

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.280/2020

Reserved on:09.08.2021
Pronounced on: 12.08.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Balram Meena S/o Late Sh. Ramraj Meena, aged about 24 years, R/o Tursangpura, Post Bakoti, Tehsil Spotra, District Karauli-322218 (Raj.). Presently working as Junior Engineer, Mob.9694751062 (Group 'C' post).

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India through the General Manager, North Western Railway, Head Quarter Office, Mother Teresa Colony, Sawai Gaitor, Jagatpura, Jaipur-302017.
2. Divisional Railway Manager, North Western Railway, Modern Market, Karni Colony, Kuchilpura, Bikaner Division, Bikaner-334001 (Raj.).
3. General Manager, South West Railway, Hubballi-580020 (Karnataka).

...Respondents.

(By Advocate: Shri Y.K.Sharma for R-1 and R-2 and
Shri Anupam Agarwal for R-3)

ORDER

Per: Dinesh Sharma, Member (A):

In the present OA, the applicant has prayed for directing the respondents to allow him to join at Bikaner Division of the North Railways, in pursuance of the order dated 29.11.2019 (Annexure A/1). He has also prayed for

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giving him all pay and other benefits for the period since he was relieved from the South West Railways by Respondent No.3.

2. The case of the applicant, in brief, is that following the seeking of options for filling the posts of TRD (Maintenance) in Jaipur, Bikaner and Ajmer Division of the North Western Railways, he had, while working in the South West Railways, given option for transfer to these Divisions in the North Western Railways. By order dated 29.11.2019 (Annexure A/1), it was provisionally accepted to post him against available vacancy in Bikaner TRD Branch. Though this order specifically mentioned that officers should be relieved before the date of cadre closure, i.e. 31.12.2019, the applicant was not relieved by his controlling officer in the South West Railway till 15.05.2020. When, on such relieve, he reported in the Bikaner Division of North Western Railways, he is not being allowed to join. The applicant has stated that the delay in relieving him occurred was not due to any fault on his side and it has partly due to COVID-19. He had applied for posting in the North Western Railway due to family circumstances since he has to take care of his aged mother, two unmarried sisters and one minor brother. The applicant has also stated that there is no change in the vacancy position in the North Western Railway and he has, now, also written to the respondents to transfer him at his own

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request (as against transfer on option) and that he is ready to forgo his seniority. However, he is not being allowed to join and has not received any salary after reporting in Bikaner Division on 26.05.2020. The applicant also prayed for interim relief to permit him to join in any office of North Western Railway subject to the outcome of the OA.

3. The respondents have filed a reply stating that the order accepting the applicant's transfer to Bikaner Division itself mentioned that he should be relieved before the date of cadre closure, i.e. 31.12.2019. The applicant has been relieved and reported for joining much after that date. Hence on the same date (26.05.2020), a letter was issued to the office of Divisional Railway Manager, South West Railway stating that the applicant was being sent back. The applicant did not receive a copy of this letter and has remained absent till date. The applicant was very well aware that the last date for closing of cadre was 31.12.2019. Now, he has requested for transferring him on the basis of his own request. As per the current transfer policy (31.08.2015), such request cannot be accepted before completion of five years. Hence, the requests of the applicant in this OA, for allowing him to join in Bikaner Division, on optional or on request transfer, cannot be accepted.

4. No rejoinder has been filed.

5. The case was finally heard through video conferencing on 09.08.2021. The learned counsel for the applicant argued that the action for filling vacancies in the North Western Railways had started long back and the last date for seeking option was extended a number of times. There is no logic behind closing the cadre on the date mentioned as there are still vacancies which can be filled. The applicant was relieved by the South West Railways and is not being allowed to join at the North Western Railways for no fault of his. The applicant is forced to remain here (in North Western Railway jurisdiction) since he has to take care of his old mother and minor sisters. The learned counsel for the respondents argued that the applicant has no right to join at a post in the Bikaner after the cadre closing date and this was made very clear in the order accepting his option. He should have reported back at his parent division. Since he has failed to do so he is not entitled to claim any wages for the period of his absence from duty. The learned counsel fairly conceded that though the applicant has no right and it is against the policy of the Railways to accommodate any inter-railways transfer requests before completion of 5 years, the respondents are in the process of considering his request for transfer waiving the requirement of 5 year stay.

6. The facts in this case are more or less undisputed. The applicant was relieved much later than the date given in the order accepting his transfer to NWR following his option. It may not be due to any fault on the part of the applicant but it does not give him any right to be accepted in the North Western Railways, which had made it unambiguously clear that no transfer under the scheme for transfer on option will be accepted after the cadre closing date. It is not for this Tribunal to decide why they have chosen a particular cut-off date and why they should choose some other date. The South Western Railways should not have relieved the applicant after the cut-off date without first making it sure that he would be allowed to join at the place of his transfer, even when the transfer order clearly stated to the contrary. Thus, though we cannot blame the applicant for having got relieved after the cut-off date given in the acceptance letter, there is no justification for his not reporting back at the parent cadre. The learned counsel for the applicant argues that he had no option but to remain here to take care of his old mother. He has also argued that he had prayed for interim relief from this Tribunal which was not granted. Both these arguments are not sufficient justification for his staying at home without reporting back to his parent cadre. It is not the case of the applicant that he is not being

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allowed to join back. The fact that he has himself sought transfer on request shows that he is aware of his present status, that he continues with the South Western Railways.

7. Thus, though we have sympathy for the applicant for the reason of his having suffered an unnecessary movement from the South Western Railways to the North Western Railways, without any fault on his part, we do not think this fact alone gives him a right to stay put at NWR. His relief was clearly against the specified condition in the order accepting his inter-railways transfer. His reluctance to report back and staying away from job, under any pretext (of his mother's illness or the pendency of this OA here) is not supported by any law and has to be at his own peril.

8. For the reasons mentioned above, we are unable to grant the reliefs prayed by the applicant. The learned counsel for the respondents has, during the course of the arguments, informed about the case of the applicant being considered for inter-railways transfer while waiving the condition about 5 years stay, on sympathetic considerations. We expect that a decision will be taken expeditiously in this matter. We also expect the respondents to take a decision on the period of absence from duty, in case the applicant applies before the concerned authorities, for grant of

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leave/regularising the same under the rules. With these observations, the OA is dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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