

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

ORIGINAL APPLICATION NO. 08/2010

Date of Order: 05-02-2010

HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER

Yog Vardhan Mishra S/o Shri Pushkar Dutt Mishra, aged about 38 years, R/o 12, Bank Colony, Abu Road (Rajasthan).

Presently work as Assistant Loco Pilot, Jodhpur Railway Station, North Western Railway.

....Applicant

Mr. Sanjeet Purohit, counsel for applicant.

VERSUS



1. Union of India, through the General Manager, Northern – Western Railway, Ganpati Nagar, Jaipur.
2. The Senior Divisional Mechanical Manager, Divisional office, Northern-Western Railway, Ajmer.
3. The Divisional Railway Manager, Northern-Western Railway, Jodhpur.

....Respondents.

Mr. Salil Trivedi, counsel for respondents No.1 & 2.
Mr. Govind Suthar, proxy counsel for
Mr. Manoj Bhandari, counsel for respondent No.3.

**ORDER
(Per Hon'ble Mr. V.K. Kapoor, Administrative Member)**

Shri Yog Vardhan Mishra has filed this OA against the respondents challenging the impugned order dated 22.12.2009 (Ann.A/1) in regard to his transfer from Jodhpur to Bikaner. The applicant has sought the reliefs that are as under:-

- "8.1 That record of the case may kindly be called for.
- 8.2 That the order impugned dated 22.12.2009 (Annx.A/1) may kindly be declared illegal & the same may kindly be quashed and set aside.
- 8.3 That respondents may kindly be directed to allow the applicant to continue the services at Jodhpur Division itself.

Yog

8.4 Any other relief, which this Tribunal deems fit and proper in favour of the applicant, may be granted.

8.5 The Original Application may kindly be allowed with costs and all consequential benefits may be granted in favour of the applicant."

2. The case in brief is that the applicant entered into service of Railways in Ajmer Division on 08.12.1993 as office khalasi grade IV employee; posted at diesel shed, Abu Road. The DRM (Estt.) Ajmer initiated process of promotion to the post of Astt. Loco Pilot from eligible employees working in mechanical department. The written and psychological exams were held on 13th June, 2009 and 01st/02nd July, 2009 in which applicant was successful. The provisional panel list prepared vide order dt 15.7.2009 (Ann.A-2) by which seniority of successful candidates got prepared as per rule 309 read with rule 303 (Chapter III of Railways Establishment Manual), the selected candidates were sent to Zonal Railway Training Institute, Udaipur for training in July-August, 2009. In all 38 candidates on promotion were selected; merit list of 32 candidates of Ajmer division was prepared on 08.8.2009, applicant was at Sl.no.5; he was on merit 12 in entire Ajmer Division (Ann.A-3,A-4). Later, respondents prepared a provisional merit list, applicant was placed at Sl. No. 30 whereas his position was at Sl. No.12 by Zonal Railway Training Institute, Udaipur. After preparation of this panel, he was transferred on temporary basis at Jodhpur vide order 02-12-2009 (Ann.A-5) at Zonal office, Jodhpur. A decision at higher level was taken to keep 12 employees in Ajmer Division, 18 in Jodhpur and 08 in Bikaner divisions. Applicant joined his duties at Chief Crew Controller (Loco) Abu Road vide order 05-12-2009 (Ann. A-6). In pursuance

WPS-6

(T)

of order dated 02.12.2009, applicant was relieved on 08.12.2009 (Ann.A-7) joined duties in DRM office of Jodhpur on 09.12.2009. Later as per order 15.12.2009, he was kept at Jodhpur station itself (Ann.A-8). Applicant's version is that he had higher seniority /merit, thus his movements to Jodhpur and other places were uncalled for, whereas others junior persons (12) were kept at the original place of posting Abu Road. Vide order dated 22.12.2009, decision was taken to keep 17 such employees at Jodhpur and 09 at Bikaner division, he was directed to join his duties at Bikaner division. The applicant has prayed to quash this order of 22.12.2009 (Ann.A-1) issued by the respondents. He has resented the frequent transfers in his case, malafide exercise of power and intentional action/harassment on respondents' part.

3. Learned counsel for respondents in interim reply has stated that applicant was posted at Bikaner on promotional post of asstt. loco pilot on 22.12.2009. Out of 38 promoted employees, 12 were kept in Ajmer division, 18 posted at Jodhpur division and 08 at Bikaner division as per HQ directions. As suitable candidates were not available at Jodhpur and Bikaner divisions, the selected candidates were posted in two divisions for a period of two years on temporary basis. The seniority and lien of promoted/selected employees of asstt loco pilots were maintained in Ajmer division itself (Ann.A-5). Later, the HQ issued instructions that 17 employees were to be posted on promotion in Jodhpur division and 09 employees in Bikaner divisions, as there was shortage of trained loco employees in Bikaner division. Therefore, instead of

WPSO/S

18 Assistant Loco Pilots, 17 were retained at Jodhpur division and 09 of them were posted at Bikaner division, as per order dated 22.12.2009 (Ann.A-1). Further, as per letter dated 06.8.2009 and 08.8.2009, 12 employees were already above the applicant, thus he cannot be at 12th position as contended by him. In view of administrative exigencies and running effective administration of trains, the selected employees of the Ajmer division were posted at Jodhpur and Bikaner divisions as per demand. It is not a case of transfer or frequent transfers, applicant cannot be permitted to choose his place of posting on promotion at a particular place. Respondents have prayed to dismiss present O.A. and vacate interim order/stay granted by this Tribunal on 12.01.2010.

4(a). Learned counsel for applicant has argued that in the present panel, seniority is prepared as per final merit list. The written examination for the promotional posts of astt. loco pilots was held on 13th June, 2009 and psychological test held on 01st/02nd July, 2009, in which applicant was declared successful. The selected candidates were sent to Zonal Railway Training Institute, Udaipur and merit list was prepared as per panel (Ann.A-3, A-4). Applicant was placed at Sl. no.5 in Ajmer division, with exclusion of 01 candidate of Jaipur division who was also at Sl no.4. In the overall list, applicant's merit was at Sl. no. 30 (Ann.A-4), one person Shri Praveen kumar at Sl. no.33 belonged to Jaipur. In this merit list, applicant is placed at Sl.no.30, there are 08 persons above him. The case of Mufid Ahmed is also cited at Sl no.17 vide order/list dated 08.8.2009 (Ann.A-4), whose merit is

Upper

shown as Sl.no.5/4. While quoting the plaint para No.4.3, applicant has contended that reliance on the provisional panel list is wrong, 12 persons junior to him were posted at Abu Road, whereas applicant was sent to Bikaner division which is basically wrong as he is higher in merit/seniority. It is further contended by applicant that he was quite senior in the panel/merit list, thus he is not supposed to be posted/shifted to Bikaner. Earlier vide orders of 02.12.2009, 05.12.2009, 08.12.2009 etc. applicant has been transferred/moved to Abu Road and then Jodhpur etc., he is frequently transferred at these places in the span of 03 weeks. Railway Establishment Manual (Chapter-III) refers to initial recruitment; it does not have correlation with promotions, rule 303 to rule 309 are to be read simultaneously so as to reach some conclusion. Applicant is certainly senior to other persons, therefore, as a matter of right, he should not be shifted outside present posting i.e. Jodhpur division to Bikaner division.

4 (b). Learned counsel for respondents while narrating the facts has averred that by provisional list i.e. 08.8.2009 applicant's name was at Sl.no.5 (Ann.A-4) in Ajmer division. In this list name of Mufid Ahmed at Sl. no.17, this being merit list of Ajmer division, applicant's position at Sl.no.12 is not true. In combined list, he is at Sl.no.97 vide order dated 15.7.2009 (Ann.A-2). As there was shortage of asstt loco pilots in Bikaner division, one such employee/loco pilot was to be taken out from Jodhpur and posted at Bikaner division, applicant was posted to Bikaner division vide order dt 22.12.2009. This order was affected

typed

because of administrative exigencies and proper functioning of Railway administration by way of posting trained loco pilots at Bikaner. It is not a case of frequent transfers; no relief need be given to applicant. Respts' counsel has relied upon citation namely Govt. of A.P. vs. G. Venkata Ratnam 2008 AIR SCW 5137.

4(c). The applicant's counsel has contended that this ruling put forth by the respondents, is not applicable in the present case. It is a malafide exercise of power on respondents' part, applicant is badly harassed by way of transferring him from Abu Road-Jodhpur-Bikaner in a short period of three weeks.

5. It is an admitted fact that the applicant entered into services of Railway department in Ajmer division on 08.12.1993 as office Khalasi Gr.IV employee, was posted at diesel shed, Abu Road. Subsequently, DRM (Estt.), Ajmer initiated process of promotion for the post of Asstt Loco Pilot from mechanical dept. from amongst eligible employees working in mechanical wing of Railways. The DRM (Estt.) Ajmer invited applications from eligible candidates for posts of assistant loco pilot, the process for promotion were started from 26.02.2009. Subsequently, written examination for these posts was held on 13th June, 2009, psychological examination was held on 1st /2nd July, 2009. The provisional panel list was prepared and published by Zonal Office, Jaipur, in which applicant's name was at Sl. no.97 on 15.7.2009 (Ann.A-2). In this provisional list, names of successful candidates belonging to all the divisions found place, the relative seniority/list of the candidates was mentioned therein. The successful/selected

Copy

candidates were sent to Zonal Railway Training Institute, Udaipur. The training was imparted in two different sections viz. 06th July to 06th Aug., 2009 and 08th July to 08th Aug., 2009. Applicant's version is that after completion of the training schedule, final merit list was prepared on 08.8.2009; 32 candidates of Ajmer division were declared successful in which the applicant was placed at Sl.no.5. It was argued on applicant's behalf that he stood at Sl.no.4 in said merit list as one successful candidate belonged to Jaipur division. The number of candidates sent to Ajmer division was 12 in which applicant stood at Sl. no.5 (Ann.A-3, A-4). In the list published by ZRTI, Udaipur on 08.8.2009 (Ann.A-4) applicant finds place at Sl. no.30. As per order dated 02.12.2009 (Ann.A-5), 12 persons were posted to Ajmer division and remaining 18 selected candidates were sent to Jodhpur and 08 to Bikaner divisions. Vide order dated 02.12.2009, this was clarified that these 18 candidates were to be given training at Abu Road Station. Applicant was relieved on 05.12.2009 from the office of Senior Section Engineer, Abu Road to join duties in the office of Chief Crew Controller (Loco), Abu Road (Ann.A-6). The applicant was to join on a temporary post of Jodhpur division vide orders dt 02.12.2009. Accordingly, the Chief Crew Controller (Loco), Abu Road relieved him on 08.12.2009 (Ann.A-7) directing him to join his duties in Jodhpur division where he gave his joining on 09.12.2009. Vide order dated 15.12.2009, the applicant was temporarily posted at Jodhpur division (Ann.A-8).

Copy

6. The trouble started when applicant was asked to join at Bikaner division vide order dt 22.12.2009, it was decided at higher level that there is need for 09 asst loco pilots at Bikaner (in place of 08 astt loco pilots), their strength at Jodhpur was reduced from 18 to 17. Applicant has strongly resented posting from Jodhpur to Bikaner division, referred to frequent transfers/ changes particularly in his case. Applicant's version is that he was transferred frequently during the short span of three weeks from 02.12.2009 to 22.12.2009. He has clarified that in Ajmer division, his seniority was at Sl.no.5 and after exclusion of fellow staff from Jaipur division, his seniority/merit comes at Sl.no.4. His position in Ajmer division comes at Sl.no.12 whereas as per letter dated 08.8.2009 of ZRTI, Udaipur, he was placed at Sl.no.30 in overall seniority. In this list of ZRTI, Udaipur on 08.8.2009, applicant has referred to the name of Mufid Ahmed at Sl. No.17, his merit is at Sl. No.5, applicant is also placed at merit Sl.no.5/4. The name of Praveen kumar (Sl.no.4) to be promoted on Assistant Loco Pilot post is not to be taken into account since hails from Jaipur, thus applicant's name is placed at Sl. no.4.

7. All selected candidates were sent on promotional posts in the respective three divisions but due to proper working and running of train, one asstt loco pilot post was increased at Bikaner division. Applicant has vehemently contended that he being senior in merit should not have been transferred to Bikaner division; he has cited his personal problems. It is averred by respondents that due to shortage of technical staff, the assistant loco pilot was

U.P.S.C.

posted at Bikaner. The respondents have further clarified that this is not a transfer or case of frequent transfers as alleged by the applicant. The respondents have contended that the applicant is an employee/staff under them; he cannot be permitted to choose his place of posting at a particular place. Because of administrative exigency spelt above, adjustment in the system was made whereby applicant was posted from Jodhpur to Bikaner division. Applicant has quoted rules 303 to 309 for regulating seniority of non-gazetted railway servants as per Chapter III of Indian Railway Establishment Manual, Vol.I. These rules pertain to the seniority of candidates recruited through the Railway Recruitment Board etc. refer to direct recruitment. The applicant has argued much on his seniority and merit list, rule 309 speaks of seniority on promotion read with rule 306. But in the present case, the relative seniority of the applicant is widely discussed; respondents have posted him to Bikaner division after giving much of thought to this matter. Accordingly, applicant was relieved from Jodhpur to Bikaner division vide order dated 22.12.2009; there appears to be no anomaly in the present case, rest of conditions would be governed by order dated 02.12.2009. This posting/promotion order is for a period of 02 years or till a period when Railway Recruitment Board provides candidates. This is a case not exactly of transfer, but of adjustment and rationalization of staff as regards proper running of trains from technical angle and proper upkeep and maintenance of railway administration. Giving thought to all these policy matters, the applicant's case does not succeed; tribunal is not supposed to

Yours

interfere in matters relating to proper and suitable running and maintenance of trains from the technical/mechanical angle.

8. After going through facts and legal position, it is apparent that applicant was moved to various places on temporary basis, this cannot be termed as case of frequent transfers. Applicant does not get a right on promotional post, he cannot insist on being posted as per his whim or desire. Thus, posting of applicant at Bikaner is made as per administrative exigency, he cannot put force to revise or revoke this order. The respondents have relied upon the citation of Apex Court Government of A.P. vs. G. Venkata Ratnam 2008 AIR SCW 5137, in the transfer matter interference in the transfer of technical assistant is most unwarranted. Even if applicant's version is accepted as on the promotional post, it is prerogative of the competent authority to post an employee/staff promoted on administrative grounds and technical requirements of particular region. The seniority and relative merit of applicant does not create any right in applicant's favour or pave way to revise the present posting. No malafide exercise of powers and intentional harassment of applicant on the part of the respondents is *prima facie* reflect in the present case.

9. In the light of deliberations made above, no interference is called for in the order dated 22.12.2009 (Ann.A-1). Resultantly, the present OA is hereby dismissed. The interim order/stay dated 12.01.2010 and subsequent such interim orders are hereby vacated. No order as to costs.

(V.K. KAPOOR)
ADMINISTRATIVE MEMBER

Received copy

8-2-10
Constitute document

R/C
000
0/2

R/C
000
9/2/10

दिनांक 17/12/15 के आदेशानुसार
पैदा जानियांदे दिनांक 9/1/16

को जारी करा ।

प्रमुख अधिकारी
केन्द्रीय प्रशासन विभाग
जोधपुर नगरपालिका, जोधपुर