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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 257/95
~~Original Application No.~~

Date of Decision : 21.4.95

Shri B.V. Pathare

Petitioner

Shri K.B. Talreja

Advocate for the
Petitioners

Versus

Union of India & Others

Respondents

Shri V.S. Masurkar

Advocate for the
respondents

C O R A M :

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

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

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


(B.S. Hegde)
Member (J)

ssp.

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. 257/95

Shri B.V. Pathare Applicant

v/s

Union of India & Ors. Respondents

CORAM 1) Hon'ble Shri B.S. Hegde, Member (J)

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

APPEARANCE

1) Shri K.B. Talreja, counsel for the Applicant

2) Shri V.S. Masurkar, counsel for the Respondents

JUDGEMENT

DATED: 21.4.95

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

1. Heard the argument of Shri Talreja, counsel for the Applicant and Shri Masurkar, counsel for the Respondents.

2. The short question for consideration is whether the impugned order passed by the Respondents vide dated 16-2-1995 (Annexure-1) is in accordance with the rules and the same is justified under the circumstances. The Applicant has filed this O.A. against the transfer order issued by the Respondents transferring him out of the ex-cadre post of Assistant Commercial Manager to the post of Asstt. Commercial Manager (TC) BSL alongwith others. The Applicant's contention is that he belongs to catering cadre and also came from scheduled caste. It is an admitted fact, that the post of ACO/ACS (Catering) are selection posts and should be filled by selecting

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suitable candidates in the eligible grades on the basis of consideration of records by a Departmental Promotion Committee. In this connection, the learned counsel for the Applicant Shri Talreja draws our attention to the Annexure-2 saying that the existing JS/CL.II posts of ACO/ACS (Catering) should be treated as ex-cadre and he also states that his case was strongly recommended by the concerned authorities regularising him in the said cadre. Further, the intention in declaring the said post of ACO/ACS as ex-cadre is that the incumbent of these posts needs special knowledge and experience in catering; however, the Committee is unable to select a suitable employee for the post from among the staff of catering branch, the post may be filled by a suitable officer already working or empanelled for promotion as ACO/ACS. It is also made clear, that the parallel drawn to the case of non-filling of vacancies in the cadre posts of AOS/ACSSs till the finalisation of the Recruitment Rules is not apt.

3. Admittedly, the Applicant was appointed on ad-hoc basis as ACO which he contends was with the approval of General Manager and he should be allowed to continue in the same post. It is not in dispute, that the Recruitment Rules have not been framed so far which has to be done by the Ministry in consultation with the UPSC. Therefore, he contends that since his name is recommended to the Board for selection as ACO/ACS since he has been continuously working in that capacity from 1985 onwards without any break.

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4. The Respondents' counsel, Shri V.S. Masurkar draws our attention, that their letter dated 19-12-1980 wherein it is made clear that the post of ACO/ACS (Catering) will be a selection post and it should be filled up by selecting a suitable employee on the basis of consideration of records by a Departmental Promotion Committee the employees so selected and posted ACO/ACS (Catering) should however appear at selection which includes written test followed by viva voce, for the Group 'B' posts open to them according to their eligibility, if they are desirous of doing so. He further submitted that no such procedure is adopted in this case, and neither the Applicant has appeared for any written examination nor appeared before the DPC. In their reply, the Respondents have taken a stand that the order issued by the Respondents vide dated 16-2-1995 are issued in routine manner and the said transfers are not ordered with any prejudice; therefore, the transfer orders are just and proper. Further, the Applicant is an Assistant Commercial Manager and there is no separate cadre as Assistant Commercial Manager (Catering); the common cadre is Assistant Commercial Manager in the Commercial Department of the Railways. The words used in the transfer orders like rates Cog, TC, Category etc. is only with a view to identify the subject matter dealt with by the concerned Assistant Commercial Managers and there is no separate and independent cadre. Therefore, the contention raised by the Applicant has no substance and the same is required to be dismissed.

5. The only prayer made by the Applicant in this O.A. is to direct the Respondents to maintain the status-quo till the recruitment rules for the ex-cadre post of ACS/ACO/Catering are received from the Railway Board

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against which the Applicant is working since the year 1985.

6. In the course of hearing, it is seen that pursuant to the orders passed by the Respondents vide dated 16-2-1995, the Applicant has joined the new posting as ACM (TC) BSL and he has not made any representation against the impugned order with the competent authority so far. Section 20 of the Central Administrative Tribunal Act is very clear that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. In view of that, it is open to the Applicant to make suitable representation to the competent authority within a period of one month of receipt of this order and on receipt of the same, the Respondents shall consider the same and pass appropriate order within a period of two months thereafter.

7. Instead of preferring an appeal to the Appellate authority, he has filed this O.A. seeking to maintain status quo till the recruitment rules for the ex-cadre post are made. In view of the catena of decisions of the Apex Court regarding transfer, saying that an order of transfer is an incident of Govt. service and unless the order of transfer is challenged on the ground of malafide or on account of breach of statutory provisions, Tribunals or Courts are normally not to interfere with the administrative decisions. In the instant case, there is no such allegation; on the other hand, he had joined the transferred post without any protest. Therefore, we

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are of the view, that this O.A. is premature as he has not exhausted remedial measures as required under section 20 of the C.A.T. Act; however, we give the Applicant liberty to make a detailed representation to the competent authority within the period specified above. Accordingly, the O.A. is disposed of with the above directions. No orders as to costs.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S.Hegde

(B.S. Hegde)
Member (J)

ssp.