

Date of order: 30.09.1999

12

O.A.No.477/96

Jitendra Singh S/o late Shri Amar Singh Aged 25 years, Ticket Collector under the control of Station Superintendent, Achnera Railway Station, Western Railway, Jaipur.

OA No.478/96

Khitab Chand S/o Shri Har Lal, aged about 23 years, Ticket Collector, O/o the Station Superintendent, Western Railway, Jaipur.

OA No.479/96

Nand Kishore Chowdhary S/o Shri Ram Nath, Ticket Collector under Station Superintendent, Western Railway, Jaipur.

OA No.510/96

Mukesh Singh Poonia S/o Shri Banwari Lal Poonia, Ticket Collector, O/o the Station Superintendent, Western Railway, Jaipur.

...Applicants

Vs.

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

...Respondents.

Mr.P.V.Calla, counsel for the applicants

Mr. Manish Bhandari, counsel for the respondents

CORAM:

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

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

ORDER

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

The Original Applications detailed above are being disposed of by this common order in view of the fact that all these applicants are aggrieved by the same order and the relief sought is also similar. We, however, take OA No.477 of 96 as the main case.

2. The applicants assail the order dated 19.8.1996 (Ann.A1) so far it relates to them and pray for a direction to the respondents to allow them to work on the post of Ticket Collector

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(for short, TC) as if the said order had never been passed.

3. The matrix of relevant facts as gleaned from the application are that the applicants were appointed as TCs on compassionate grounds as per order dated 7.6.1995 (Ann.A5) after following the prescribed Selection Process, institutional training, practical training etc. The post of TC falls under the Ticket Checking Staff with its own seniority. However, after almost two years of service, the respondents suddenly and without any notice, changed their category to Assistant Commercial Clerks vide the impugned order dated 19.8.1996 (Ann.A1).

4. The respondents have through their reply resisted the application. Briefly states, they contend that with a view to rectify a bonafide mistake so as to fall in line with the order dated 12.9.1994 of this Tribunal in some cases, they had to change the category of the applicants since only the surplus employees and those selected for Jaipur, and could not be accommodated initially at Jaipur, had to be first accommodated in the posts of TCs to those of Commercial Clerks. They also contend that even though the seniority of the applicants was maintained separately, such transfer could be made due to administrative exigencies as well as on the request of employees but in the former case, the seniority will be protected. Further, no prejudice has been caused to the applicants and they have, in fact, been placed in a category with a higher pay scale.

5. We have gone through the records including the rejoinder filed by the applicants and have heard the learned counsel for the parties.

6. The case of the applicants as argued by their learned counsel is primarily based on the arguments that having appointed the applicants on selection basis, invested in their institutional and practical training and applying them on the post of TC for almost two years, the respondents had no authority to change their category, especially when they had not volunteered for such a change. This has been done in the absence of any provisions and, therefore, the order dated 19.6.1996 should be declared as illegal. On the other hand, the master circular dated 12.12.1990 issued by the Railway Board regarding appointment on compassionate grounds, provides under para XII (6) that 'once an appointment on compassionate grounds of the wards, window etc. has been made in a

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particular category/grade no change of category/grade is subsequently permissible subject to the provisions in para X (c) above.' The latter part of para XII (6) is not relevant to this case as it is meant for cases where compassionate appointment has to be initially given in Group 'D' for want of Group 'C' posts.

7. The learned counsel for the respondents while opposing the above contentions has stated that the compulsion to follow the orders of this Tribunal and escape from being punished for contempt of court was, no doubt, there. However, the respondents have the power and authority to effect transfer of any railway employee, without his option, when exigency of administrative requirement so dictates. In this connection, he has drawn our attention to para 226 of the Indian Railway Establishment Code (for short, the Code) Vol.I which is reproduced below:

"226. Transfers.- Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."

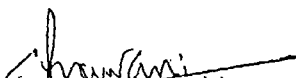
It was, therefore, asserted on behalf of the respondents that there was no illegality in the order dated 19.6.1996 (Ann.A1) and there was no force in the prayer of the applicants that they must be considered as working on the posts of TCs as if this order was not issued at all. These OAs, therefore, deserved to be dismissed.

8. We have carefully considered the rival contentions and have gone through the master circular dated 12.12.1990 as also para 226 of the Code. The Code has certainly a higher status than the administrative circulars. The Code does provide the railway administration power to transfer employees not only to another railway establishment and department but even to a different

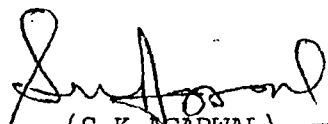
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railway in the exigencies of service. We are not here to go into the question of 'exigencies of service' as it is really in the realm of administration but in this particular case, there was a requirement of complying with the orders of this Tribunal in some other OAs and need to escape from being hauled up for contempt of court. There was also no need to issue a show-cause notice as the impugned order is in no way punitive and, in fact, the applicants have been transferred to a post which carries a higher pay scale. The impugned order dated 19.8.1996 issued with the approval of the competent authority does not suffer from any illegality or lack of jurisdiction.

9. These Original Applications, therefore, do not succeed and we dismiss these accordingly with no order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member

*gives copy
of the order
7/10/99
to calla Advocate.
and on behalf
of Manish Bhandari
AB
8/10/99*