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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

CA NO.19/1996

Date of order: 10-5-1996

Liyakat Ali : Applicant

vs.

1. Union of India through the
General Manager, Western Railway,
Churchgate, Bombay-20.

2. The Divisional Railway Manager,
Western Railway, Kota Division,
Kota.

: Respondents

None for the applicant
Mr.T.P.Sharma, counsel for the respondents

CORAM:

HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL))

Shri Liyakat Ali has filed this application under Section 19 of the Administrative Tribunals Act, 1985 to quash the impugned order dated 19.12.1995 (Annex A-1) transferring him from Gangapur City to the office of Chief Train Examiner at Bayana.

2. Brief facts of this application are that while the applicant was working on the post of Senior Clerk in the office of Chief Ticket Inspector at Gangapur City under the respondents, he appeared in the selection to the post of Head Clerk and after being declared successful was offered appointment on promotion to the grade of RS.1400-2300 and posted at Divisional Railway Manager's Office in Mechanical Branch vide order dated 25/30-1-1995 (Annex A-2). The applicant reported to the respondents vide his representation dated 3.12.1995 (Annex A-3) that because of his domestic

conditions and of his ailment, he cannot proceed on promotion and gave his refusal for promotion to the aforesaid post by this representation. It is the grievance of the applicant that inspite of there being a specific provision under Rule 224 of the Indian Railway Establishment Manual vol.I, the applicant has been transferred within one year of his refusal from Gangapur City to Bayana. He has, therefore, approached this Tribunal to quash the aforesaid impugned order dated 19.12.1995 (Annex A-1).

3. The respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents has been that the application is premature as the applicant has not exhausted the remedy before approaching this Tribunal. It has also been averred by the respondents that the applicant has been transferred in public interest and for administrative reasons and that he has no vested right to remain posted at one place. It has, therefore, been urged that the application deserves rejection.

4. I heard the learned counsel for respondents and have also examined the record in great detail. The learned counsel for the applicant has not appeared inspite of repeated calls.

5. The only point for consideration in this OA is whether a Railway employee can be transferred to another station within one year of his refusal to go on promotion post ?

6. The contention of the learned counsel for the respondents has been that since the transfer of the applicant has been made in the exigencies of public service and for administrative reasons, there is no infirmity or illegality in the impugned order dated 19.12.1995 (Annex.A-1) issued by the respondents railways. The learned counsel for the respondents has also drawn the attention that even if the representation made by the applicant dated 3.12.1995 (Annex.A-3) is taken into consideration, the applicant cannot be granted any relief in this OA because the order of promotion of the applicant is dated 25/30-1-1995 and in accordance with Rule 224 of the I.R.E.M. Vol.I the period of one year is to be counted from this date and not from the date of refusal by the employee.

7. I have given anxious thought to the arguments raised by the learned counsel for the respondents and have also looked into the relevant provisions.

8. Rule 224 of the I.R.E.M. Vol.I reads as under:-

"224. Refusal of Promotion

I. Selection Posts

'i) The employee refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected,) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection.

E(NG)1-64-PM 1-66 dt.21.1.65 & E(NG)I-71
PM 1-106 dt. 15.12.71

(ii) at the end of one year if the employee again refused promotion at the outstation, his name may be deleted from the panel, deletion being automatic requiring no approval from any authority and the administration may transfer him to out-station in the same grade. He will also have to appear again in the selection notwithstanding the fact that he in the meantime, has officiated non- fortuitously against short term vacancy based on his panel position.

(iii) Seniority will be as from the date of effect of promotion and he will be junior to all the persons promoted earlier than him from the same panel irrespective of his panel position. He will not, however, lose seniority to another employee promoted to the same promotion category during the one year period of penalty as a result of a fresh selection subsequently held.

E(MG)I-66 SR-6/41 dt. 14.10.66."

9. According to clause (i) of Rule 224, it is clear that an employee who refuses promotion expressly or otherwise is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. In accordance with sub-clause (ii) of Rule 224 it is only at the end of one year and if the employee again refuses promotion at the outstation then he can be transferred to outstation in the same grade. It is pertinent to note that under clause (i) of Rule 224, the counting of the period shall start immediately after the issuance of the promotion order. This is evident from the wording used in clause (i) of Rule 224 which lays down that when the employee refuses promotion expressly or otherwise i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected, is debarred for future promotion for one year. It is thus clear that even though an employee who refuses to go on promotion does not expressly give in writing or communicate otherwise that he refuses to go on transfer, the counting of the period of one year shall

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start from the date of promotion and not from the date on which the employee actually refused either expressly in writing or otherwise as has been done by the applicant in this case. The promotion order is dated 25/30-1-1995. The applicant did not indicate his refusal earlier than 3.12.1995 i.e. almost for one year he waited and thereafter he has made a representation that he does not want to go on promotion. What the applicant has tried through this representation is that his period of one year should be counted from 3.12.1995 and not from the date of promotion order i.e. 25/30.1.1995.

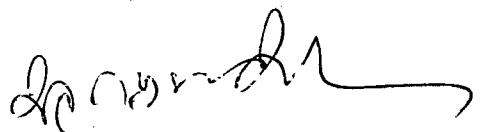
10. In view of above, it is clear that the applicant is not approaching the Tribunal with clean hands. However as the things stand today, the applicant moved this Tribunal by filing the OA on 8.1.1996 and an interim ex parte order staying the operation of the order dated 19.12.1995 (Anmt.A-1) was issued on 9.1.1996. It is by virtue of this stay order which is continued till today, that the applicant has been continuing at the same station. In fact, the period of one year to be construed in consonance with sub-clause (i) of Rule 224 of the I.R.E.M. Volume-I has come to an end on 30.1.1996. He has, therefore, forfeited his right to stay on the same station by virtue of Rule 224, Sub-clause (i) of the IREM Vol.I.

11. In view of above, the answer to the issue raised in this OA has to be in the negative and the impugned order dated 19.12.1995 (Anmt.A-1) stands quashed. However, in the peculiar facts and

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circumstances of this case since the period of one year has come to an end on 30.1.1996, the respondents are now free to take action in pursuance of Rule 224 (ii) of the IREM Vol.I within a period of one month from the date of receipt of a copy of this order.

12. The OA stands disposed of accordingly with no order as to costs.



(RATAN PRAKASH)
MEMBER (JUDICIAL)