

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 694 of 1995.

Dated this Tuesday, the 1st day of August, 2000.

J. B. Kasar, _____ Applicant.

Shri G. S. Walia, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. S. Masurkar, _____ Advocate for
the respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? Yes.
- (ii) Whether it needs to be circulated to other Benches No
of the Tribunal ?
- (iii) Library. No

B. N. BAHADUR
MEMBER (A).

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J. B. Kasar,
Senior T.T.E. at Nandurbar,
Bombay Division,
Western Railway,
Bombay

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Applicant.

(By Advocate Shri G.S. Walia)

VERSUS

1. Union of India through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Bombay - 400 008.

3. Sr. Divisional Comm. Manager,
Bombay Division,
Western Railway,
Bombay Central
Bombay - 400 008.

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Respondents.

(By Advocate Shri V. S. Masurkar)

* OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri J. B. Kasar, Senior T.T.E. posted at Nandurbar in Mumbai Division seeking the relief, in substance, for a direction to the respondents to promote the applicant in Head T.T.E. scale from June, 1993 at Nandurbar. He also seeks all consequential benefits.



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2. We have seen the papers in the case and have heard the Learned Counsel, namely - Shri G.S. Walia for the applicant and Shri V. S. Masurkar for the respondents.

3. The applicant has made out his case as follows :

The applicant states that he was posted vide order dated 16.03.1990 (exhibit 'B') as Head T.T.E., at Surat, from his present position and he was not relieved for a period of two years by the Administration. He describes his personal difficulties in moving out of Nandurbar and states that in 1992, for these personal difficulties he expressed his inability to move out of Nandurbar and hence, refused this promotion. He was debarred for further promotion for one year, as per rules, (order dated 04.08.1992 at exhibit R-1).

4. The Learned Counsel for the applicant, Shri G.S. Walia, argued the case at some length, and strenuously contended that the applicant has been singled out because of unfair and malafide treatment and, at least after his period of debarment gave over in June, 1993, he should have been provided a post in the higher scale of Head T.T.E. at Nandurbar only. His argument on the point of ^{the order} being discriminatory is further sought to be strengthened by his quoting the case of two persons junior to him, who were provided a posting in Nandurbar, when vacancies became available. Thus, the applicant takes the argument of hostile discrimination in his not being given a posting at Nandurbar.

5. The respondents have filed a reply through their written statement dated 25.04.1996, where the claims of the applicant are

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resisted. The respondents state that although he was promoted and posted to Surat vide the aforesaid order in 1990, the applicant did not join his position and refused promotion only two years later. Hence, he was debarred as per rules. The written statement has been seen and so also the annexures.

6. The Learned Counsel for the respondents, Shri V.S. Masurkar, met the points raised by the applicant and depended on Annexure 'A' filed by the applicant to argue that, after refusing to join for two years, the applicant persisted in his efforts to stay on at Nandurbar by using extra official influences, as could be seen from the letter at exhibit 'A'. He contended that exhibit 'A' contains the detailed reasons for the action as taken in the case of the applicant. All contentions of malafide were refuted and the point made that neither the two persons said to have been given special consideration by posting them at Nandurbar nor any official of the Railways was impleaded as party for malafide.

7. In the first place, we see that it is admittedly correct that whereas the transfer order came in 1990, there is nothing on record to show what happened till two years later, when suddenly the applicant has indicated his inability to accept the promotion for stated reasons. Well as the stated reasons of personal problems would in all probability be correct, it is difficult to accept that the applicant was helplessly waiting at Nandurbar, and would have joined at Surat earlier to 1992 had he been relieved. These personal difficulties were of a continuing nature. He accepts the fact of debarment quite fairly, but his main ground is, that on the completion of the period of debarment in June, 1993, he should have been posted at Nandurbar, when the two persons cited above could be posted.

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8. Number of arguments and contentions are advanced as to why the applicant's claim was better than those two persons or the third person Shri Khairnar. We would not like to go into the case of those two persons with a fine comb. The point to be examined is, whether any injustice was done to the applicant or any malice can be attributed to his not being posted at Nandurbar on promotion. We have carefully considered all the facts brought before us and the arguments advanced in the light of the settled law by the Hon'ble Apex Court, and cannot find any reason to conclude that this is the case against the applicant's rights. Ans. Assuming that his case was genuine on personal ground, it was not correct to say that in fact his rights have been violated. No aspect of seniority can be called ^{in Ans.} play for demanding postings. For one, he has been kept at Nandurbar and not posted out. To demand a posting on transfer at particular places, is not a right and certainly not a right that can be determined by judicial intervention. The settled law in this regard is very clear and no detailed reasons need be recorded further in respect of this finding.

9. In the facts and circumstances of the case, there is no evidence to show that the applicant was singled out because of malafide. In any case, no one has been made as a party in the case and no clear facts of malafide brought out.

10. In view of the discussions made above, this application deserves to be dismissed and is hereby dismissed. This order will not come in the way of the applicant pursuing his case with the respondents and respondents taking a decision as per rules.

S. L. Jain
(S. L. JAIN)
MEMBER (J).

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).