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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO: 23/2003

DATE OF ORDER: June 03, 2003

Nilam Daughter of Shri Ram Chandra Koli, aged 40 years, office Superintendent Ist, In the Office of Assistant Engineer, North Western Railway, Abu Road, District Sirohi, R/o Quarter No. E 12 A, Railway Colony, Opposite Roadways, Abu Road, Sirohi.

...Applicant

VERSUS

(1) Union of India through the General Manager,
North Western Railway, Jaipur

(2) Divisional Railway Manager (Establishment),
North Western Railway, Ajmer

(3) Assistant Engineer,
North Western Railway,
Abu Road.



.....Respondents.

Mr. Vijay Mehta, counsel for the applicant
Mr. Salil Trivedi, counsel for the respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

O R D E R

Kumari Nilam has assailed the impugned order dated 30.04.2002 (Annexure A/1) and order dated 15/20.01.2003 (Annexure A/2) vide which she has been ordered to be transferred from Abu Road to Gandhidham under Assistant Engineer.

2. The brief facts of the case are that the applicant was initially appointed on compassionate ground on 05.10.1981 on the post of Clerk. She is presently employed on the post of Office Superintendent Ist under Assistant Engineer, North-Western Railway, Abu Road. She was ordered to be transferred vide impugned order dated 30.04.2002 (Annexure A/1). The said order was kept in abeyance on her representation. Subsequently on 20.01.2003, one Shri Jag Mohan Sharma has been posted on promotion vice the applicant. A representation was made immediately on 20.01.2003 which remains pending.

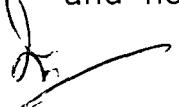
3. The further case of the applicant is that there has been a bifurcation of Western Railway and Abu Road has been included in the North Western Railway whereas Gandhidham is continued to be in Western Railway upto 01.04.2003 Gandhidham as well as the Abu Road were under Ajmer Division North Western Railway and after this cut-off-date Gandhidham would form a part of Ahmedabad Division within the Western Railway. It is



also averred that options have also been called to this effect. The applicant has not opted for new Ahmedabad Division of Western Railway. It has also been submitted that the applicant otherwise belongs to SC Category who have been provided with certain immunity/protection on his transfer in as much as persons belonging to SC/ST reserved category can only be transferred for very rarely and for very strong reasons.

4. The salient grounds, on which the Original Application has been filed, are that the transfer order has been made in clear violation of the guidelines issued by the Railway Board. Annexure A/1 & Annexure A/2 are non-speaking orders and do not contain any reason. The applicant has not opted for Western Railway or new Ahmedabad Division. She, therefore, cannot be transferred to place which is not a part of North Western Railway. The applicant is a lady and is faced with certain peculiar problems even her very appointment was made in compassionate circumstances. The person who has been ordered to be posted in her place is being posted on promotion.

5. The respondents have contested the matter and have submitted a detailed reply to the Original Application. It has been submitted that Shri Jag Mohan Sharma who has been promoted and posted at Abu Road on the post where the applicant was posted and the transfer is an incidence of service and no employee has a legal right to remain at a particular



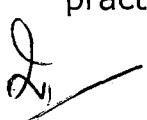
place. Shri Jag Mohan Sharma has not been impleaded as a necessary party. The Original Application suffers from non-joinder of necessary party therefore the same deserves to be dismissed. The further defence of the respondents is that the applicant has been transferred in terms of policy of periodical transfer. Abu Road and Gandhidham Section are still in the Ajmer Division under North Western Railway. If Gandhidham or Gandhidham Section will be kept in Western Railway then the staff of Ajmer Division who are working in Gandhidham Section would be returned back to Ajmer Division. So far as the options are concerned, the options have been called from the employees who are working under Gandhidham Section which is proposed for new Ahmedabad Division of Western Railway. The applicant can join at Gandhidham and submits her option. She is a SC employee and working at Abu Road since long back and longer stay at Abu Road by itself is a strong reason for transferring her. The grounds made in the Original Application generally refuted and denied.

6. With the consent of the parties, the case was heard at admission stage for final disposal. I have heard Mr. Vijay Mehta, the learned counsel for the applicant as well as Mr. Salil Trivedi, the learned counsel for the respondents and have carefully considered the pleadings and the records of the case.



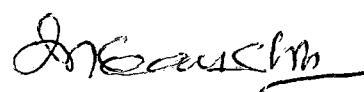
7. At the very outset, the learned counsel for the parties have submitted that from 01.04.2003 Gandhidham Section has already been brought in Ahmedabad Division which is newly created Division in the Western Railway and in view of this factual development, the applicant is required to be kept in Ajmer Division of North Western Railway Zone. Because of the subsequent development and as per the very fair pleading on the part of the respondents that if the Gandhidham or Gandhidham Section are kept in Western Railway then the staff of Ajmer Division who are working in Gandhidham would be returned back in Ajmer Division. Thus, the impugned orders, as far the applicant is concerned, do not survive since the applicant has not opted for Western Railway and she is required to be kept in North Western Railway in Ajmer Division.

8. There is hardly any further deliberation required on the main point involved in this case i.e. regarding the very jurisdiction/competence/authority of transferring the applicant from Abu Road to Gandhidham which are in different Railways. As regards the other ancillary ground that applicant belongs to SC/ST category and there are certain protections provided by the Railway Board vide Circular dated 08.04.1991 (Annexure A/9) which contains the brief of main Circular dated 24.12.1985 and specifically provides that SC/ST employees should be transferred very rarely and for very strong reasons and as far as practicable they should be confined to their native district or



adjoining districts or places, it is expected that the respondents shall take judicial notice of the same and adhere to their own instructions, in case it is necessary to transfer the applicant from her present place of posting.

9. In view of the aforesaid discussions, the Original Application is succeeds and the impugned order dated 30.04.2002 (Annexure A/1) and order dated 15/20.01.2003 (Annexure A/2), so far the same relate to the applicant, are hereby quashed and set aside. The rule already issued is made absolute. In the facts and circumstances of the case, there shall be no order as to costs.


(J.K. KAUSHIK)
JUDICIAL MEMBER

Kumawat

R. C. P. J.
Surf
5/6/03

Releas

Signature

5/6/03

Part II and III destroyed
in my presence on 13.5.07
under the supervision of
section officer () as per
order dated 5.2.05

V.G.R.M.
Section officer (Record)