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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION No. 120/2010

Date of Order 29.01.2012

(Reserved on 19.01.2012)

CORAM: HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

Rabindra Lal Mukharjee S/o Shri Birendro Lal Mukherjee, aged about 57 years, by caste Mukharjee, R/o House No. 176, Ward No. 17, Near Muskaan STD, Sri Karanpur Road, Puranai Abadi, Sriganganagar holding the post of Head Goods Clerk under transfer from Hanumangarh to Suratgarh, North Western Railway, Bikaner.

.....Applicant.

By Mr. Harish Purohit, Advocate.

Versus

1. Union of India through the General Manager, North Western Railway, H.Q. Jaipur.
2. Divisional Railway Manager, Bikaner Division, Bikaner.
3. Divisional Personnel Officer, North Western Railway, Bikaner.
4. Sr. Divisional Commercial Manager, North West Railway, Bikaner.

.....Respondents.

By Mr. Manoj Bhandari, Advocate.

O R D E R

The applicant of this case had approached this Tribunal on 30.04.2010 against the orders of his transfer dated 13.04.2010, by which he stood transferred from Hanumangarh to STP Suratgarh. He has come before this Tribunal with the prayer that his posting at STP Suratgarh by the impugned order at Annex.A/1 was made without following the correct order of seniority in his case, and that since he was very close to the date of superannuation, such transfer should not have been ordered in his case. When the case was first taken up for hearing on 10.05.2010 for issuance of notices, a wrong submission appears to have been made that the applicant was going to retire after two years and two months only, and therefore that applicant's transfer was against the transfer policy framed by the respondents in connection with the transfer. Believing the submission to be true, the OA had been admitted for the purpose of issuance of notice, and notices had been issued.

2. However, it is seen that the date of superannuation of the applicant is actually 31.03.2012, and on the date on 10.05.2010, when a submission was made in this

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regard before this Tribunal, it was wrongly stated that the applicant was retiring after two years two months, while the correct picture was that he was retiring after more than two years and ten months from that date. If the correct picture of more than two years and ten months remaining before his date of superannuation had been presented to the Bench that day, perhaps the Bench may have had a different appreciation of the facts. Still, looking into the circumstances, it cannot be termed as a perjury by the applicant before this Tribunal, because, as on that date the applicant had already turned 57 years of age, which age has been correctly mentioned by him in the cause title, and in para 5.3 Grounds of the O.A., and in the verification dated 30.04.2010, though the OA did not mention the correct date of his superannuation anywhere.

3. The respondents have filed a detailed reply written statement with numerous annexures to prove their point that the applicant fell within the purview of the cases who could have been considered for being transferred in the manner the applicant was transferred through the impugned Annex.A/1. While on the one hand the applicant has insisted that before transferring him to STP Suratgarh, the respondents should have drawn the correct seniority list of the posts of Head Goods Clerk, and of the post of Goods Supervisor, which posts now stand merged in the single pay scale of Rs. 930-34800 in the grade pay of Rs. 4200/-, and if such lists had been correctly drawn, the applicant may not have been liable to undergo posting through the impugned Annex.A/1. Further, the applicant has contended that the rules of the respondents make it clear that while making postings at STP Suratgarh, the respondents are required to post persons in descending order of seniority. Yet, he alleged that two such eligible Goods Clerks have not been transferred, though they stood higher in the place seniority than him.

4. The respondents denied these submissions and stated that there has been no violation of the transfer policy in the instant case, and that even otherwise such a transfer policy is not legally enforceable, and on this ground alone, the OA is liable to be dismissed. It was further submitted that after the VI Pay Commission, an order pin-pointing the cadre of Goods was issued in order to pinpoint the location of

various cadres in the new pay band + grade pay system introduced at the time of implementation of the VI Pay Commission. It was further denied that any merger of cadres had taken place, ~~as~~ and it was submitted that eligibility of salary at par, within the same pay band, even at the same grade pay, does not mean a merger of cadres, and that the designations of the Railway servants have remained unchanged even after introduction of VI Pay Commission Pay Scales. It was submitted that such fixation of salary within the new Pay Band + Grade Pay System for different cadres has got nothing to do with the interse seniority in between the cadres, and the resultant transfers and postings policy of the concerned staff.

5. The respondents further submitted that since the applicant had not reached 58 years of age, and was having 2 months and 11 months for his date of superannuation, the impugned orders of his transfer had been passed correctly. It was further mentioned that if the applicant had any grievance against any such orders or posting, he could have represented against the same, but he has approached this Tribunal without taking recourse to the opportunity of seeking redressal of his grievance within the department. It was submitted that the list of priority staff for posting at a station of their own request had been prepared and circulated, and that being below 58 years of age then, the applicant had been correctly posted in STP Suratgarh siding as per the policy in existence at the time of issuance of the order. It was prayed that this Tribunal may not interfere with the said transfer order at the instance of the applicant, which order has been issued in accordance with law and exigencies of administrative service. It was further submitted that since the principle of making such postings as per descending order of place seniority had been correctly followed in the case of the applicant, therefore the OA is liable to be rejected on this count alone. It was further submitted that Hon'ble Supreme Court has laid down the law that a transfer order should not be interfered with by the Tribunal, unless there is some statutory infraction, or there is some mala fide, both of which cases do not exist in the present case, and therefore the O.A. is liable to be dismissed on this ground also. It was lastly prayed that since the applicant has not been able to show any



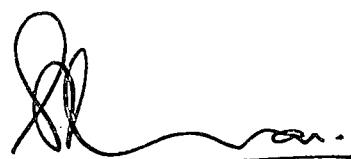
infringement of his legal rights, the OA deserves to be dismissed with exemplary cost, and the prayer for interim relief also deserves to be dismissed.

6. Heard learned counsels who argued their case vehemently according to the lines of their pleadings as stated above.

7. It is clear that in this case this Tribunal is not concerned with either the matter of seniority or inter se seniority between the two cadres in the case of merger of two cadres, as this Tribunal has not been called upon to do so, either by the applicant or by the respondent Railways. The orders of the applicant's transfer were issued when he had around two years and eleven months left in his service, and had not crossed the age of 58 years, which was the threshold for applicability of the policy which was being followed by the respondent department not to post such persons to the STP Suratgarh. However during the course of the period of one year and ten months which have elapsed since the date of filing of the O.A. on 30.04.2010, when the applicant had full two years and eleven months of service left, it is obvious that when it was filed, the OA did not have any merit whatsoever, and that by getting this Tribunal to issue notice on 10.05.2010, by making a wrong submission, the applicant has now crossed well beyond 58 years, and is close to reaching the age of 60 years in less than two months from now. The applicant has already achieved his purpose of not getting relieved, and not obeying the orders of transfer by entering into litigation without first exhausting the available remedies and by getting this Tribunal to issue notices. Even though in Para 6 of the OA he has mentioned that he has availed of the departmental remedy by filing a representation in this regard, he has not brought on record any representation filed by him in respect of the impugned orders of his transfer dated 13.04.2010. Therefore, by merely making a bland statement in this regard, the applicant has succeeded in avoiding the available channels of administrative redressal of his grievance, and had approached this Tribunal.

8. It is, therefore clear that the O.A. does not have any merit, and that the respondents were within their powers, as on the date they had issued the impugned orders at Annex.A/1, to order the transfer of the applicant, and that the applicant had

mis-led this Tribunal by wrongly submitting on 10.05.2010 that he was retiring only after just two years and two months, believing which the Bench had ordered for issuance of notices. Therefore, the O.A. is rejected, with a cost of Rs. 1,000/- imposed on the applicant, payable to Legal Services Authority of the High Court of Rajasthan, Jodhpur.



(Sudhir Kumar)
Member (A)

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