

(76)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 156/95

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~~XXXXXX~~

DATE OF DECISION 01.03.2000

Tulsi B Kishnani

Petitioner

Mr.P.V.Calla

Advocate for the Petitioner (s)

Versus

Union of India and others

Respondent

Mr.Anupam Agarwal, proxy

Advocate for the Respondent (s)

counsel for Mr.Manish Bhandari

CORAM :

The Hon'ble Mr. S.K.Agarwal, Judicial Member

The Hon'ble Mr. N.P.Nawani, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P. NAWANI)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)

* * *

Date of Decision: 01.03.2000

OA 156/95

Tulsi B Kishnani, Confidential Assistant in the office of Divisional Railway Manager, Western Railway, Ajmer, at present attached with the Divisional Engineer (South), Western Railway, Ajmer.

... Applicant

V/s

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. General Manager (Estt), Headquarters Office, Churchgate, Mumbai.
3. Divisional Railway Manager(Estt), Western Railway, Ajmer.

... Respondents.

CORAM:

HON'BLE MR.S.K.AGARWAL, MEMBER (J)
HON'BLE MR.N.P.NAWANI, MEMBER (A)

For the Applicant

... Mr.P.V.Calla

For the Respondents

... Mr.Anupam Agarwal,
proxy counsel for
Mr.Manish Bhandari

O R D E R

(PER HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER)

In this Original Application filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs :-

"by an appropriate order or direction the action of the respondents in not retaining the applicant on promotion at the station where he is already working i.e. Ajmer Division, knowing it fully that the applicant is going to retire on 30.9.1996, the relieving order Annexure A-2 may kindly be quashed and set aside. Further, the respondent No.3 may be directed not to consider the contents made in Annexure A-1 as final refusal by the Headquarter Office in respect of the prayer made by the applicant for floating the post.

The respondent No.2 may further be directed to decide the representation submitted by the applicant in respect of floating of post of Personal Assistant in view of the circular issued by the Railway Administration.

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Further, the respondents may be directed ~~to~~ not to relieve the applicant from Ajmer Division."

2. In view of the fact that the applicant must have already retired on 30.9.96, the remaining controversy in this OA falls within a narrow compass as to whether the order by which he was relieved from Ajmer to report to Head Office Western Railway was bad in law and requires to be set aside.

3. The facts of the case, as stated by the applicant, ^{are} ~~that~~ while he was serving at Ajmer, he was promoted to the post of P.A. carrying higher pay scale of Rs.2000-3200 vide order dated 23.12.94/6.1.95 (Ann.A4). Amongst the CAS in the scale Rs.1640-2900 promoted as PAS in the scale Rs.2000-3200, there were 3 officials from Ajmer Division, S/Shri P.L.Mehandiratta, K.N. Khatwani and the applicant in that order. It is stated that all the above (perhaps meaning the 7 in the later part of paragraph 2) were instructed to report to ~~Head~~ Headquarter Office, CCG for further posting and that all the above promotion orders should be complied within a period of one month. Vide an order dated 19.1.95 (Ann.A7) also, the applicant as well as his other two colleagues were asked to report to Headquarter, CCG, within one month. Vide order dated 23.2.92 (Ann.A5), issued by the Headquarter, Western Railway, it was separately decided to increase the limit of floating posts from 10% to a maximum of 20% w.e.f. 1.4.92 and further that post can be floated in case employee is due to retire within 2 years from the date of issue of promotion orders. The promotion order in case of the applicant was issued on 22.12.94/6.1.95 and he was to retire on 30.6.96 and thus he was eligible to get the benefit of a floating post and get promoted at Ajmer itself, ~~where~~ where ~~he~~ his presence was further required due to the demise of his ~~wife~~ wife. His grievance is that while the DRM, Ajmer, ~~respondent~~ No.3 (for short R-3) managed to keep Shri Mehandiratta at Ajmer, his representation for being accommodated at Ajmer under the scheme of floating posts was not acted upon timely and in the

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meantime R-2 'forced' him to sign the relieving^{ch} order dated 5.4.95 (Ann.A2) and he was considered as relieved w.e.f. 5.4.95 ~~XXXX~~ (A.N.). It is alleged by the applicant that, on the other hand, in order to favour Shri Mehanderatta, R-2 allowed him to join promotion post at Ajmer vice Shri K.K.Kapil, who proceeded on leave. It appears that Shri Mehanderatta kept on getting adjusted against leave by somebody, or other. In the meantime, it appears that on receipt of the representation of the applicant, a letter dated 14/21.3.95 (Ann.A1) was issued from the Headquarter Office, Western Railway, to DRM (E) indicating that the local arrangement made for posting of Shri Mehanderatta against leave vacancy of Shri Kapil, PA, in the grade of Rs.2000-3200 cannot continue beyond duration of leave of Shri Kapil and that the arrangement be terminated well in time to enable ~~HQ~~ HQ Office to issue proper posting orders. It was further added that replies to the representations from Shri Mehanderatta and the applicant will be separately sent (but) they may be advised that their request for floating of posts cannot be considered as the higher posts are attached to Senior Administrative Grade (SAG) Officers only and they should be spared to carry out transfers unless give unwillingness. It appears that following this, the letter dated 5.4.95 (Ann.A2) was issued relieving him w.e.f. 5.4.95 (A.N.) which the applicant seeks to get set aside and quashed.

4. It has been stated on ~~a~~ behalf of respondents that ~~RA~~ ~~RX~~ PAS/Stenographers in the scale of Rs.2000-3200 are attached with SAG Officers. Therefore, the applicant's claim for floating of the post was not maintainable. However, the applicant and another refused the promotion, thereby relinquishing their right to the promotion. The respondents have asserted that the allegation for accommodating Shri Mehanderatta is baseless and he has not even impleaded the respondent No.3 in person to reply to the allegation so made. It has also

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been stated that Shri Mehandiratta had been kept only against leave and sick vacancies and respondent No.3 was already instructed by the Headquarter Office, Western Railway, to discontinue the local arrangement whereunder Shri Mehandiratta was accommodated. It has also been stated by the respondents that instead of proceeding to Headquarter Office, Western Railway Churchgate, as required by the order of promotion, the applicant had sent his refusal for accepting the promotion and the same cannot be withdrawn and at least it cannot be treated as withdrawn unless an ^{order} ~~office order~~ to that effect is passed by the administration; the telegram sent by the applicant has no effect on the refusal. Therefore, there was no reason to consider the representation of the applicant once again, which had, in fact, been turned down ^{earlier} ~~again~~. It has also been mentioned that there were no vacancies at Ajmer and the railway administration could not be expected to keep an employee idle for 6 to 12 months, only for vacancy to come up and on the other hand make the other Division suffer. Further, both Shri Mehandiratta and Khatwani are senior to the applicant, if at all the first two vacancies were required to be given, the applicant cannot stake a claim to these. It has finally been contended that it was absolutely within the discretion of the administration and no employee can insist for posting at his place of choice when floating of post was not permissible for the said post.

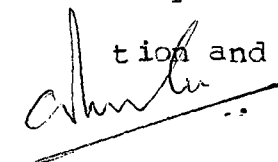
5. We have heard the learned counsel for the parties and examined the material on record.

6. The crux of the matter in this case is the question of floating of posts in order to allow employees to obtain promotion at his place of posting provided his retirement is within 2 years of the date of order of promotion. It obviousl means that a post is allowed to float, or diverted from one

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location to a location, where an employee eligible for advantage of floating is posted. The authority for this system, as produced before us by the applicant himself is a letter dated 28/29.8.91 (Ann.A15) from ~~MAVCE~~ HQ Office, Western Railway, which extends the period prior to superannuation from 1 year to 2 years and the letter dated 23.3.92 under which percentage of posts that could be floated has been increased from 10% to 20%. These letters clearly indicate that these are only administrative instructions and have no status of a statutory provision. It is essentially a welfare measure taken by the administration to allow a retiring employee to remain at his place of posting over where he is promoted. In the instant case, however, the very same authority which issued the aforementioned letters has clarified vide its letter dated 14/21.3.1995 (Ann.A1) that "the request for floating of post cannot be considered as the higher posts are attached to SAG officers only". This letter was in respect of the request of not only the applicant but also in respect of Shri Mehendi-ratta, who, it was alleged by the applicant, was being favoured by respondent No.3. It has already been clarified by the respondents that the latter was given local promotion against leave and sick leave & vacancies. The allegation of favouratism, therefore, does not stand.


7. We have already observed that the system of floating was put in place under administrative instructions and it does not, in any case, create any right in favour of the applicant. Further, when the same authority i.e. H.O. of Western Railway on behalf of the General Manager, rules that floating cannot be considered as higher posts (of Personal Assistants etc.) are attached to SAG officer, we cannot deem it proper to interfere in such administrative functions. We also feel that floating of posts is really a welfare measure adopted by the administration and it cannot override the administrative requirement of

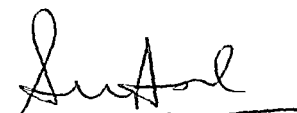


organisation; which in turn may adversely affect the service rendered by the railways to the public. When PAS in the x higher scale of Rs.2000-3200 are attached with only Senior Administrative Grade officers, administration is within its right to require that they are posted with only SAG officers and the welfare measure of floating of postsx cannot be extended to them. We, therefore, hold that the applicant has no right to demand that a post has to be floated to Ajmer so that even after he is promoted to the higher scale of Rs.2000-3200, he remains at Ajmer and his personal requirements cannot be placed at a higher pedestal than the needs of the administration.

8. The OA, therefore, does not succeed and is accordingly dismissed.

Parties to bear their own costs.


(N.P. NAWANI)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)