

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH
J O D H P U R

Date of order : 13th May, 1998.

O.A.NO. 362/1996.

Nand Kishore Sharma S/o Shri Hazarilal Sharma aged about 38 years presently posted as Peon in the Office of the Assistant Mechanical Engineer, Northern Railway, Rewari, C/o B.D.Sharma, Retired Goods Supervisor, Jaidav Colony, Village and Post Office Hailee Mandi, Haryana.

..... Applicant.

VERSUS

1. Union of India through General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
4. Divisional Mechanical Engineer (Power), Northern Railway, Bikaner Division, Bikaner.
5. Assistant Personnel Officer, Northern Railway, Bikaner Division, Bikaner.

..... Respondents.

.....

CORAM

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

.....

Mr. S.K.Malik, counsel for the applicant.
Mr. S.S.Vyas, counsel for the respondents.

.....

2m

..... Contd..2

BY THE BENCH :

The Applicant has filed this O.A. with the prayer that the impugned order dated 9.10.1996 (Annex.A/1) be quashed and the respondents be directed to post the applicant either on the post of Sealman or Goods Marker under the control of Station Superintendent, Northern Railway, Rewari, under whom these posts exist. In terms of interim relief, the applicant has prayed for maintaining the status quo and retaining him as Office Khallasi under the Assistant Mechanical Engineer, Northern Railway, Rewari.

2. After hearing the applicant notices of the O.A. were directed to be issued to the respondents and it was further directed that respondents shall maintain the status quo qua the applicant as it exists today. This order is dated 6.11.1996.

3. The respondents have filed their reply in which it has been mentioned that the applicant was working as a Call Boy but due to closure of steam loco shed, he was posted as substitute Khallasi where he is presently working. The respondents have also given details relating to applicant's appointment and subsequent postings and the position of the posts relating to Marker and Sealman. It is contented by the respondents that the applicant wants a place and posting of his choice which is not possible under the circumstances. It has also been stated by the respondents that the applicant was posted as Call Boy at Sadulpur but he has not carried-out the posting order and has subsequently obtained the order relating to status quo.

4. The applicant has filed rejoinder in which he has reiterated its earlier stand and has further stated that the posts of Seal Man, Lampman and other equivalent posts are lying vacant at the present station of his posting where he could be adjusted. But in order to victimise the applicant he is being shifted from one place to another without any just cause.

..... Contd..3.

5. I have heard the learned counsel for the parties and gone through the record.

6. In order to appreciate the controversy in hand, few facts are required to be given in detail.

7. The applicant was initially engaged as a Casual Labour and was posted as Hot Weather Waterman. Vide Notification dated 6.1.1987, 347 vacancies were notified to be filled-in in the Traffic and Commercial department under the Bikaner Division. The seniority of which was required to be reckoned according to the number of days of working up to 31.8.1986. As per this criteria, the applicant stood at serial no. 151. Subsequently, he was screened and vide Notification dated 4.1.1988 his name stood at No. 104. Thereafter, applicant was not adjusted in Traffic and Commercial department and continued to be posted as per the requirements. On 23.2.1995, he made a representation with a request that he be absorbed in any of the vacancies in the Traffic and Commercial department and then repeated its demands by subsequent representations. It is also borne out from the record that the applicant was informed that he had cleared the Medical C-1 category test and he could be adjusted only as against the post falling within the medical category C-1. The applicant was also informed that there was no vacancy of Medical C-1 category on which he can be posted and was assured that as and when vacancy arises he will be adjusted. In the meantime, the applicant was informed through his immediate superior that he may under-go Medical B-1 category test for being posted on the post falling within this category. But the applicant refused to under-go Medical B-1 category test on the ground that he could not clear the same category earlier and, therefore, he should not be time and again forced to under-go such test. After this reply, the respondents had to wait only for a vacancy arising under the Medical category C-1. Even the applicant's representation to the General Manager was also disposed of with the same information to the

Qm

..... Contd..4.

applicant. Thereafter, the applicant was posted as per the allegation of the O.A. on the post of Call Boy at Sadulpur. But the applicant has challenged the same here before this Tribunal.

8. From the reply of the respondents, it appears that there is no post of Sealman at Rewari. This averment of respondents is disputed by the applicant in view of letter Annex.A/14. The post of Goods Marker is a post of higher category and relates to Medical B-1 category. This is also disputed by the applicant. There is no dispute so far as the rank and pay of Office Khallasi and Call Boy being equal. Therefore, posting of the applicant as Call Boy cannot be said to be economically detrimental to his present position.

9. Keeping in view all these facts if the case of the applicant is considered then it would be revealed that applicant in the garb of allegation of victimisation, wants to be adjusted at Rewari and that too on the post of his own choice. He has said that as a Call Boy he can not discharge his duties efficiently and effectively because of defect developed in his leg due to typhoid which he suffered three years ago. However, this contention is not supported by any medical certificate. How applicant's leg has been affected because of typhoid, is not known and in absence of any specific medical certificate, this allegation cannot be taken to be factually correct. The applicant in his O.A. has stated that the post of Call Boy is also a Traffic and Commercial department controlled post and all through he was seeking a posting under the Traffic and Commercial department by making representations repeatedly. Therefore, the applicant cannot now be heard to say that he would not be in a position to discharge the duties of a Call-Boy. Even earlier, the applicant was discharging his duties as Call Boy at Rewari under the Mechanical Engineer, Steam Loco Shed. Therefore, it is beyond imagination that when he is posted out-side Rewari as Call Boy he would not be able to discharge his duty as such. A Government servant can claim to be adjusted at a particular place ~~because of~~ because of some domestic problems for some time but he

..... Contd..5.

3m

cannot claim to be adjusted against a particular post. What I find from the facts in the instant case is that not only the applicant wants adjustment at Rewari but also he wants his adjustment against a particular post, which under the circumstances cannot be provided. It is the prerogative of the employer or of the superior to take work from a particular employee on a particular post and where his services are required. Therefore, if the applicant is posted at Sadulpur for discharging his duties as Call Boy, he cannot advance excuses that his physique does not permit him to render his duties as Call Boy or that for better maintenance of his family he needs to be posted at Rewari. In my opinion, the applicant has not made out a case for quashing the impugned order Annex.A/1 dated 9.10.1996. He has also not been able to make out a case for his adjustment on the post of Seal Man or Goods Marker at Rewari Station. Therefore, the O.A. deserves to be dismissed.

10. The Original Application is, therefore, dismissed with no order as to costs. The interim order issued on 6th Nov., 1996 by this Tribunal stands vacated.


(A.K.MISRA)
Judicial Member

.....

MEHTA

Recd (CPT)
8/85/98.

Recd (Sgt)
10/12/98

Part II and III destroyed
in my presence on 17.3.2003
under the supervision of
section officer () as per
order dated 31.12.2003

Section officer (Record)