

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 19.07.02

OA No.85/97

Hans Ram Meena s/o Shri H.N.Meena r/o V&P Jolanda, Tehsil Bonli, Distt. Sawai Madhopur, presently posted as Asstt. Station Master, Railway Station, Makholi, W.R. Kota Division.

Ram Avatar r/o Railway Quarter Hanspura, presently posted as Assistant Station Master, Hanspura Railway Station, Western Railway, Kota Division.

.. Applicants

Versus

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

.. Respondents

Mr. P.P.Mathur, proxy counsel to Mr. R.N.Mathur, counsel for the applicant

Mr. T.P.Sharma - counsel for the respondents

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.GUPTA, Member (Administrative)

The applicants are aggrieved of the order dated 22/23.2.96 (Ann.A1) whereby their request for assigning proper seniority has been finally rejected. In relief, they have prayed for quashing the said order and also for holding para 312 of the I.R.E.M. as ultra vires insofar as

it relates to assignment of seniority at the bottom to the original allottees of the division/department from where they were sent to the another division/department in the administrative interest and subsequently were transferred to their original department on their request, on various grounds stated in the application.

2. The facts of the case as stated, in brief, are that:

2.1 Based on the advertisement published in 1986 by the Railway Recruitment Board, Ajmer, they applied for the post of Assistant Station Master (ASM) indicating their first choice of appointment in Kota Division of the Western Railway. They were selected for the said post and assigned Kota Division and after found fit in medical examination and after having completed training successfully at Zonal Training School, Udaipur, they joined the post at Kota. Subsequently, an order was passed by the respondent No.1 whereby the applicants were transferred to Bombay. They were transferred to the Bombay Division perhaps for the reason that there was urgent need of trained ASMs in that division. They were sent there with an understanding that they will return back to the Kota Division.

2.2. The Railway Recruitment Board selected more ASMs against the vacancies of the subsequent year. A few of them were sent to Bombay Division and they have now been transferred to Kota Division on administrative grounds without changing their seniority.

2.3 They made representations for sending them to Kota Division but their representations were treated as

to another on request basis. Having concurred with the same and availed of the benefit, the applicants are estopped from raising a grievance at a later stage.

3.2 No reason has been shown as to how the provisions of para 312 of the IREM are ultra vires and as such their prayer is not sustainable in law.

3.3 It is not denied that the applicants were originally allotted to the Kota Division. It is admitted that the applicants were sent for training by Kota Division and were posted at Kota Division. However, it is submitted that since there was a shortage of staff in Bombay Division, the applicants alongwith others were transferred to Bombay Division on permanent basis. In the transfer order, it was not mentioned that they have been posted on temporary basis. Therefore, the question of their repatriation to the Kota Division did not arise. No preferential right is accrued to the applicants on account of their being first posted to Kota Division since the transfer was made on permanent basis and, therefore, the question of their re-transfer without request does not arise.

3.4 The post of ASM is a safety category post and without any reliever the post cannot be left unfilled as it may amount to hamper in running of trains and safety of passengers. Therefore, immediately relievers were available, the applicants were relieved for joining at Kota Division. Being an essential service, no exception can be taken for delayed relief. No discrimination is made as contended by the applicants. Accordingly, the application of the applicants deserves rejection.

4. The applicants have not filed rejoinder.

request for transfer to Kota Division and their names were noted in the Name Noting Register for transfer on request basis. Thereafter the respondent No.1 issued order dated 30.1.89 (Ann.A3) which provided for their immediate release to Kota Division without waiting for the reliever. However, they were not relieved for a long period and eventually, after a lot of persuasion they were relieved in the year 1992. After they joined, a seniority list was published in which the name of one of the applicants i.e. Hans Ram Meena does not appear and of another applicant i.e. Ram Avatar appears at Sl.No.73, as may be seen from the seniority list at Ann.A4.

2.4 They submitted representation stating that they were not transferred on request basis but they were repatriated to their original division where they were originally appointed. It was also submitted that they were not transferred to the Bombay Division on their request and hence they were sent back to their original division of posting/appointment and that their seniority could not be changed. When their grievances were not redressed, they agitated through the Trade Union and the matter was taken up in the P.N.M. meeting held in 1995, but the respondents rejected the legitimate grievance of the applicants vide the impugned order dated 22/23.2.1996 (Ann.A1), being the minutes of the P.N.M. meeting.

3. The respondents have contested this application. Briefly stated, they have submitted that :-

3.1 The applicants were transferred to Kota Division on request basis and they were fully aware of the provisions about seniority on transfer from one Division

5. Heard the learned counsel for the parties and perused the record.

5.1 It is an admitted fact that the applicants were selected in Kota Division and they were posted to the Kota Division after successful completion of the training. It cannot be denied that the respondents had powers to transfer from one division to another on permanent basis in administrative exigencies. The contention of the respondents that the transfer order did not contain any clause that it was ordered on temporary basis, has not been contested by the applicants by filing rejoinder/documents. As seen from the order dated 30.1.89, (Ann.A3), the transfer of the applicants from Bombay Division to Kota Division was on request basis. It is further stated in the said order that a declaration should be obtained from the employees who are transferred to Kota Division for acceptance of bottom seniority. During the course of arguments, the learned counsel for the respondents submitted that the applicants had given declaration for accepting the bottom seniority and this submission was not denied by the learned counsel for the applicants during the course of arguments.

5.2 It is also a fact that the applicants were relieved after 3 years of issue of the order dated 30.1.89 (Ann.A3) which contained specific instructions of the competent authority for their release without the reliever. The contention of the respondents in their reply that due to exigency of service and being the safety staff, they could not be relieved unless a reliever joined is strange. However, for such abnormal delay, no relief

can be considered. The applicants had the option to withdraw their declaration. There is nothing on record in this regard. It appears that the applicants were themselves eager for posting at Kota.

5.3 Para 312 of the IREM provides for assignment of the seniority, on transfer from one division to another on request basis, below the existing confirmed, temporary and officiating railway employees. The applicants have not given any ground as to how this para is illegal. In the circumstances, the said para can not be held as ultra-vires. The action of the respondents in assigning the seniority in accordance with para 312 of the IREM, is in order.

5.4 There is nothing on record to establish the contention of the applicants that they were sent to Bombay Division with the understanding to bring them back to Kota Division. The order of transfer to Bombay Division was on permanent basis. They themselves gave in writing in 1989 for acceptance of bottom seniority <sup>with</sup> ~~and~~ consequences of acceptance of bottom seniority.

5.5 In view of above discussions, we do not find any merit in this case and accordingly this OA is dismissed.

6. No order as to costs.

  
(M.L.CHASHAN)

Member (Judicial)

  
(H.O.GUPTA)

Member (Administrative)