

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.723 of 2000

Thursday this the 12th day of April, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)

N.K. Gupta working as
Chief Engieer (Construction & Survey)
Western Railway,
Churchgate,
Mumbai-400 020.

Residigg at

Flat No.P/86
Badhwar Park,
Colaba,
Mumbai-400 050.

.....Applicant

By Advocate Shri G.S. Walia

Versus

1. Union of India through
General Manager,
Western Railway,
Churchgate,
Mumbai-400 020.

2. Secretary, Railway Board,
Rail Bhavan,
New Delhi-400 011.

.....Respondents

By Advocate Shri Vinay S. Masurkar.

ORDER

Hon'ble Mr. Kuldip Sigh, Member (J)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 198, as he is aggrieved of the fact that he has not been given posting as Divisional Railway Manager (hereinafter referred to as DRM) (scale of Rs.18,400-22,400) on the Railways allotted to the applicant, i.e., the Western Railway.

2. The facts in brief are that the applicant is alleged to have joined the Indian Railway Service of Engineers and as per the appointment letter, Exhibit-A, he was posted to the Western

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Railway. The applicant further alleges that according to the appointment letter the applicant was ordinarily to remain posted in the Western Railway throughout his service.

3. The applicant further alleges that a selection was held for the post of DRM and he was found suitable for being posted as DRM but after that selection he was posted as DRM, Lumding on North Eastern Frontier Railway vide Railway Board's letter dated 5.5.2000 (Annexure-B).

4. The applicant claims that he was shocked to learn that though there were various vacancies available for DRM's on the Western Railway but the applicant was allotted North Eastern Frontier Railway which was in violation of the important condition of the appointment letter.

5. The applicant further claims that one of the officer, namely, Deepak Krishan who was posted as DRM on the Western Railway on Ratlam Division by the same order declined the said offer and the applicant made a representation that since Shri Deepak Krishan had refused, he may be posted at Ratlam due to his family problems but nothing was heard. Thereafter the applicant gave his application dated 7.7.2000 giving refusal for being posted as DRM, Lumding and requested to consider him for posting as DRM on the Western Railway in the next panel (Annexure D).

6. The applicant further claims that next list of DRMs have been made but not published and an officer has been posted as DRM, Ratlam from the next list and the officer who has been posted as DRM, Ratlam also stated does not fulfil the criteria of the Railway Board's circular of 16.9.1999 and he is also junior to the applicant.

7. It is also pleaded that the impugned action of the respondent in posting the applicant out of the Western Railway

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is discriminatory and breach of trust and is also arbitrary.

8. It is further pleaded that the respondents does not have the authority in law to violate the sanctity of appointment letter to the detriment of the applicant in posting him out of the allotted Railway.

9. At the time of filing of the OA, the applicant had also sought for interim relief which was allowed vide order dated 17.10.2000 and the respondents were directed that any posting of other than the applicant on Western Railway shall be subject to the result of the OA.

10. The application is being contested by the respondents. The respondents pleaded that in terms of Rule 226 of the Indian Railway Establishment Code (IREC) Vol.I which has a statutory force as the same has been issued under Article 309 of the Constitution of India, a Railway servant shall be employed throughout his service on the Railway or Railway Establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another Railway or another establishment. In the exigencies of service it shall be open to the President to transfer the Railway servant to any other department or Railway or Railway Establishmet including a Project in or out of India.

11. The respondents further pleaded that the posting of DRM has great importance as it has overall responsibility for smooth and efficient service of the Railway and the posting of DRM is a General Administrative post on the Railways but the same is not a promotional level post and the Sr. Administrative Grade Officers with excellent track record are chosen for these posts and normally officers with 24-26 years of experience and not more than 52 years of age are chosen. The short list of officers selected for posting as DRM is normally valid for a period of

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one year from 1st July of the year to 30th June of the next year and accordingly all such officers who are less than 52 years of age as on 1st July of the year are considered for inclusion in the short list for posting as DRM and such officers work as DRMs for a duration of 2-3 years.

12. The applicant was also short listed for posting as DRM along with other officers in the year 1999. The list was valid for a period of one year from 1.7.99 but the applicant's date of birth is 1.7.47 and he exceeded the age limit of 52 years by one day on 1.7.99. He was, however, included in the short list by granting one day of age relaxation, and was posted as DRM, Lumding on the North Eastern Frontier Railway. The applicant, however, requested for posting as DRM, Ratlam on Western Railway, the request was considered but not agreed to and the applicant was again directed to take up the charge of the post of DRM, Lumding. The applicant, however, refused posting as DRM and as per the procedure he was debarred from posting as DRM for one year. The next short list of officers for posting as DRM was framed by the competent authority in July, 2000. The applicant could not be considered for inclusion in this short list as by that time he had already completed 52 years of age. Therefore, the question of posting as DRM on any Railway does not arise.

12A. The respondents further pleaded that the applicant belongs to Group 'A' service having all India service liability. The applicant has quoted selectively from para 3 of the letter of appointment which further states that the Railway Board, however, reserve the right to require him to serve in any other Railway or Project in or out of India. Thus the respondents pleaded that the applicant has a service liability to serve the Railways on an all India basis.

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13. As regards the allegations with regard to Shri Deepak Krishan is concerned the respondents in their sur-rejoinder have stated that Shri Deepak Krishan was initially listed for posting as DRM in the short list for the year 1999 along with the applicant. Shri Deepak Krishan was directed to join as DRM, Ratlam but he refused the posting and was accordingly debarred for posting for one year. However, in the next short list Deepak Krishan was again considered and was included though his period of debarment would have clearly expired in May, 2000. Since there was a major railway accident in Ambala Division in December, 2000 so it was decided to post Shri Deepak Krishan as DRM, Ambala, who was the seniormost IRSE Officer in the short list and was considered most suitable for the job. Thus it is stated that there is no discrimination in any manner and applicant who is having the service liability to serve the Indian Railways all over India cannot claim to be posted at a station of his choice.

14. I have heard the learned counsel for the parties and have gone through the records of the case.

15. The main grievance of the applicant is that he having been appointed on Western Railway could be ordinarily posted within the Western Railway itself and posting him as DRM, Lumding was in violation of terms of appointment. There were no extraordinary circumstances under which he has been posted at North Eastern Frontier Railway. The order posting him as DRM, Lumding was not based on any exigency of service and as such is bad in law.

16. The applicant further contended that as per the IREM Volume-I para 123 the Power to Frame Rules have been given to the Railway Board are only with respect to Group 'C' and 'D' employees. The Railway Board could not have posted the applicant

outside the Western Railway unless and until the posting is approved by the President of India since the applicant belongs to Group 'A' for which the sanction of the President of India is necessary as the applicant has been appointed by ^{the} President of India and in his appointment letter it has been specifically stated that ordinarily he shall not be posted outside Western Railway.

17. Besides that the applicant has also submitted that he has been given discriminatory treatment since Shri Deepak Krishan has not been given posting in North Eastern Frontier Railway so the applicant should have also been given posting in the Western Railway.

18. Shri Masurkar appearig for the respondents submitted that the Government of India, Min. of Railways had taken a decision on 16.9.99 with regard to posting of Group 'A' officers for career development in Eastern Region which shows that the Min. of Railways have decided that with a view to effect career development of officers, such of the officers who have not earlier worked on the Eastern region comprising Eastern Railway, N.F. Railway, S.E. Railway (includig Costruction organisations) etc. and who would be due for posting as ADRM, DRM, CHOD/PHOD or Executive Director in the Railway Board in due course should be required to work on Railways/Units in Eastern Region for a period of minimum 3 years. So the respondents submitted that the posting of the applicant as DRM, Lumding was in accordance with the policy of the Railway Board and it was in consonance with the appointment letter as well and it is the applicant, who himself had refused to be posted as DRM, Lumding so now he cannot claim that he should be posted at Western Railway.

19. After considering the rival cotention of the parties, I

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find that the contention of the learned counsel for the applicant that the appointment letter says that the applicant has to be continued on Western Railway and he cannot be transferred outside Western Railway by orders of the Railway Board, I find that this contention has no merits because para 3 of the appointment letter which contains the condition is quite significant and is reproduced herein below for easy reference:-

"3. You have been posted to the Western Railway. You will ordinarily be employed throughout your service on the Railway to which you are posted. The Railway Board, however, reserve the right to require you to serve in any other Railway or Project in or out of India. You will, however, receive your training on the Northern Railway. On completion of your training, you will go to the Western Railway to which Railway you have been posted".

20. A bare reading of this clause 3 shows that the appointment letter though has been issued in the name of the President yet in this very letter itself the power has been given to the Railway Board to post the applicant anywhere. A right has been conferred on Railway Board when it reserved the right in favour of Railway Board to require to serve the applicant in any Railway Project in or outside India. Thus the President itself has given the power to the Railway Board so that the Railway Board may call upon the officer to work on any other Railway. If the order of posting vide which the applicant had been posted at Lamding be read along with clause 3 of the appointment letter and also along with the policy decision of the Railway Board vide their letter dated 16.9.99 (Annexure R-II), I find that the action of the respondents in posting the applicant at Lamding does not contravene any rules rather it is for the career development of the officer itself that the applicant was being posted at Lamding. So this contention of the applicant has no merits.

21. Though the counsel for the applicant has also referred to a judgment reported in 1995 (2) ATJ page 200 - M. Smile Vs.

The General Manager, Southern Railway, wherein also para 226 of the IREM, Volume-I has been quoted and drawing support from the same the applicant's counsel submitted that it is only the President himself who could pass the posting order of the Railway servant to any other department of the Railway or Railway Establishment including a project in or out of India. Rule 226 also says that in cases of Group 'C' and 'D' Railway servants, the power of the President under this rule in respect of transfer may be exercised by the General Manager or lower authority to whom the power may be redelegated. Thus this rule itself speaks of delegation of powers by the President particularly in the case of Group 'C' and 'D' employees to the General Manager who may further redelgate to any authority lower than the General Manager.

22. Similarly paragraph 3 of the appointment letter (Exhibit-A) does show that at the time of appointment of the applicant itself the Railway Board had been authorised to ask the applicant to serve in any other Railway or Railway Establishment including a Project in or out of India. Though the opening paragraph of the letter says that the President ~~is~~ is pleased to offer an appointment. Thus this letter ^{which} has been issued in the name of the President itself speaks that the Railway Board was fully competent to require to serve the applicant in any other Railway.

23. Moreover, it is the prerogative of management to post any of its employee in the interest of organisation and the employee has to obey the orders. In this case, the right of posting which has been reserved in favour of Railway Board as per appointment letter that itself shows that posting of applicant at Lumding was in accordance with the policy of the Railway Board and was also in accordance with rules.

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24. I may further mention that the applicant vide Annexure D has also given an unequivocal refusal for being posted at Lamding with a further addition that his name may be considered in the next panel. Thus the applicant himself has given up his right to be posted as DRM not only on the Western Railway but even as DRM, Lamding he had refused and had made a request for being considered in the next panel and since in the next panel he could not be considered because of the age bar as stated by the respondents that they will not consider any person who is beyond the age of 52 years of age. So the applicant now cannot claim that he may be posted as DRM.

25. In view of the above discussion, I find that the OA has no merits and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (J)

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