modification in the relief and the applicant is provided the relief as under:-

J.M / -

- (1) ON the first available occasion of the promotees vacancy on the post of Section Engineer (T.F.O.) in the grade of Rs.6500 - 10500 (RS on T.I.D. Department) of Jhansi Division, the applicant be accommodated.
- (2) The applicant be paid salary from 11.3.98 to 7.4.98 with all consequential benefits attaching to his post.
- (3) The applicant if moves an application for leave for which he has an entitlement, his application for leave from 8th April onwards till the decision of the case be considered having a sympathetic view as the whole trouble did arise due to act of respondent no.2.
- (4) The applicant be relieved from Jhansi Division, henceforth to join Bhopal Division on the next date.
- (5) Looking to the facts and circumstances of the case it is ordered that both the parties shall bear their own costs.

J.M. /
MEMBER (J)

Gc