

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00160/2020

Reserved on: 16.03.2021

Date of Pronouncement : 20.05. 2021

CORAM :

**HON'BLE MRS. JASMINE AHMED, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Akhilendra Kumar Singh S/o Shri Chitradev Singh aged about 49 years by caste Rajput Resident of House No. 208, Near Water Tank, Basanti Chauk, Shri Ganganagar (Office Address : Working as Chief Booking Clerk Sriganganagar under DRM, Bikaner Division Railway Department)

Applicant

By Advocate: Mr. S.P. Singh present through VC.

Versus

1. Union of India, through the General Manager, North Western Railway, Jaipur – 302017.
2. Divisional Railway Manager, North Western Railway, Bikaner – 334 004.
3. Senior Divisional Personnel Officer, North Western Railway, Bikaner.
4. Senior Divisional Commercial Manager, NWR, Bikaner – 334004.
5. Divisional Railway Manager, North Western Railway, Ajmer – 305001

..Respondents

By Advocate: Mr. Vinay Jain, present through VC



O R D E R

Per Hon'ble Ms. Jasmine Ahmed, Member (J)

This present Original Application has been filed against a transfer order being aggrieved that the transfer order is from one cadre to another. The learned counsel for the Applicant states that the applicant was initially appointed as Assistant Booking Clerk in 1994 and was thereafter on 11.08.2011 transferred from Ajmer Division to Bikaner Division and now is discharging his duties at Sri Ganganagar from May 2014. It is pleaded that he has been transferred from Srigananagar to Suratgarh Thermal Power Station under Siding Policy and periodical transfer basis. It is also stated that no passenger or express train runs from this station and he being a Booking Clerk cannot be posted as Goods Clerk for unloading purposes.

2. It has been contended by the learned counsel for the applicant that as per Railway Board's letter dated 6.8.1993 different cadres of Commercial Staff (viz. Coaching and Goods Cadre and Coaching cadre consisting Booking/Parcel/Luggage) were merged in one Cadre. It was decided to make it a unifying cadre and named a new cadre known as Commercial Cadre. Now the question came for fixing the seniority in gradation list and it given rise of three cadre Booking Clerk, Parcel Clerk, Goods Clerk and Commercial Clerk (after unified). Applicant opted for Assistant Booking / Assistant Luggage



Clerk and accordingly his seniority was fixed under Booking Clerk. His seniority was fixed in Booking Clerk Cadre because applicant was employee of western region in the year 1994 and the same position continues. Applicant contended in his OA that while considering his case for promotion eligibility was fixed keeping in view the service rendered as Booking Clerk under Ajmer Division but for Transfer the Siding Policy of Bikaner Division has been adopted which is arbitrary. Applicant in his OA states that respondents took the base for transfer in view of the Railway board letter dated 6.8.1993 stating that merging of existing three cadres viz. Booking, Parcel and Goods Clerks as 'Commercial Clerk' as Unified Cadre, thereby, a new cadre came in existence viz. Commercial Clerk. But all regions did not implement the unified scheme due to maintaining seniority therefore the newly appointed or lowest grade such as Assistant Booking Clerk (like applicant) and option was given to choose either Booking Clerk or Goods Clerk. Applicant was placed in Booking Clerk Cadre which is also evident from the Service record and thus it is clear that he was not placed in Unified cadre i.e Commercial Clerk. It is further submitted that his promotion as Chief Booking Clerk was given keeping in view seniority of Booking Clerks Cadre. It is stated by applicant that respondents adopted a policy whereby any employee whose seniority is maintained under Booking Clerk Cadre in Bikaner Division, his transfer will not be done in Goods Clerk Cadre under Siding Policy which is evident from



letters dated 19.3.2018 and 24.3.2017. Respondent-department has issued seniority list of Chief Booking Clerks wherein, he has been placed under the cadre of Booking Clerks and he was promoted in the same cadre however, he has been picked up and transferred to such a place where there is no work of Booking Clerk as except goods train no trains are running. It has been pleaded that without consent none could be transferred outside the cadre. Applicant has mentioned in his OA that transfer order is issued under the heading of 'periodical transfer' 2020' but no notice has been given and apart from that there are his seniors who have been exempted from applying siding policy while transferring them, hence he has been chosen discriminatorily by the respondents.

3. Applicant pointed out that while disposing of his OA No. 126/2020 on 24.7.2020 wherein same transfer order dated 27.2.2020 was under challenge, this Tribunal ordered that 'the respondents are directed to decide the pending representation of the applicant dated 29.02.2020 within 15 days from the date of receipt of a certified copy of this order and till that time as the applicant has not been relieved yet the applicant shall not be relieved'. Now, the respondents disposed of the representation dated 29.02.2020, therefore, applicant has approached this Tribunal against the same transfer order.



4. Respondents No. 1 to 4 and respondent No. 5 have filed their separate replies. In their reply, respondents No. 1 to 4 have contended that applicant was appointed as Assistant Commercial Clerk and not as Assistant Booking Clerk and his Division was changed due to administrative action of the Head Office from Ajmer due to complaints on 23.09.2011 and he consequently joined at Bikaner on 13.05.2014. The fact remains that a penalty of Rs. 3000/- was imposed by the learned ACJM (Railways) due to his misbehaviour apart from that the major penalty charge sheet is still pending, hence the statement of unblemished service is 'far from truth'.

5. Vide letter No. E(NG)11/88/CD/1 dated 6.8.1993 PS No. 10841 (Annex.R/3), the Railway Board, New Delhi decided to merge three cadres viz. Booking, Parcel and Goods into one combined cadre called Commercial Clerk in respect of new entrants w.e.f. 1.11.1993 and it was made clear that after 1.11.1993 new appointments should be made only to the unified merged cadre. Admittedly, applicant was appointed on 19.04.1994 as Assistant Commercial Clerk after taking training as per Unified Merged Cadre Policy norms, hence the version of applicant regarding his appointment as Booking Clerk and Separate Roster etc. are far from truth. Further, it is clarified in the reply statement that according to above PS No. 10841 the staff appointed in merged unified cadre



after 1.11.1993 can be posted/transferred to Booking/Parcel/Goods Wing on administrative reasons. Also it is narrated in the reply that applicant himself was well aware of posting of Commercial Clerks in Booking / Parcel / Goods Wing for which he submitted an application on 7.7.2015 (Annex.R/4) for his posting as Parcel Clerk, at Srigananagar. As regards the Seniority List of Chief Commercial Clerk inclusive of three Wings dated 19.3.2018 (Annex.R/5) his name was mentioned at Sl. No. 38 and he never objected to the same. Respondents' have categorically submitted that vide Office Order dated 27.02.2020 applicant was posted at Suratgarh Thermal Power Siding on same capacity as per local policy framed by the Department, therefore also applicants have failed to establish his case even on one leg. It is thus prayed that applicant is not entitled to any relief.

6. Respondent No. 5 in his reply stated that after his appointment in 1994 and posting at Nasirabad Railway Station (erstwhile Ratlam Division, Western Railway, Det-Hatundi Section) and Nasirabad came in the jurisdiction of Ajmer Division of North Western Railway on 1.10.2002 after the formation of new Zone and General Manager, North Western Railway, Jaipur. Thus, Narisabad Railway Station which was part of Det-Hatundi Section, Western Railway automatically came under Ajmer Division (North Western Railway) jurisdiction w.e.f. 1.10.2002 and the employees who were working



at that time in Det-Hatundi Section and have not given their option to work anywhere other than this Section are automatically transferred to Ajmer Division. It is submitted that the option regarding working in Unified Commercial Clerk whether on the coaching side or goods side must have been taken by the Ratlam Division of Western Railway at the time of appointment of the applicant.

7. Rejoinder has been filed by the applicant reiterating his stand taken in the O.A. that applicant never worked in Goods Clerk cadre which is against the doctrine of lien which connotes the right of a civil servant to hold the post substantively to which he is appointed and no Government servant can simultaneously have two liens against two posts in two different cadres. It is specifically mentioned that respondents have misled in the garb of letter dated 6.8.1993 whereas such letter in respect of merging of different cadre of Commercial Staff into a Single Cadre has been issued in 1989 vide RBE No. 260/89 dated 16.10.1989. Since applicant was not borne on the strength of Bikaner Division rather Ajmer Division, therefore, the applicant was kept in Booking / Parcel Clerk Cadre and rendered service for more than 26 years as Booking Clerk. Now all of sudden he is transferred in Goods Cadre but lack of experience and knowing nothing, he is compelled to take leave and presently also, as stated in the rejoinder, he is on leave. Reiterating his averment that



respondents issued transfer on promotion vide letter dated 30.3.2011 which also reveals that he was working in Booking Clerk Cadre and his promotion is made as Senior Booking Clerk. Applicant mentions that the separate cadre yet exists and it is not unified that is the reason that the promotion and the transfer letter do not termed as Commercial Clerk but separate cadre Booking Clerk / Parcel Clerk/ Goods Clerk and Commercial Clerk. Applicant has filed his leave request dated 17.10.2020 vide Annex. A/17 and therefore prayed that respondents have failed to comply the rules and directions of the Railway Board in its letter dated 6.8.1993, hence, their action is nothing but glaring example of arbitrariness and resultantly prayed for allowing the O.A. in the interest of justice.

8. Learned counsel Mr. Vinay Jain filed his reply to the rejoinder denying the averments put forth by the applicant and further stated that applicant has not annexed complete documents and has concealed material facts by manipulating the document and further has not placed on record the original copy and has only placed on record the typed copy of the inter departmental communications. It is again submitted that applicant was assigned seniority in Bikaner Division as Ch. Commercial Clerk (B.P.G) jointly and no separate cadre exists. Apparently, applicant was appointed in unified cadre and his cadre was never changed, hence, his posting at STPS is correct based on Railway Board's Instructions as well as local policy.



Last but not the least, it is pleaded that applicant herein, has already joined at Suratgarh Thermal Power Station i.e. at the transferred place.

9. We have gone through the rival contentions and the paper book including the written statements and annexures filed additionally by Sh. S.P. Singh.

10. The moot question/issue to be contested is to whether there is any change in the cadre or not while transferring the applicant.

11. In the entire pleadings from either side, we do not find any appointment letter annexed with. Hence, the claim of the applicant that he was appointed as Goods Clerk cannot be taken as correct or established in absence of any documents. It is not disputed that the Scheme introduced and merged category came into effect from 01.11.1993 and the applicant joined with the department in the year 1994., i.e. after merger of three categories e.g. (Goods Clerk, booking Clerk and Parcel Clerk) and the same became and got the nomenclature of Commercial Cadre. But it is also seen that in the newly merged Commercial Cadre, there will be a suffix mentioning cadre in which an employee is appointed as no appointment letter has been produced, hence, it is not established under which cadre nomenclature the applicant was appointed. In absence of that, as per the basic principle of the Scheme (newly framed) any employee appointed after 01.11.1993 will be under Commercial Cadre only. It



is also seen that through letter dated 07.07.2015 (Annex .R-4) filed by counsel for the respondents, the applicant himself requested to be shifted/transferring him as Parcel Clerk from Booking Clerk, which reads as under :

श्रीमान रेलवे बोर्ड के नियमानुसार कार्य अनुभव हेतु बुकिंग एवं पार्सल कर्मचारियों को उनके अनुरोध पर बुकिंग कार्यालय से पार्सल कार्यालय में पदस्थ करने का नियम है। अतः मुझे श्री गंगानगर के पार्सल कार्यालय में अविलंब पदस्थ कर अनुगृहित करने कि कृपा करें।

Hence, if he can be shifted from Booking to Parcel Clerk then the argument that as he has been transferred as Goods Clerk, his cadre has been changed does not hold good.

12. The applicant has also raised issue of maintaining lien in his cadre. It is not clear how the question of maintaining lien is raised as the applicant's seniority is maintained in merged Commercial Cadre where there is no classification of any cadre. It is also not understandable that while his name was reflecting at S.No. 38 of seniority list, why he has not given any objection in relation to his cadre change. Hence, while being transferred as Goods Clerk, the argument of changed cadre also does not look justified. It has been settled by the Hon'ble Supreme Court in plethora of judgments that it is always the prerogative of the employer to utilize services of the employees for smooth and effective functioning of the institute and unless any malafide or arbitrariness is seen or established, no transfer order is to be interfered with. The applicant being posted as a Goods Clerk position cannot be held as malafide or arbitrary.



13. The argument of the applicant at para 11 of the OA also doesn't hold good as the applicant was not an existing employee before the onset of the new merged Scheme which came into effect w.e.f. 01.11.1993. The Scheme unequivocally states that :

Options for Existing Employees

All the employees appointed on regular basis to any of three **existing** cadres upto 31st October, 1993 will continue therein, and progress in any respective cadres as is position at present. However, employees working in the lowest grade in any of the three **existing** cadres will be given an option to come over to the new unified cadre. This option should be exercised within 02 months from the date of issue corresponding instructions by your railway. Option exercised within this period of two months will be deemed to be effective from 01.11.1993.

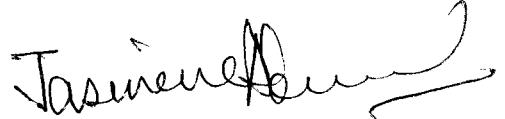
Hence, the bare reading of this paragraph clearly reflects that these all instructions are meant for the existing employees who were working with the respondents as on 01.11.1993. It is undisputed that the applicant herein joined the department in the year 1994, hence, the plea of the applicant that an option should have been asked from him before transferring him to any cadre, as argued by him, does not seem to be justified at all and also it does not come within the purview of newly framed Scheme nomenclatured as Commercial Cadre. The respondents in their reply reiterated their contentions that there is no distinct cadre maintained after unification/merging of three cadres and all employees joined after 01.11.1993 only to be treated as employees of Commercial Cadre and in the eventuality of any requirement of any employee at any particular place, the respondents/employer are having all the rights and prerogative to appoint any employee at any siding place.



14. The argument of the respondents that there is only one seniority list maintained in the Commercial Cadre is also seems to be justified in absence of producing any different seniority list by the applicant showing therein that three different seniority lists are being maintained or are in existence by the respondents. Hence, as per the pleadings available on record and oral arguments submitted by learned counsels for the parties, we feel no employee can choose a place of posting as per his request or comfort level. The applicant has also not raised any issue of malafide and Hon'ble Apex Court, which is the law of the land, time and again through various judgments has held that transfer orders are not to be interfered unless until malafide, arbitrary, or under colourful exercise of power etc. are shown or proved by the applicant or are on the record. Hence, we feel that the applicant cannot claim that as for a long time, he has worked as Booking Clerk, he cannot be transferred as Goods Clerk at any point of time of his career. The respondents have to run the institution and the interests of the institution are paramount. Hence, we feel it is not a case made out by the applicant where transfer order needs to be interfered.

15. Accordingly, OA lacks merit and the same is dismissed with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)



(JASMINE AHMED)
MEMBER (J)