

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.399/2008

This the 24th day of December, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member (A)

Abdulla, aged about 46 years, Son of Late Abdul Aziz Khan, Resident of L-45 A, Loco Colony, Mawaiya, Lucknow.

.....Applicant

By Advocate: Sri A. Moin.

Versus

1. Union of India through the General Manager, North East Railway, Gorakhpur.
2. The Divisional Railway Manager, North East Railway, Ashok Marg, Lucknow.
3. The Divisional Personnel Officer, North East Railway, Ashok Marg, Lucknow.

.....Respondents

By Advocate: Shri Ajmal Khan.

ORDER

By Ms. Sadhna Srivastava, Member-J

The applicant is seeking quashing of order dt.24.10.2008 whereby, his cadre has been changed from Ticket Collector to Senior Clerk (Mechanical) Diesel Shed and consequently transferred from Lucknow to Gonda.

2. The applicant was initially appointed as Engine Cleaner on 01.07.1980. In due course, he was promoted as Senior Diesel Assistant in the year 2005. There was a rule for medical examination after every three years. When medically examined in the year 2006, he was de-categorized for the post of Senior Diesel Assistant. Consequently, pursuant to the amended provision of Indian Railway Establishment Manual in accordance with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, he was interviewed by the Standing Committee, for absorption of medically



incapacitated staff in alternative post. By order dated 08.09.2006, the post of Ticket Collector (Commercial discipline) was offered and his acceptance solicited. After his acceptance, he was sent for training to Regional Training Center, Muzaffarpur. On completion of training, he was posted as Ticket Collector at Budwal Junction till his transfer to Lucknow City Station on 07.08.2008. The dispute began when he was again called for interview on 15.10.2008 by the Standing Committee, and by order dt.24.10.2008, posted as Senior Clerk (Mechanical), Diesel Shed, Gonda. The applicant alleges that once he was provided with alternative job of Ticket Collector obtaining his consent and imparting training, there was no occasion for providing another job and change his service conditions. The applicant alleges that it will adversely affect him and that such an action was not warranted under the rules.

3. The respondents have filed reply justifying the order without referring to rules under which they exercised the power to make a change in the cadre. They have simply stated in paragraph-11 of the Counter Affidavit that an application was made by an employee under Right to Information Act regarding applicant's posting on a post which involves public dealing directly and the competent authority while disposing the application directed the standing committee to consider applicant's posting on a non-public dealing post.

4. We have heard the learned counsel for the parties and perused the records.

5. Chapter XIII of Indian Railway Establishment Manual deals with absorption of disabled/medically de-categorized staff in alternative employment. It provides the steps to be taken as and when need arises to find an alternative employment for such an employee. One of the steps is an entry in a register and deletion of such entry.



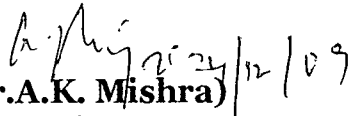
Rule-1306 (7) of Indian Railway Establishment Manual reads as under:-

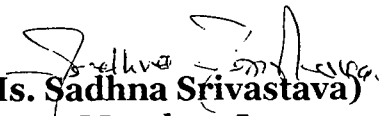
“If and when a Railway servant is absorbed in any alternative post, intimation will be sent by the officer under whom he was previously working to all other officers to whom his name was notified. On receipt of such intimation, his name will be deleted from the registers.”

6. In view of the provision of Indian Railway Establishment Manual, once the applicant was provided alternative employment in the department in the year 2006, the exercise came to an end. There could be no occasion to exercise again unless the rule on the subject empowers an authority to do so. No such rule has been cited in Counter Affidavit nor it was referred to at the time of hearing. It is a matter of common understanding that the conditions of service of govt. servant are governed by statutory rules. No authority can act on his/her own whims. The action on the part of the authority has to be supported by the rules. It is not enough to say that the competent authority decided to interview the applicant again for offering alternative employment and to do so without the support of rules on the subject. Therefore, it appears to us that the respondents failed to appreciate the background of the case. Once the applicant was absorbed in a particular post and worked on the said post for some time, he came to acquire certain rights by way of seniority and increments. His re-designation at a later date without his consent would surely affect his rights. Then the change of cadre, without support of rules or the consent of incumbent by itself becomes bad in law. At least, we have not been able to lay hand on any statutory rule/administrative instructions under which the order to interview applicant again and change his cadre could be supported. The counter reply did not throw any light on this subject. Therefore, we find ourselves unable to uphold the impugned order dt.24.10.2008. Thus, the OA must be allowed.



7. Resultantly, the OA is allowed; impugned order dt.24.10.2008 is hereby quashed. The applicant will continue in the cadre of Ticket Collector as ordered on 08.09.2006 by Railway Administration. No order as to costs.


(Dr.A.K. Mishra)
Member-A


(Ms. Sadhna Srivastava)
Member-J

Amit/-