

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR.

Date of Order : 10.12.2001

O.A. No. 255/2001.

Shri B.L. Gehlot son of Shri Bhanwar Lal Gehlot resident of near Balwadi school, Ganga Sahar, Bikaner, presently working as Law Assistant, Engineering Branch, Divisional Railway Manager's Office, Northern Railway, Bikaner.

... APPLICANT.

v e r s u s

1. Union of India through General Manager, Northern Railway Head Quarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner.
3. Senior Divisional Personnel Officer, Northern Railway, Bikaner.
4. Divisional Superintendent Engineer (Coordination), Northern Railway, Bikaner.

... RESPONDENTS.

Mr. N. K. Khandelwal, counsel for the applicant.
Mr. Salil Trivedi, counsel for the respondents.

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Hon'ble Mr. Justice O.P. Garg, Vice Chairman.
Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :
(per Hon'ble Mr. Gopal Singh)

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant Sh. B.L. Gehlot has prayed for quashing the impugned order dated 03.09.2001 (Annexure A-1), and for a direction to the respondents to allow the applicant to continue on the post of Law Assistant in the Engineering Branch, Northern Railway, Bikaner, and further to regularise the applicant on the post of Law Assistant because his initial appointment was made after following the prescribed procedure.

2. Applicant's case is that he was initially appointed as Assistant Station Master on 30.09.1983. The applicant on his

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own request was appointed to the post of Law Assistant in the Claim Branch vide respondents letter dated 06.12.1993 (Annexure A-2). The applicant worked on this post from 07.12.1993 to 02.05.1995, thereafter he was transferred to Engineering branch vide respondents letter dated 28.04.1995 (Annexure A-5). The applicant has been transferred vide respondents letter dated 03.09.2001 (Annexure A-1), on promotion as ASM in the grade of Rs. 5500-9000 and posted against the existing vacancy at Bijwasan. Feeling aggrieved, the applicant has filed this application.



3. The contention of the applicant is that he has been working on the post of Law Assistant for more than seven years and he cannot be reverted to a junior post in the junior time scale of pay without filling the post of Law Assistant by regularly selected candidates. Applicant has also contended that transfer of the applicant amounts to reversion, and these orders of transfer and reversion has been passed by an incompetent authority. Learned counsel for the applicant has contended that the action of the respondents is colourable exercise of power and his transfer is punitive. It has further been stated by the applicant that two posts of Law Assistant are lying vacant and selection is going to be held very shortly and the applicant can be considered for posting against those vacant posts.

4. In the counter, it has been stated by the respondents that the post of Law Assistant in the Claims branch of Bikaner Division, where the applicant was appointed as Law Assistant on ad hoc basis has been transferred to headquarters, and it was at the request of the applicant himself that he was posted in the

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Engineering department on the post of Law Assistant on a work charged post. It has further been stated by the respondents that the currency of work charged post in the engineering branch has expired and accordingly, the applicant has been shifted or transferred on promotion to Bijwasan. It has, therefore, been averred by the respondents that the application is devoid of any merit and is liable to be dismissed.

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

6. There is no dispute that the applicant had worked on ad hoc basis on the post of Law Assistant, first in the claims branch against a vacant post and thereafter in the engineering branch on a work charged post. Since the sanctioned post in claims branch was transferred to Northern Railway headquarters at New Delhi, the applicant so as to avoid his transfer to New Delhi prayed for his adjustment against the work charged post in the engineering branch. This prayer of the applicant was accepted and accordingly, he was posted on ad hoc basis against the work charged post. The currency of the work charged post having come to an end, the respondents have repatriated the applicant to his parent cadre of Assistant Station Master. We see no irregularity in the action of the respondents in transferring the applicant on the post of ASM. The contention of the applicant is that, no candidate has been selected in his place and, therefore, he cannot be transferred, is not tenable. It is very clear that the applicant was holding the post of Law Assistant against a work charged post and when the currency of the work charged post came to an end the applicant cannot lay claim on other post lying vacant on the Division. As a matter



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of fact, the post of Law Assistant is an ex cadre post and his appointment on ad hoc basis on that post does not vests any right in him to continue on that post for all times to come. The applicant has also contended that he is being transferred to a lower pay scale and, therefore, it amounts to his reversion. In fact the applicant has been enjoying a higher pay scale than his colleagues in his own cadre till now and he is now being shifted on a promotional scale in his own cadre. This transfer cannot be said to be reversion. In fact, it is repatriation to his own cadre. It is not the contention of the applicant that some of his juniors have been enjoying higher pay scale than him in his parent cadre. Learned counsel for the applicant has also cited many judgments in support of his contention that the transfer of the applicant is illegal and against the rules.



6. The applicant had also prayed for an interim relief for staying operation of impugned order dated 03.09.2001 (Annexure A-1). While examining the prayer in regard to interim relief, this Tribunal had in its interim order dated 28.09.2001 had already examined the following judgments :

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- (a). OA No. 3193/92 - Jugal Kishore Anand V/s Union of India and Others, delivered by the PB, New Delhi, dated 16.04.1993 ;
 - (b). Vice Chancellor Lalit Narayan Mithila V/s Dayanand Jhah, - AIR 1986 SC 1200 ;
 - (c). Rudra Kumar Sain & Others V/s Union of India and Others, 2000 LAB I.C. 2881 SC ;
 - (d). (1994) 28 ATC SC, Director of School Education Madras and Others V/s O. Karuppa Thevan and Others ;
 - (e). (2000) 4 SCC 20 - T.Vijayan and Others V/s DRM ;
 - (f). (1996) 33 ATC 56 CAT Delhi."

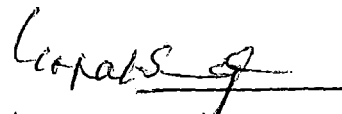
and rejected the prayer for interim relief. We do not

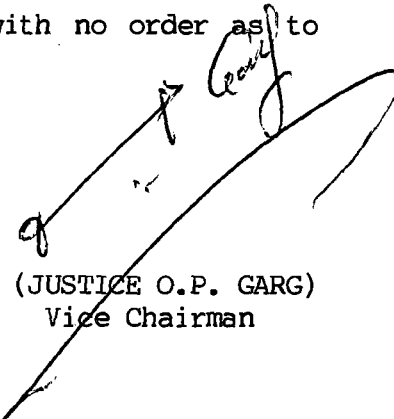
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consider it necessary to re-examine all these cases again. We are firmly of the view that the applicant has been holding the post of Law Assistant on ad hoc basis and has no right to continue on the said post specially when the post has ceased to exist. The applicant can always be repatriated to his parent cadre. In this view of the matter, we do not find any merit in this application and the same deserves to be dismissed.

7. The OA is accordingly dismissed with no order as to costs.


(GOPAL SINGH)
Adm. Member


(JUSTICE O.P. GARG)
Vice Chairman

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