

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.482 of 2001.

Allahabad this the 26th day of February 2004.

Hon'ble Maj Gen K.K. Srivastava, Member-A.

Hon'ble Mrs. Meera Chhibber, Member-J.

Hari Mohan Swarnkar
S/o Ram Charan Swarnkar
R/o 81, Jharkaria, Jhansi.

.....Applicant.

(By Advocate : Sri Pankaj Barman)

Versus.

1. Union of India
through General Manager,
Central Rly. Mumbai.
2. Divisional Railway Manager,
Central Rly., Jhansi.
3. Senior Divisional Electrical Engineer,
Central Rly., Jhansi.

.....Respondents.

(by Advocate : Sri G.P. Agrawal)

O_R_D_E_R

(By Hon'ble Mrs. Meera Chhibber, Member-J)

By this O.A., applicant has sought the following
relief(s):-


- "a) to issue a writ, order or direction in the nature of certiorari, quashing the impugned order of respondent No.1 (Annexure A-1) and assigning him the seniority in consonance with the decision of CAT Jabalpur Bench dated 08.07.1991
- b) to issue a writ, order or direction in the nature of mandamus commanding respondent No.1 to accord seniority to the applicant in consonance with the judgment and decision of CAT Jabalpur Bench dated 08.07.1991.
- c) to issue any other suitable order or direction as this Tribunal may deem fit and proper".



2. It is submitted by applicant that he was selected for appointment pursuant to notice No.2/80-81 (Category No.25) but due to vigilance enquiry pending in Headquarter office appointment letter was issued only on 16.05.1989. Even though applicant was selected for the post of A.S.M/Ticket Collector or Office Clerk but he was appointed as T.N.C. Trains Clerk vide order dated 20.03.1989 (Annexure A-2).


3. Applicant represented that he may be appointed in the category of Ticket Collector but instead applicant was initially appointed and posted as Trains Clerk at Bina Railway Station. Thereafter he was directed to be transferred from Bina to Jhansi as Ticket Collector/ Office Clerk vide order dated 03.11.1989 (Annexure A-3) as per the orders of MOSR. On 29.11.1989 another office order was issued explaining that since there is no vacancy of Ticket Collector at Jhansi, he is posted under Sr. D.E.E.(T.R.S.) (A.C. Loco Shed Jhansi) against the post of Sri J.K. Kohli who was to be relieved to E.D.P.P Centre Jhansi. In this order it was clarified that seniority would be assigned in Electrical Cadre from the date he resumes (Annexure A-4).

4. Applicant relied on judgment of Jabalpur Bench in O.A. No.871/91 and O.A. No.497/93. Applicant also filed O.A. No.1450/98 which was decided on 18.10.2000 directing the applicant to give a representation and directed the respondents to decide the same by a speaking order. Pursuant to it applicant gave representation which was rejected by the General Manager on the ground that since applicant had sought posting as Ticket Collector or Office Clerk after having accepted T.N.C at Bhopal division, he was transferred



at Jhansi Division as Office Clerk as per his request, therefore, he has rightly been assigned seniority from the date he resumed duty at Jhansi. Applicant has challenged this order on the ground that he never sought transfer to Jhansi but had only requested for being appointed as Ticket Collector, therefore, it is absolutely wrong to say that he was transferred from Bina to Jhansi on request.

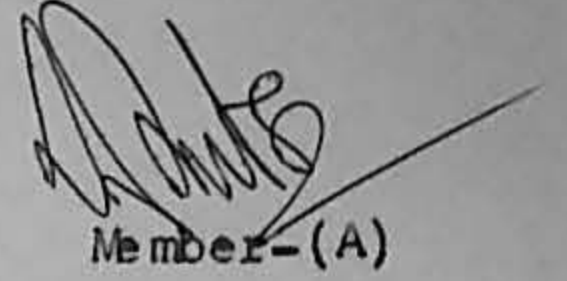
5. Since applicant's counsel had strenuously argued that he never sought transfer from Bhopal to Jhansi we had directed the respondents to produce the relevant documents as to how he was transferred from Bhopal to Jhansi. Respondents have produced the records to show that applicant had made a request to appoint him as Ticket Collector. The order dated 03.11.1989 clearly shows his transfer from Bina to Jhansi as Ticket Collector or Office Clerk was done as per the order of MDSR meaning thereby, it cannot be said to be transfer in normal course. Even otherwise it is seen that at Jhansi there was no vacancy of Office Clerk in the Division but in order to accommodate him at Jhansi, applicant was posted in Electrical Cadre, therefore, naturally it could not be said to be a normal transfer since applicant was being accommodated at Jhansi which is his home town, ^{under} ~~also~~ at the orders of Minister of State for Railways, it had to be treated as transfer on request and in these circumstances the relief as sought by applicant cannot be given to him. Had he continued at Bhopal Division itself probably he could have got the relief but since he got himself transferred to a different division through a Minister, respondents have rightly treated it as transfer on request.



6. In view of above discussion, we find no illegality in the orders passed by respondents. The O.A. is, therefore, dismissed with no order as to costs.



Member-(J)



Member-(A)

GIRISH/-