

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

.....

Date of Order : 25.5.2001.

O.A.NO. 441/1994

Ashok Kumar Sharma S/o Shri Ram Gopal Sharma, aged around 38 years, R/o 4909, Math Ka Kooa, Kundigar Bhairo Ka Rasta, Johri Bazar, Jaipur; presently posted as Assistant Station Master, Jaipur Junction, Jaipur.

.....Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Jaipur.

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None is present for the applicant.

Mr. Hemant Gupta, proxy for Mr. M. Rafiq, counsel for the respondents.

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CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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PER MR. JUSTICE B.S. RAIKOTE :

The applicant is seeking a direction to the respondents to treat the applicant's transfer to Jaipur Division as one being in the public interest on the ground that initially he was allotted the Jaipur Division. The applicant also further prays that his seniority of the Assistant Station Masters in the Jaipur Division dated 3.1.1991 may be revised by placing the applicant in the seniority list on the basis of the vacancies which arose in the year 1980-81 notwithstanding the fact that applicant was assigned

in Bombay Division

seniority w.e.f. 18.6.1993. The Jaipur Division also may be directed to assign the seniority to the applicant w.e.f. 1987-88. The applicant also has sought for declaration that Para 312 of the Indian Railway Establishment Manual (for short 'IREM'), as ultra vires.

2. The applicant contended that as per the Advertisement No. 2/1980-1981, he applied and appeared in the written test in the month of January 1982 and also appeared for interview held at Jaipur on 19.1.1982 but the result was not declared. But, later the result was declared on 31.12.1986 declaring the applicant as being successful. The applicant was allotted to Jaipur Division for the purpose of appointment on the post of Assistant Station Master. The applicant, accordingly was allotted to Jaipur Division vide Annex.A/4 dated 13.3.1987 (Annex.A/4) and he also successfully qualified in the training from the Zonal Training School at Udaipur. After completing the training successfully the applicant was not taken on duty for a period of three months but eventually he was posted as Assistant Station Master in the Bombay Division of Western Railway, vide order dated 18.6.1988. The applicant made a representation that he should be allotted to Jaipur Division but he was allotted to Bombay Division despite his objection. In those circumstances, the applicant has no option but to join at Bombay on the oral assurance of the authorities that the applicant would be posted to Jaipur Division later on the ground that there was no vacancy in the Jaipur Division. Therefore, the applicant joined at Bombay Division and after considerable time, after waiting for allotment of the applicant to the Jaipur Division, he submitted an application for transfer to Jaipur Division and accordingly, the applicant was transferred to Jaipur Division vide order dated 20.4.1989. It is the contention of the applicant that notwithstanding such a request for transfer from Bombay Division to Jaipur Division, since the applicant belongs to Jaipur Division, he did not lose his seniority in the Jaipur Division, therefore, on his transfer from Bombay Division to Jaipur Division, the applicant could

not be placed at bottom seniority. The applicant made a representation to treat him as one belonging to Jaipur Division and fix his seniority accordingly, but the same has been rejected by the respondents. Therefore, there should be a direction to the respondents to treat the applicant as ^{the} one belonging to Jaipur Division and accordingly fix his seniority in the Jaipur Division as if he was allotted and appointed in Jaipur Division as on 15.2.1988 on the basis of Annex.A/5.


3. By filing reply, the respondents have denied the case of the applicant. They have stated that the applicant was selected for the post of Assistant Station Master against the Railway Service Commission Bombay Employment Notice No. 2/1980-1981. However, the appointment of the applicant was delayed due to certain objections of the vigilance department. They have stated that the applicant was initially allotted to Jaipur Division for his appointment and accordingly, he was directed to take the training at the Zonal Training School at Udaipur and he passed the said training during the period 21.9.87 to 23.2.88 and after this training he was reallocated to the BCT Division for his appointment vide letter dated 1.2.1988 and accordingly the applicant was appointed on 18.6.1988 in Bombay Division. Subsequently, the applicant applied for his transfer from Bombay Division to Jaipur Division at his own request with loss of seniority on 20.6.1988 (Annex.R/1). His application was received in the office on 12.8.1988. Accordingly, his name was noted in the name noting register on 19.8.1988 for his transfer from Bombay Division to Jaipur Division at his own request on bottom seniority. They have stated that on the basis of the said noting, the applicant was transferred from Bombay Division to Jaipur Division at his own request on 1.5.1989 vide order dated 18.1.1989 at Annex.R/3. They have also stated that in terms of Para 312 of IREM, since the applicant was transferred at his own request from Bombay Division to

Jaipur Division, he was assigned seniority at bottom, below all temporary/permanent Assistant Station Masters working in the Jaipur Division as on 1.5.1989. However, on the representation of the applicant, the matter was referred to the General Manager (E), COG, vide letter dated 10.3.1992. In reply to the said letter, vide D.O. letter dated 7.8.1992, his representation was rejected stating that the transfer from Bombay Division to Jaipur Division was on the request of the applicant and the applicant was required to be assigned only bottom seniority and accordingly his seniority was assigned in terms of Para 312 of IREM, ^{and it} was in accordance with law. The learned counsel for the respondents reiterating the same contended that since the applicant's transfer from Bombay Division to Jaipur Division was on his own request, the applicant is not entitled to any relief in view of Para 312 of IREM.

4. Heard.

5. The fact that earlier the applicant was allotted Jaipur Division is not disputed. The fact that after passing the training, he was allotted to Bombay Division and appointed in Bombay Division, is not disputed. It is also not disputed that applicant sought his transfer from Bombay Division to Jaipur Division, and on his request, he has been transferred to Jaipur Division. In view of these circumstances, we have to see, whether the ~~and above the persons~~ assignment of the bottom seniority to the applicant in Jaipur Division, is justified or not.

6. In order to appreciate the rival contentions, we have perused the application filed by the applicant for his transfer from Bombay Division to Jaipur Division filed in the case at Annex.R/1. We propose to extract the relevant paragraph of the said letter Annex.R/1 as under :-



"I request your goodself to kindly enlist my name for transfer from BCT Division to Jaipur Division at my own request ready to join Jaipur Division at bottom seniority.

I hope you will consider my case and arrange to transfer me at my own request on humanitarian ground to Jaipur Division where already vacancy exists.

I shall be much thankful to you for this act of kindness - highly obliged.

7. From the above, it is clear that applicant for his own personal reasons, requested for his transfer from Bombay Division to Jaipur Division with the clear undertaking that he was ready to join Jaipur Division at the bottom seniority. By accepting his request, the applicant was transferred vide transfer order dated 18.1.1989 communicated under letter dated 20.4.1989 (Annex.R/3). We think it appropriate to extract the entire transfer order as under :-

NO.E/T/1140/2/1

"WESTERN RAILWAY

DRM's Office, BCT
Dt.20-4-1989.

OFFICE ORDER NO. 47

Sub : Inter Division transfer at own request.

Ref : COPS (E) - CCG's letter No. E/T/839/4/I(Misc.)dt.18.1.89

...
COPS (E) - CCG has approved and ordered that the employees indicated below be transferred to their respective divisions on out of turn basis. Accordingly following transfer orders are issued to have immediate effect.

1. Shri Anupam Kumar Sharma, ASM-ST, scale 1200-2040 (RP) is transferred to KTT Dn. at his request on bottom seniority in the same scale and pay.

2. Shri Ashok Kumar Radhey Shyam, ASM-BSR scale Rs. 1200-2040 (RP) is transferred to KTT DN at his request on bottom seniority in the same scale and pay.

3. Shri Ashok Kumar Ramgopal Sharma, ASM-KEB scale Rs. 1200-2040 (RP) is transferred to JP DN at his request on bottom seniority.

a) Date of relieving/Joining time should be advised to all concerned please.

b) No DA/TA, Joining time, passes on transfer, transfer allowance is admissible as per rules as transfers are ordered at their request.

c) Their service sheet, P/file will be sent to Divn. concerned on their joining.

C/-Sr.DAO BCT JP KTT, 2) SS ST BSR KEB
3) Divl.Secy., WREU GTR & WRMS BCT

4) CC E/T/PB, E/T/III, O.O.file, Tfc.Stores, P/file.
5) GM(E)-CCG, Dy.CPO (U)-CCG.

Sd/-
for DRM(E)-BCT."

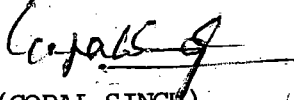
(Emphasis supplied)

8. From the above order, it is clear that three persons by name Shri Anupam Kumar Sharma, Shri Ashok Kumar Radhey Shyam and Shri Ashok Kumar Ramgopal Sharma (present applicant), sought transfer at their own request. At item No. 3, as against the name of the applicant it is specifically stated that applicant Shri Ashok Kumar Ramgopal Sharma, is transferred to Jaipur Division at his own request at bottom seniority. Accordingly, the applicant accepted the transfer order and joined at Jaipur Division. Consequently, he was placed at the bottom in the seniority list. From this, it is clear that the applicant cannot now go back and say that his seniority should be determined as if he was allotted to Jaipur Division in the year 1987. Though, the respondents might have thought of allotting the applicant Jaipur Division earlier but the fact remains that after completing his training from 21.9.1987 to 23.2.1988, the applicant was allotted to in Bombay Division vide order dated 1.2.1988. The applicant accepted the appointment order and joined at Bombay Division. Though, the applicant has made several representations that he should be transferred to Jaipur Division, he was not transferred and ultimately, at his own request vide Annex.R/1 dated 20.6.1988, he has been transferred from Bombay Division to Jaipur Division. In Annex.R/1, the applicant has specifically given an undertaking that he was ready to take bottom seniority if his request for transfer was accepted and accordingly, his request for transfer has been accepted. In this circumstances, the applicant is estopped to put forth any contention contrary to his request for transfer vide Annex.R/1 dated 20.6.1988. It is also not in dispute that under Para 312 of the IREM, if a transfer is made on request,



such applicant's seniority would be determined at the bottom on his transfer, in the place of his choice. Though, in the prayer column, the applicant has challenged the validity of Para 312 of the IREM but failed to makeout any case for declaring Para 312 of IREM as ultra vires to the Constitution. Para 312 of the IREM has been holding the field as a prudent rule since decades and it is not possible to strike-it down on any ground at this stage. Accordingly, we find that there are no merits in this application. Hence, we pass the order as under :-

The Original Application is dismissed but in the circumstances without costs.


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

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mehta