

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

Original Application No. 985 of 2003

Monday, this the 25th day of August, 2003.

Hon'ble Maj. Gen. K.K.Srivastava, A.M.
Hon'ble Mr. A.K. Bhathagar, J.M.

Abdul Aziz,
aged about 51 years,
S/o Late Shri Dost Mohammad,
R/o Outhouse-L-I/C,
Railway Colony, Shahjahanpur.

....Applicant.

(By Advocate : Shri Rakesh Verma)

Versus

1. Union of India,
through the General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Engineer (General),
Northern Railway, Moradabad.
3. The Assistant Divisional Engineer,
Northern Railway, Shahjahanpur.

.... Respondents.

(By Advocate : Shri A.K. Gaur)

ORDER (ORAL)

By Hon'ble Maj. Gen. K.K.Srivastava, A.M. :

In this OA, filed under Section 19 of A.T. Act, 1985, the applicant has prayed for quashing the impugned order dated 12.8.2003 passed by the respondent No.3 transferring and posting the applicant as Trolleyman in the office of the

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Senior Section Engineer (P.Way), Shahjahanpur from the office of the Junior Engineer I (W), Shahjahanpur (Annexure-A-I) and direction to respondent No.3 to post the applicant as Chainman with IOW Shahjahanpur (now known as JE I (W), Shahjahanpur against the clear vacant post.

2. The facts, in short, are that the applicant was working as Trolleyman in the respondent's establishment. On surrender of the post of Trolleyman, the applicant was declared surplus. The Divisional Engineer, Moradabad by order dated 6.2.2002, directed all the Assistant Engineers of Moradabad Division that all the Trolleyman of IOWs have been surrendered. Instead two posts of Chainman to each IOW will be given and that any surplus Trolleyman to that extent needs to be adjusted. However, by the impugned order dated 12.8.2003 passed by Assistant Engineer, Northern Railway, Shahjahanpur (Annexure-A-I), the Assistant Divisional Engineer has posted the applicant as Trolleyman under SSE (P.Way) Shahjahanpur. Aggrieved by this, the applicant has filed this QA.

3. Shri Rakesh Verma, learned counsel for the applicant submitted that by the order of Divisional Engineer dated 6.2.2002, the applicant was required to be adjusted as Chainman. Instead of adjusting the applicant the Assistant Divisional Engineer has posted him as Trolleyman. Such an order, which is contrary to the direction of Senior Authority, is illegal and liable to be quashed.

4. Shri A.K.Gaur, learned counsel for the respondents submitted that it is not a case of transfer but a case of adjustment of surplus staff. This order has been issued keeping in view the administrative exigency.

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He also submitted that on one hand, in para 4.11, the applicant has alleged that the action of respondent No.3 is totally discriminatory, whereas in Para 4.10, the applicant is talking about the option. It would have been proper for the applicant ^{to have} ~~for~~ ⁱⁿ ~~in~~ ^{the} ~~through~~ ^{the} remedy through departmental channel by moving the representation before Divisional Engineer, Moradabad.

5. We have heard the counsel for the parties and perused the records.

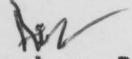
6. After hearing counsel for the parties, we are of the opinion, that the proper ~~way~~ ^{course} of the applicant was to file the representation before respondent No.2, rather than approaching this Tribunal straightway. In our opinion, this OA can be disposed of at the admission stage itself. The ends of justice shall better be served, if the applicant files his representation before the respondent No.2, which should be decided by a reasoned and speaking order within specified time.

7. In view of the aforesaid, the OA is finally disposed of with a direction to respondent No.2 to decide the representation of the applicant within a period of two weeks from the date of filing of the representation alongwith the order of this Tribunal for which the applicant is given liberty. The applicant is allowed one week time to file his representation before respondent No.2. Learned counsel for the applicant submitted that the applicant is still working at Shahjahanpur and has not been relieved so far for taking up his new assignment. Therefore, we provide that the applicant shall not be

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disturbed till his representation so filed is decided by
respondent No.2. No order as to costs.


Member-J


Member-A

RKM/