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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.305/2012
With MA no.78/2013

Jodhpur, this the 3rd day of October, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Bhoj Raj s/o Shri Jiva Ram, aged about 57 years, r/o House No.1022, Double Storey, Behind RPF Barrack, Rani Bazar, Bikaner, at present employed on the post of Return Courier in Commercial Branch, DRM Office, Bikaner Division, Bikaner, NWR

.....Applicant

Mr. J.K.Mishra, counsel for applicant

Vs.

1. Union of India through General Manager, HQ Office, North Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur.
2. Senior Divisional Personnel Officer, North Western Railway, Bikaner Division, Bikaner.
3. Senior Divisional Commercial Manager, NWR, Bikaner Division, Bikaner.

...Respondents

Mr. Vinay Chhipa, counsel for respondents

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

By way of this OA, the applicant has challenged the order dated 10.7.2012 (Ann.A/1) by which the applicant has been absorbed as IOW Khallasi after medical de-categorisation and prayed for the following reliefs:-

- (i) That impugned order dated 10.7.2012 Annexure A/1, passed by 2nd Respondent (Annexure A-1) may be declared illegal and the same may be quashed and the applicant may be allowed

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all the consequential benefits as if the impugned orders were never in existence.

- (ii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded.

2. Facts, as averred by the applicant, in brief are that the applicant was initially appointed to the post of Gangman on 25.1.1985 in PWI Office, Ellnabad, Haryana. He was promoted to the post of Pointsman-B in the year 1996 and posted at Narwarsi. The applicant was medically de-categorised due to vision problem by a Medical Board on 21.12.2001. He was kept on a special supernumerary post at Narwasi IOW Khallasi O/o, AEN, Bikaner. Thereafter on the basis of recommendations of the absorption committee, he was found suitable for absorption on the post of Return Courier and accordingly ordered to be absorbed alongwith the supernumerary post vide letter dated 6.7.2007. The applicant assumed his duties against the post of Return Courier in Commercial Branch at Bikaner, but subsequently vide letter dated 8.1.2008, the applicant was ordered to be absorbed on the post of IOW Khallasi in the office of ADEN (Track). Vide another order dated 10.7.2012, the applicant has been ordered to be absorbed as IOW Khallasi, as per order dated 8.1.2008 in the office of ADEN (HQ), Bikaner. Aggrieved by the absorption on the post of IOW Khallasi, the applicant has filed this OA on the ground that once a person has been absorbed on a post after being medically de-categorised, he cannot be again absorbed on some other post until he is again declared as surplus.

3. By way of reply, the respondents have denied the right of the applicant and submitted that while working on the post of Pointsman 'B', the applicant was medically de-categorised vide letter dated 21.12.2001 and a

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special supernumerary post was sanctioned and created till his absorption permanently on alternative and suitable post vide letter dated 24.1.2002. Thereafter the applicant appeared before the absorption committee and the committee vide letter dated 28.12.2006 made recommendation that the applicant is suitable for the post of IOW Khallasi and on this basis the applicant was temporarily posted as IOW Khallasi under ADEN, Bikaner alongwith special supernumerary post vide letter dated 13.2.2007, but he showed his unwillingness to join the post of IOW Khallasi. Thereafter the applicant was posted as Return Courier along with special supernumerary post vide letter dated 6.7.2007 and later on the committee found him suitable for the post of IOW Khallasi, therefore, vide letter dated 2.1.2008, the committee made recommendation to be permanently absorbed and posted as IOW Khallasi. The applicant was permanently absorbed as IOW Khallasi vide letter dated 8.1.2008 and special supernumerary post created was also abolished. Therefore, it is ex-facie clear that basic order was passed in 2008 i.e. on 8.1.2008 by which the applicant was permanently absorbed as IOW Khallasi and the said order has not been challenged by the applicant. The order dated 10.7.2012 is merely a reply to the representation dated 26.6.2012. Therefore without challenging the basic letter dated 8.1.2008, the present OA is liable to be dismissed. It has been further stated that sanctioned cadre of the Return Courier at Bikaner is having only three posts and against the aforesaid three posts three persons are already working since long time. The applicant has been permanently absorbed as IOW Khallasi and he was working without cadre post, therefore vide letter dated 17.5.2012 and again vide letter dated 10.7.2012, the applicant was asked to join the post of IOW Khallasi but the applicant did not join.

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4. Heard counsel for both the parties. Counsel for the applicant contended that medical de-categorisation order Ann.A/2 was passed in pursuance to the recommendation of the absorption committee and therefore, the order Ann.R/3 and R/5 cannot be sustained in the eyes of law. Counsel for the applicant further contended that when he was working on the post of Return Courier and the supernumerary post was created vide Ann.A/2 then, there is no reason to absorb the applicant on the post of IOW Khalasi in the office of ADEN (Track). Counsel for the applicant contended that Ann.A/1 is per-se illegal and therefore, it is required to be quashed and the application may be allowed with all consequential benefit as if the impugned orders were never in existence.

5. Per contra, the counsel for the respondents contended that Ann.A/4 is only the order of posting of the applicant on the post of Return Courier and this order was passed on the recommendations of the absorption committee but it is not the absorption order passed by the competent authority, therefore, the applicant cannot claim any right in pursuance to Ann.A/4. The applicant was regularly absorbed against the supernumerary post of IOW Khalasi under ADEN, Bikaner and therefore, Ann.R/3, R/4 and R/5 were passed and the contention of the applicant that Ann.A/4 is absorption order of the applicant does not carry any force.

6. We have considered the rival contention of both the parties and perused the orders referred to by the counsel during the course of arguments. In our considered view, Ann.A/2 is posting order of the applicant on the post of Return Courier and this order was passed in pursuance to the recommendation of the absorption committee, but actual absorption order of the applicant was passed vide order Ann.R/3 and R/5. Therefore, order

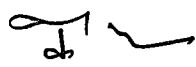
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Ann.A/2 does not create any right in favour of the applicant to be appointed on the post of Return Courier and therefore, in our considered view, Ann.A/1 cannot be said to be illegal and no interference is required in this OA. Accordingly, the OA lacks merit and the same is dismissed with no order as to costs.

7. In view of dismissal of OA, the MA No. 78/2013 for vacation of stay order is rendered infructuous and the same is dismissed as having become infructuous.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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