

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1124/96

Transfer Application No.

Date of Decision 16-07-97

G.P. Bairwa

Petitioner/s

Shri G.S. Walia

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S. Masurkar

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

Hon'ble Shri. M.R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ? *x*
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ? *y*

M.R.K.
(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde
(B.S. HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.1124/96
Wednesday this the 16th day of July 1997

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Gangaprasad Bairwa,
C/o. Shri G.S. Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Fort, Mumbai - 400 001.

By Advocate Shri G.S. Walia

.. Applicant

-versus-

1. Union of India,
through
The General Manager,
Western Railway Headquarters,
Churchgate, Mumbai.
2. Divisional Railway Manager,
Western Railway, Bombay Division,
Bombay Central, Mumbai

By Counsel Shri V.S. Masurkar.

.. Respondents

-: O R D E R :-

(Per M.R. Kolhatkar, Member(A))

The applicant who was working as Constable RPF(Group'D') was selected after written test and interview for the post of Commercial Clerk and was allotted to BCT as against the applicant's desire for ^{to} ~~posting~~/Jaipur Division. The contention of the applicant is that there were five general vacancies and one SC vacancy in Jaipur Division and the applicant was entitled to be posted as Commercial Clerk against available SC vacancy in Jaipur division. Applicant states that he had made a representation vide Ex.'D' to be posted at Jaipur. In this representation he had mentioned that one Ravinder Mishra from Ratlam division who was initially allotted BCT division was ^{subsequently} allotted Jaipur division against the existing vacancies of Jaipur division

and he therefore prayed for considering his request for change of division.

2. Subsequently applicant came to know that one Shri R.K.Meena ^{being} ST candidate is posted at Jaipur against SC vacancy under pressure from certain quarters. R.K.Meena ST candidate though originally allotted ^{to} BCT division was ^{being} posted at Jaipur ^{allegedly} against SC vacancy. The Tribunal therefore gave the interim relief on 12-11-96 of status-quo. The applicant's contention is borne out from the annexure R-2 to the written statement from which it is seen that by order dt. 7-11-96 R.K.Meena's posting was changed from Bombay division to Jaipur Division and after the interim order by the Tribunal on 12-11-96 the Western Railway head quarter by their order dt. 13-11-96 stayed the implementation of their order dt. 7-11-96.

3. Respondents have filed their reply. They have stated that the applicant after undergoing the training has joined the post of commercial clerk on Bombay division on 2-8-96. As per general rules he can register his request of transfer to another division i.e. Jaipur division which is called name noting. Regarding vacancies it is stated that though there were six assessed vacancies for Jaipur division, as per original notification due to non-availability of vacancies at the time of allotment of employees due to generation of surplus staff in the Jaipur division, no selected employees were given posting in the Jaipur division. All the selected employees including the applicant were posted to other divisions, where there were vacancies. Regarding R.K.Meena the respondents' reply is ambivalent. In para 13 it is stated that

R.K.Meena has not joined BCT division. It is further stated that the order of posting of R.K.Meena as Commercial Clerk was issued with the approval of the General Manager and R.K.Meena was not posted against SC post as contended by the applicant. It is contended that the applicant has grievance with regard to the posting of R.K.Meena but he has not joined him as a party. It is clear from this that the contention of the respondents that all the selected employees including applicant were posted to ^{Divisions other than} Jaipur is not borne out by record. R.K.Meena in fact was posted to Jaipur though it may not be against SC vacancy as contended by the respondents.

4. The counsel for applicant filed a rejoinder with which he has enclosed a copy of letter dt. 30-10-1996 from A.K.Chopra, CPO, Western Railway to DRM Jaipur. The counsel for the applicant has taken the stand that R.K.Meena is not the necessary party and the respondents are trying to twist the rules under pressure from All India Scheduled Caste/Scheduled Tribes Association and at the instance of certain office bearers. From the letter dt. 30-10-1996 it is clear that the letter was written in the ^{post} context of proposal to R.K.Meena to Jaipur Division and the letter ends with the observation that the request for reallotting R.K.Meena to Jaipur division would not be feasible. From this letter it is seen that there are request for transfer to Jaipur from both direct recruits and existing name-noted candidates. Among direct recruits 12 general and 2 SC employees have asked for posting in Jaipur. Among name noted candidates 38 employees have noted their names which comprised 9 ST employees. It is further observed that name noted existing employees have to be given preference over direct recruits. It is thus clear

that R. K. Meena who is a direct recruit ST candidate and who features at Sl. No. 13 among 16 employees who wanted to be posted to Jaipur Division did not have the remotest chance of being posted to Jaipur Division in the normal course. Moreover, ~~on~~ the admission of the respondents^{is} that there is no ST vacancy in the Jaipur Division. There is however, one SC vacancy. The claim of the applicant is that he may be posted to Jaipur Division against SC vacancy. It is in this context^{the} the counsel for the applicant has cogently argued¹ that R.K. Meena is not a necessary party.

5. The respondents have not filed any sur-rejoinder countering the rejoinder filed by the applicant. However, an M.P. No. 200/97 was filed for vacation of interim relief. The grounds urged for the vacation of interim relief are the grounds urged in the written statement. In addition, it is stated that the applicant at his own request has accepted transfer to Baroda and therefore, his grievance does not survive. Counsel for applicant has also relied on Supreme Court judgement in J. Jose Dhanapaul V/s. S. Thomas & Others (1996) 3 SCC 587 according to which Tamil Nadu Administrative Tribunal committed grave error in annulling the appointment order without joining a necessary party. The judgement quoted by the counsel does not, however, apply to the facts of the present case.

6. We are of the view, that the relief claimed by the applicant is for being posted at Jaipur against SC vacancy. The relief is not against R. K. Meena, who ~~is such~~ not being eligible to be posted to Jaipur under

the normal rules but was still being posted and hence the status-quo affected Meena's posting at Jaipur. Respondents themselves have stated that Meena has not been posted to Jaipur against SC vacancy. If so, respondents themselves concede the contention of the applicant that Meena is not a necessary party. The fact that the applicant has obtained transfer on mutual basis to Baroda does not affect merits of the case. The letter from Shri A.K. Chopra, C.P.O., Western Railway, which appears at exhibit R-1 to the rejoinder to the application shows that the claim of the applicant to be posted to Jaipur may also take time because as pointed out in that letter the existing name noted candidates will take precedence over direct recruits. All the same, the applicant is entitled to get the relief of directing the respondents to consider his request for transfer to Jaipur as Commercial Clerk as a SC candidate in his turn strictly according to rules. If Meena's transfer is not according to rules and name noting position, naturally respondents would be expected to ensure that action taken in regard to Meena would also be strictly according to rules. The O.A. is disposed of on these terms.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B. S. Hegde

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