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O.A. No. 121 of 2009

Order dated: 03.04.2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)
Hon'ble Mr. C.R.Mohapatra, Member (A)

The applicant by challenging Annexure-A/1 transfer order, filed this O.A. However, the challenge is only against Annexure-A/1, there are two prayers in the O.A. that is not permissible as per rules. The second prayer is to direct the Respondents to publish the result of DPC and appoint/promote the applicant as Deputy Chief Electrical Engineer in the Junior Administrative Grade in the event of success. As we have already remarked that the second prayer cannot be answered in this O.A. as, such prayer is not ~~provided~~ for as per the rules. Hence, we are considering only the first prayer with regard to the transfer order under Annexure-A/1.

2. It is stated in Annexure-A/1 that the transfer of the applicant is on the basis of order of Railways and the authority is shown as Railway Board's wireless message order No. e(O)III-2009/TR/67 dated 25.2.2009. The Railway Board is also not a party in this proceeding.

3. With the above background, we have to consider the arguments of the Ld. Counsel appearing for the applicant.

4. The first contention of the Ld. Counsel is that he being the senior-most in the zonal basis, there was a chance for him to be promoted to the post of Dy. Chief Electrical Engineer in the zone and according to Counsel DPC has already met for that promotion. But, it is not stated anywhere in the O.A. that when the DPC met and what is the result. We are now concerned only with the transfer.

5. We have heard Mr. G.A.R.Dora, Ld. Counsel for the applicant and Mr. S.K.Ojha, Ld. Standing Counsel for the Respondents on notice.

6. As we had directed Mr. Ojha to get instruction in the matter, especially regarding the question whether the transfer now ordered will affect the promotion of the applicant or not, on this query, relying on the orders of the Railway Board, Mr. Ojha, contended that the applicant being an IRSE Engineer ^{he is} ₁ amenable to be transferred anywhere in India and that apart his seniority is counted only on the All India basis and if the promotion is ordered on the basis of the direction given by the Railway Board, it is the Railway

Board to decide whether the transfer will affect his promotion or not.

7. In this question, we have got a clear answer from the Ld. Counsel appearing for the Respondents that his transfer will not affect the promotion of the applicant if any, as the seniority is maintained on All India Level.

8. At the same time, we are now concerned with the arguments of the Ld. Counsel for the applicant that the selection or promotion to the post of Dy. Chief Engineer is on the zonal basis and he being the senior-most in the zonal basis, if his transfer is effected, his chance for promotion as Dy. Chief Engineer will be affected as anyone of his juniors will be promoted to the above post and apart from that the Ld. Counsel for the applicant submits that steps are being taken for such promotion by the Railway Board and if the ^{promotion} ~~transfer~~ is now effected, he would not be ^{promoted} ~~transferred~~. However, the question further remains that his seniority being on All India basis, he cannot claim any seniority on the zonal basis only for the purpose of ad hoc promotion in ^{even} the zone.

9. We are also informed by the Ld. Counsel for the Respondents that the applicant is actually not an

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Engineer of the East Coast Railway but he is an Engineer of South Eastern Railways. If so, the contention of the Ld. Counsel for the applicant that if the steps taken for adhoc promotion is ordered he will be given a promotion at the zone alone but that zonal promotion will not affect his seniority or his chance for promotion anywhere in India. In the above circumstances, we see that this order cannot be interfered with ~~at this stage~~.

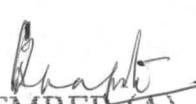
10. In this context, Ld. Counsel for the applicant also relies on the judgment of the Delhi High Court reported in 1973(1) SLR 209 in the matter of O.P.Gupta vs The Municipal Corporation of Delhi and ors., in which the Delhi High Court has taken a view that "whatever be the nature of appointment i.e permanent, temporary or adhoc, the person eligible for promotion has a right to be considered". Admittedly, in the case in hand, the applicant while he was working as Dy. Electrical Engineer, he has been already considered or steps has been taken to consider his case for promotion that result has also not ^{been} published and his chance even for ad hoc promotion is not complete. In the above circumstances, we see that the judgment relied on by the Ld.

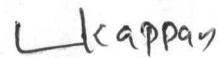
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Counsel for the applicant is not applicable in the fact, of this case.

11. Another point, that Annexure-A/1 order has only to be considered on administrative reason and we are not in a position to see any malafide as alleged by the applicant to issue such an order so as to deprive the right of the applicant to be considered for the promotion to the post of Dy. Chief Electrical Engineer. At the same time, mere allegation of malafide is not enough to hold that an order is vitiated. It should be proved on facts. In this context, it has to be noted that even according to the Ld. Counsel for the Applicant DPC has met, the applicant does not know when and how and what will be ~~the~~ result. In the above circumstances, we see that the order passed is purely on the basis of administrative reason and, being an all India service, employee is liable to be transferred anywhere in India.

12. We see no reason to interfere with the order. Accordingly, this O.A. stands dismissed as meritless. No costs.


MEMBER (A)


MEMBER (J)

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