

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : August 10, 1999.

O.A. No. 193/99.

Shri Uda son of Shri Ram Sukh by caste Rawat r/o. village Badlia, Tehsil and District Ajmer, at present working as Painter Khalasi under the Chief PWI, Rani.

... Applicant.

versus

1. The Union of India through the General Manager, Western Railway, Church Gate, Bombay.
2. The Divisional Railway Manager (Estt.), Western Railway, Ajmer.

... Respondents.

Mr. D.K. Chouhan, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(Per Hon'ble Mr. Gopal Singh)

Applicant, Uda, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 7.7.99 (Annexure A/1) and for a direction to the respondents that the applicant be restored to his original posting at Rani. By way of interim relief, the applicant has prayed for staying the operation of impugned order dated 7.7.99 at Annexure A/1.

2. Applicant's case is that while he was working as Khalasi under the Bridge Inspector, Ajmer, he was promoted to the post of Painter Khalasi and posted under the Chief PWI, Rani vide respondents' order dated 20.4.99 (Annexure A/2). That the applicant had joined at Rani on 7.5.99 as Painter. In this order, another person, Shri

Uda

Ghisa Lal, on promotion as Painter was transferred from Rani to Gandhidham. Subsequently, the respondents vide order dated 7.7.99 (Annexure A/1) have transferred the applicant from Rani to Gandhidham and Shri Ghisa Lal who was earlier posted at Gandhidham was brought back to Rani in the post vacated by the applicant. Feeling aggrieved, the applicant has approached this Tribunal.

3. Notices were issued to the respondents and they have filed the reply. In their reply, the respondents have stated that the transfer of the applicant to Gandhidham and that of Shri Ghisa Lal to Rani was in the administrative interest. The respondents have also raised a preliminary objection that the applicant has not exhausted the alternate remedy available to him and, therefore, the application is not maintainable. They have also pointed out that the application also suffers from non-joinder of necessary parties and, therefore, deserves to be dismissed.



4. It is seen from the order Annexure A/2 dated 20.4.99 that the earlier order of promotion and posting of the applicant was issued with the approval of Senior Divisional Engineer, Ajmer, while the order dated 7.7.99 (Annexure A/1) has been issued with the approval of the Divisional Railway Manager, Ajmer. For the orders passed by the Senior Divisional Engineer, an appeal could have been filed with the Divisional Railway Manager. But when the order has been passed with the approval of the Divisional Railway Manager, the appeal / representation would lie with the General Manager, Western Railway. In the instant case, the applicant was working as Khalasi and in his case, the appellate authority, as we understand, should not be higher than the Divisional Railway Manager. Moreover, the matter is of transfer and waiting for the representation to be decided would have served no purpose. Therefore, in the circumstances, we do not consider it justified to say that the applicant has not exhausted the alternate remedy available to him. Thus, the respondents' contention in this regard is rejected.

5. As for the second objection of the respondents, we observe that Shri Ghisa Lal may a proper party but not a necessary party. The applicant is challenging the order dated 7.7.99 (Annexure A/1) transferring him from Rani to Gandhidham as malafide and, therefore, it is for the respondents to see as to how the interest of Shri Ghisa Lal can be protected. Thus, this argument of the respondents is also not tenable.

6. We have heard the learned counsel for the parties and perused the records of the case.

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7. In the reply, the respondents have only mentioned that the transfer order dated 7.7.99 (Annexure A/1) was issued in the administrative interest. As has been discussed above, the applicant had joined his new post at Rani on 7.5.99 in terms of order dated 20.4.99 and within two months thereafter, the applicant was sought to be transferred and posted from Rani to Gandhidham whereas Shri Ghisa Lal was posted to Gandhidham under order dated 20.4.99 and he was being brought back from Gandhidham to Rani vice the applicant under order dated 7.7.99. We do not find any reason as to what administrative exigencies have arisen during the period of two months that have compelled the respondents to transfer the applicant to Gandhidham and bring back Shri Ghisa Lal to Rani. It is also contended by the applicant that Shri Ghisa Lal had continued at Rani right from his initial appointment with the respondent-department. Though this contention has been contradicted by the respondents, they have not furnished any detail as to where Shri Ghisa Lal had been posted during the service career with the respondent-department. We are firmly of the view that the order dated 7.7.99 (Annexure A/1) has been issued with a view to extend undue favour to Shri Ghisa Lal and this action of the respondents amounts to colourable exercise of power. The hearing in this case was over on 2.8.99 and the order was reserved. On 5.8.99, the learned counsel for the respondents has also shown us a note dated 5.7.99 signed by the Divisional Railway Manager in regard to the transfer of the applicant from Rani to Gandhidham. It has been stated in this note that the applicant belongs to general category. However, in the seniority list dated 29.2.96, the word 'SC' was shown against him. Since he is a general category candidate, he should have brought this to the notice of the superior authority for making necessary correction in the seniority list. It has been stated that this inaction on the part of the applicant causes serious aspersions on the honesty and integrity of the employee and this might have an advantageous effect on the seniority as well as consideration which have gone into his posting at Rani. It has also been mentioned in this note that ^{as a} change of caste status of an employee is a matter of serious concern, a separate enquiry is being ordered to investigate the whole episode. It has also been ordered in this note that the earlier orders (CP 402) need to be modified as under :-

"Shri Uda Ram Sukh to be posted in SEE (Works), Gandhidham.
Shri Ghisa Lal Ramdhani to be posted under SSE (Permanent Way),
Rani."

It has been argued by the learned counsel for the respondent that the applicant was posted in Rani considering him as 'SC' candidate and when it came to the notice of the authorities that he was not belonging to SC category, his transfer orders were modified. We have carefully considered the note dated 5.7.99 signed by the Divisional Railway Manager. It is seen that the word 'SC' crept in ⁱⁿ the seniority list against the name of the applicant ~~now~~

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for no fault of his. It is an administrative mistake and needs to be further investigated so as to fix the responsibility for the same. The applicant does not deserve to be punished for this administrative mistake. Once the posting orders have been issued and the applicant had joined the new place of posting, modification of the transfer and posting order dated 20.4.99 was not called for. If it is revealed that the applicant is responsible for inserting the word 'SC' against his name in the seniority list, then ofcourse, the administration can proceed against him. Thus, the argument put forth by the respondents in this regard does not help them to cover up the colourable exercise of power.

8. In the light of the above discussion, we allow this application and set aside the impugned order at Annexure A/1 dated 7.7.99. This would imply that Shri Ghisa Lal would continue to be posted at Gandhidham and the applicant would continue to be posted at Rani in terms of respondents' order dated 20.4.99 at Annexure A/2.

9. Parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Adm. Member

AM 10/8/99
(A.K. MISRA)
Judl. Member

cvr.

Copy Received by Applicant

3 Det
10-8-99

Rec'd
9/5/99
11/8/99

Part II and III destroyed
in my presence on 14-7-99
under the supervision of
Section Officer (J) as per
order dated 16/3/99

Section Officer (Robert)