

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, AT JODHPUR

.....
Original Application No. 284/2007

Dated this the 5th day of April, 2011

Coram: HON'BLE MR. JUSTICE S.M.M. ALAM, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

Madan Mohan Ratnu s/o Sh. Balu Dan Ratnu, present post Section Engineer, (P.Way) Western Railway, at present working as Police Inspector (SPE), CBI, office of S.P., CBI, Jodhpur on deputation, R/o 113, Hanumant A, BJS Colony, Jodhpur.

....Applicant

By Advocate Mr. Rameshwar, Sr. Advocate with Mr. Mahesh Bora, ,
counsel for the applicant

Vs.

1. The Union of India through its General Manager, Western Railway, Headquarters Office, Church Gate, Mumbai.
2. The General Manager, North Western Railway, Headquarter Office, Opposite Railway Hospital, Jaipur.
3. The Divisional Railway Manager, Mumbai Central (BCT), Mumbai.

By Advocate Mr. Manoj Bhandari with Mr. Govind ~~Sethi~~, counsel for respondents.

....Respondents

ORDER

Per Hon'ble Mr. Sudhir Kumar, Member (Administrative)

The applicant is an employee of the Railways, and through this Original Application has sought the following reliefs related to his request for transfer from one Railway Zone to another:-

- i) Respondent No.1 may be directed to issue a formal order of transferring the lien of the applicant from Western Railway to North Western Railway and direct their office to transfer the entire service record of the applicant to Headquarter office of N.W.R.
- ii) Respondent no. 2 may further be directed to insert the name of the applicant at appropriate place in the seniority list of Engineering Department as per his date of appointment in the respective grade. Further the respondent may be directed to allow the applicant to appear in the selection for Group B post.
- iii) Any other relief to which this Hon'ble Tribunal deems fit and proper may also be granted.
- iv) This Original Application may kindly be allowed with all consequential benefits like seniority and promotion etc. with costs."



2. The relevant facts leading to this case are that the applicant was initially appointed w.e.f. 10.2.1987 as Permanent Way Inspector Gr.-III of Mumbai Central (BCT) Division of the Western Railway. The applicant was subsequently posted as Chief Vigilance Inspector at Ajmer w.e.f. 6.1.1995, and was in the meanwhile promoted first as Permanent Way Inspector Gr. II, and later in Grade-I. The applicant was afterwards selected for being sent on deputation as Police Inspector in C.B.I., and joined in CBI on deputation on 10.1.2002. It is stated that while the applicant was working as Chief Vigilance Inspector at Ajmer, the process for establishing of a new Zonal Railway, namely North Western Railway with H/Q at Jaipur, was undertaken by the Railways, and in response to the Railway Board's circular dated 6.12.1996, the applicant had submitted his option for his transfer from Western Railways to North Western Railway, through proper channel and form of option had been forwarded by his immediate supervisor in the CBI to the NWR. Acting upon the option submitted by the applicant, the competent authority, the GM (P), NWR, Respondent No.2, accord^{ed} his approval, and sent a letter on 27.12.2002 to the DRM Mumbai (BCT), Respondent no.3, requesting for relieving the applicant for his joining in the newly constituted NWR. The applicant has submitted that the respondent no.3 had also agreed to relieve the applicant from the Western Railways, but the



order of the necessary permission for transferring the applicant's lien from the Western Railway to the H/Q office of the newly being constituted NWR was never received.

3. As a result, when the newly constituted NWR issued the letter for selection for promotion to the Group-B posts of Assistant Engineer regular 70% (in the scale of Rs. 7500-12,000/-) in the Engineering Department of NWR, in the eligibility list annexed to that circular the name of the applicant obviously did not appear, apparently on the ground that the name of the applicant had not at all been included in the seniority list of H/Q of the NWR. The applicant has produced Annexure A/4 dated 09.07.2002, by which it was indicated that the existing Bikaner and Jodhpur Divisions of Northern Railway, and the existing Jaipur and Ajmer Divisions of Western Railway were to be merged and constituted into the new North Western Railways, and fresh options were allowed to be exercised by the staff, by extending the date of exercise of such options to the revised last date of 31.8.2002, and further prescribing that the staff short listed for transfer/posting to the H/Q office of the new Zonal Railway should be relieved to be in position by 30.9.2002, and 1.10.2002 was indicated as the date of constitution of the new Zonal Railways. It was further mentioned that any transfer to the new zonal Railways on or after 1.10.2002 will be treated as request transfer on bottom seniority in

the recruitment grades, subject to other conditions governing such request transfers being fulfilled.

4. The applicant submitted that he had sent his option for transfer from Western Railway to North Western Railway, through proper channel, which was forwarded to N.W.R. Jaipur on 6.9.2002, a copy of which was also simultaneously sent by the applicant to his parent department i.e. SPO (Engg.) through letter dated 4.9.2002. The option form submitted by the applicant was received by the Respondent no.2, General Manager (P), who as the competent authority accorded approval for transfer of the applicant and a few others vide letter dated 27.12.2002 (Annexure A-6), and the same was sent to the D.R.M., BCT (and to the other respective Divisions). In turn the DRM, BCT, vide his letter dated 17.9.2003 forwarded the representation/option of the applicant to the Respondent no.1 i.e. G.M. (P) Churchgate (CCG), Mumbai, indicating that the competent authority i.e. Senior Divisional Engineer (H/Q) has agreed to relieve the applicant on his transfer to N.W.R. The respondent no.1 was then required to issue a formal order regarding transfer of lien of the applicant alongwith his service records to N.W.R., but so far no formal order has been issued, due to which the name of the applicant has not been shown in the seniority list of Engineering Department maintained at Head Quarter Office of N.W.R., and he could not be



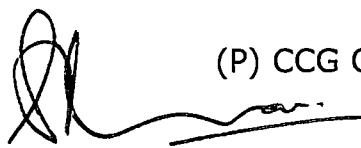
considered eligible for selection to the Group B post in NWR. The applicant submitted that it appears that his case for transferring his lien from Western Railway to North ~~West~~ Western Railway has not been Ph. considered due to his deputation with the SPE (CBI), but since the deputation period of the applicant was going to expire in the month of January, 2008, the applicant submitted that he would be bound to join at H/Q office of Western Railway, and it would be injustice to the applicant, as many of his juniors, who had applied for such transfer, had not only been transferred, but that they were appearing in the selection for the next higher post at H/Q office of N.W.R.

5. The applicant has taken the ground that pursuant to Railway Board's letter dated 6.12.1996, as amended from time to time, he had opted for N.W.R., and though physically he was working on deputation with CBI, his option form was accepted, approval was granted and the competent authority had agreed to relieve the applicant, yet no formal order had been issued by the Respondent no.1, which is arbitrary and prejudicial to his interest, and this inaction is liable to be declared illegal. Due to this inaction on the part of the Respondent no.1, neither the name of the applicant has been inserted in any of the seniority lists of Engineering Department of H/Q office, N.W.R., nor he has been held eligible for Group-B post, and juniors to



the applicant at joined at NWR H/Q, and are appearing for selection in Group-B post, and therefore the applicant pleaded that the inaction of respondent no.1 is discriminatory. The applicant placed reliance on the decision of this Tribunal rendered in the case of **K.D. Swami Vs. UOI & ORS. O.A. No. 246/2004** dated 23.2.2007. Aggrieved by the inaction on the part of respondents, the applicant had sought the reliefs as mentioned above in the opening paragraph.

6. In response to notice, respondents No. 1 & 3 filed their reply written statement, contesting the prayers made by the applicant. It was stated that although the applicant was working as Police Inspector in CBI on deputation, his lien was maintained with the D.R.M. Mumbai Central (BCT), in the category of P. Way Supervisor. Further, it was submitted that his application for transfer to the new Railway Zone had never been received in the office of D.R.M. Mumbai Central, and therefore, the same had not been forwarded by the concerned office, and therefore the question of agreeing to relieve the applicant did not arise. It was further stated that though the General Manager, (P), NWR, Jaipur, had vide his letter dated 27.12.2002 conveyed the acceptance in favour of the applicant, but it had not been received in the W.R. G.M.'s office, and for relieving the staff to a new zone, GM (P) CCG Office's approval is required, which was not received from HQ



office CCG, and in absence of the same the applicant could not have been relieved to join the new zone. It was further submitted that the request application of the applicant dated 5.9.2003 for transfer from Western Railway to North Western Railway was received through Sr. DEN, H/Q and the same was forwarded to GM (P) CC with the remark that competent authority, i.e. Sr. DEN, H/Q, has agreed to relieve the applicant on his transfer to NWR. But the GM (P) CCG, had vide letter dated 9.10.2003 advised that the acceptance earlier conveyed by the GM (P), NWR vide their letter dated 18.8.2003 had since been cancelled, and therefore the question of issuing order for transfer of the applicant does not arise. It was further submitted that since the competent authority had cancelled the approval earlier granted for the applicant's transfer from Western Railway Zone to North Western Railway Zone, the question of the applicant's lien to be maintained in NWR zone is absolutely not tenable and sustainable in the eyes of law, and the lien/seniority of the applicant has to be maintained at Bombay Central Division only, and therefore the name of the applicant rightly does not appear in the eligibility list of Group-B posts issued by H/Q office of NWR, Jaipur. It was submitted that the GM Western Railways had written to the CBI on a number of occasions, requesting to repatriate the services of the applicant back to the Western Railway, as his lien was being maintained in the Western Railway,



Bombay Central Division, and the copies of such communications were annexed as ~~Annexure R/4~~ collectively, to show that the lien of the applicant is very much maintained with the Western Railway, Bombay Central Division, and therefore the contention raised by the applicant is not tenable and sustainable in the eyes of law.

7. Respondent No. 2 filed a separate written statement. It was stated that the option form filed by the applicant was received by the NWR, and after receiving the option form, vide letter dated 27.12.2002, GM, (P), NWR Jaipur had conveyed the acceptance in favour of the applicant. It was further stated that the Railway Board had vide its letter dated 30.12.2003 given specific directions that the persons who have been ordered to be transferred to the new zone should be relieved prior to 31.10.2003, but since neither the applicant was relieved prior to 31.10.2003 by the GM Western Railway, Mumbai, nor his papers with regard to lien were sent to the NWR, Jaipur, therefore the name of the applicant rightly did not appear in the eligibility list of Group-B posts issued by the H/Q office of NWR Jaipur (vide Annexure R/1). It was stated that since the approval had never been extended by the Western Railway, and the approval granted by the NWR, Jaipur Zone, had been cancelled by the NWR, therefore the question of keeping the applicant at NWR, Jaipur does not arise. It was

submitted that it is settled law that after the period of deputation is over, the deputationist has to be repatriated back to his parent department. It was stated that the facts of the case of **K.D. Swami** (Supra) as referred by the applicant are totally different, as no cancellation order was passed by the NWR in that case, but, in the instant case, the approval granted by the NWR, Jaipur, has also been cancelled by the NWR, and therefore the question of transferring the lien of the applicant from Western Railway to NWR, Jaipur, is not tenable and sustainable in the eyes of law, and therefore the **K.D. Swami** (Supra) Case is not relevant to the facts of the instant case. In these circumstances, it was prayed that the O.A. deserves to be dismissed with exemplary costs.

8. The applicant filed a rejoinder also, in which he more or less reiterated the contentions taken in the O.A. The applicant tried to show that the statements given by the answering respondent's are contradictory, and that the cumulative effect of the written statements of Respondents 1 & 3 and of Respondent No. 2 is that the Western Railways itself, had expressed its disability to relieve the applicant, while the contention taken in the written statement is that NWR had withdrawn the consent, which is factually incorrect. The applicant also alleged discrimination stating that one of the persons

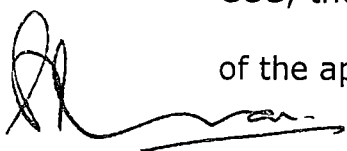
named in Annexure R/1 had since been transferred as per his option, and was working in the H/Q office of NWR at Jaipur, wherein in his case such an opportunity was denied. The applicant further stated that the strength of the officials working in the cadre of Senior Supervisor of Permanent Way in the Western Railways, where the applicant is working, are excess and a notice has been issued that those who are excess in the cadre are going to be reverted, and therefore it is wrong for the respondents to state that there was dearth of officers in Bombay Division because of which he has not been relieved.

9. We have heard the learned counsel for the parties and carefully gone through the records produced before us by both the sides.

10. The learned counsel for the applicant emphasized on the Annexure A/8 dated 17.8.2003, stating that the competent authority was the Sr. DEN H/Q, who had agreed to relieve the applicant on his transfer to North Western Railway, and yet the orders were not issued.

On the other hand, the learned counsel for the respondents submitted that the Sr. DEN H/Q was only the Cadre Controlling Authority of the applicant, and not the competent authority to sanction the applicant's inter-zonal transfer to NWR. He pointed out that the letter dated

17.9.2003 (Annexure A/8) was issued from DRM (P) BCT to the GM (P) CCG, the controlling and competent authority to sanction the transfer of the applicant to NWR.



11. The learned counsel for the applicant also submitted that the Annexure R/1 produced by the respondents had made a reference to the letter dated 3.7.2003 of the GM (P) CCG Western Railway by which the NWR had been informed that in view of shortage of technical/works staff, the 19 officers mentioned in that letter would not be relieved, but that the respondents had failed to produce that letter dated 3.7.2003 alongwith their reply written statement.

12. The learned counsel for the applicant further stated that in the face of that letter dated 3.7.2003, it was wrong for the respondent no. 1 GM Western Railway H/Q to have recorded, as is apparent from Annexure R/2 dated 9.10.2003, that since the North Western Railways have cancelled their orders, the same status may be maintained, and that thereby the permission to relieve the applicant from WR for NWR was denied. On the other hand, the learned counsel for the respondents responded that through letter dated 3.7.2003 mentioned in R/1, the Western Railways had intimated the NWR about the shortage of technical and works staff, because of which it was not in a position to relieve a number of officials, including the applicant, and when through letter dated 18.8.2003 (R/1) this position was agreed to by the NWR, Respondent no.1 GM Western Railway had correctly recorded that NWR have cancelled the orders, and the same status may be maintained. The learned counsel for the applicant

prayed that no reasons have been recorded to change the opinion of WR from the opinion of the Sr. DEN H/Q agreeing to relieve the applicant, conveyed through letter dated 17.9.2003, but the learned counsel for the respondents submitted that when in the meanwhile the NWR had itself communicated their agreement not to insist upon relieving the technical works staff of the Western Railway, there was no factual or legal mistake committed by the GM in passing the orders and in communicating the orders so passed in reply to the DRM (P) Mumbai Central Annexure R/2 dated 9.10.2003.

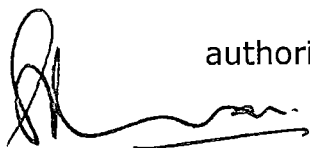
13. Learned counsel for the applicant also emphasized on the decision of this Tribunal dated 23.2.2007 rendered in O.A. 246/2004 in the case of **K.D. Swami** (Supra). However, the learned counsel for the respondents submitted that this case is not at all applicable to the facts of the present case in view of the fact that in the present case the transfer of applicant from Western Railway to NWR has never been given effect to, and he had all along continued to be on deputation with the CBI during the whole of the relevant period.

14. We find merit in the contention of the respondents that nobody other than the GM Western Railway H/Q CCG was the competent authority to sanction the transfer of lien of the applicant from Western Railway to the newly created NWR, and that such approval had never been accorded by the Respondent no.1 GM

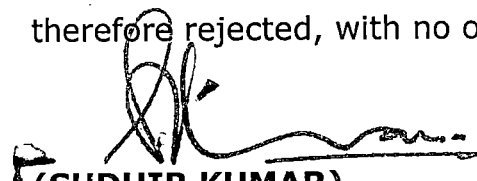
Western Railway. Also, it appears that no benefit of the case in **K.D. Swami** (Supra) decided on 23.2.2007 would accrue to the applicant in the present case, since the facts of the two cases are entirely different. The transfer of the applicant's lien from Western Railway to NWR has never been completed for his seniority to be infringed by the NWR publishing the eligibility list of officers through impugned Annexure A/1. The applicant is still an employee of the WR only, and his seniority counts only in the technical cadres of WR.

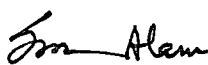
15. It is seen that the applicant had never reported back before the Western Railways, and presented himself before his cadre controlling authority for seeking his transfer to the newly constituted North Western Railway. He had also not forwarded his application for absorption in the newly created NWR through proper channel of his cadre controlling authority in the Western Railways, and had got it forwarded directly through SP CBI, from his deputation post itself, through Annexure A/5 dated 6.9.2002, which itself was after the closing date for receipt of options by NWR by 31.8.2002.

16. In such circumstances, much later, in the year 2003, the case of the applicant for transfer from Western Railways to NWR, without treating it as a request transfer at bottom seniority, could have been considered only as an exceptional case by the respondent authorities. The respondent authorities have, however, due to



administrative exigencies, and shortage of staff, not acceded to this request, and with the concurrence of both the Western Railways and NWR, it was decided not to agree to the request of the applicant for transfer of his lien from Western Railway to NWR. The applicant does not have any right to seek such zonal transfer, as a matter of right, irrespective of the administrative exigencies of his parent Railway. His request was first accepted, but when he did not revert back from his deputation in the CBI in order to quickly avail of such zonal transfer, in the meanwhile on a rethinking the authorities concerned decided to cancel their earlier mutual agreement, due to administrative exigencies. Now that the applicant has been reverted back from his deputation to the CBI, he wants to put the clock back to where it was at the time of initial acceptance of his option by the NWR, which is not possible. In these circumstances, we do not find that the applicant is entitled to any relief as prayed by him in this O.A. and the same is therefore rejected, with no order as to costs.


(SUDHIR KUMAR)
MEMBER (A)


(JUSTICE S.M.M. ALAM)
MEMBER (J)

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