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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 26/5 July, 2001

OA No.93/97

R.N.Pathak s/o Shri D.N.Pathak r/o 613/A, New Colony, Gangapur City, Distt. Sawai Madhopur, Guard Gr.'C' under Station Master, Gangapur City (W.R.).

..Applicant

Versus

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Personnel Officer, Western Railway, Churchgate, Mumbai.
3. The Divisional Rail Manager, Western Railway, Kota.

.. Respondents

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

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

CORAM:

Hon'ble Mr. A.K.Mishra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

Per Hon'ble Mr. Gopal Singh, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant, R.N.Pathak, has prayed for a direction to the respondents to give relief to the applicant in terms of letter dated 17.3.1979 (Ann.A4) with all consequential benefit and for withdrawal of order dated 3.7.95 being factually incorrect and illegal and not sustainable.

2. Applicant's case is that he was initially appointed as Apprentice Fireman Grade 'A' on 2.4.1962, was promoted as Shunter

*Gopal Singh*

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Grade 'A' in the year 1968-69 and was further promoted on the post of Driver Grade 'C' and was posted at Gangapur City. In the month of January, 1979 some anti-social elements attacked him with a view to damage his life and limbs and that resulted injury to his left hand middle finger. The applicant requested the authorities for his transfer from Gangapur City (Kota Division) to Jaipur, Ajmer, Ratlam or Bombay Division for safety of his and his family's life. The Divisional Medical Officer, Kota issued a certificate dated 21.6.1979 to the effect that the applicant cannot work as Driver and he should be given a light job permanently. The applicant was transferred to Jaipur Division on the post of Guard Grade 'C' at his own request with condition of bottom seniority vide their letter dated 6.7.79 and accordingly the applicant joined the post of Guard Grade 'C' in the Jaipur Division and he took voluntary retirement w.e.f. 9.3.2000. It is the contention of the applicant that he should have been treated as medically decategorised and should have been accorded seniority as per the rules applicable to medically decategorised employees. This has not been agreed to by the respondents as seen from their letter dated 1.9.96 (Ann.A1). Hence, this application.

3. In the counter, it has been stated by the respondents that this application is hopelessly barred by limitation and can be dismissed on this count alone. It has been pointed out by the respondents that the applicant had requested for his transfer to any other Division from Kota, since he apprehended threats to his life in his place of posting. Subsequently, he was medically decategorised. However, his case for transfer to Jaipur Division was under consideration on the basis of his request for transfer to Jaipur Division on the post of Guard, and accordingly he was transferred to Jaipur Division vide order dated 6.7.1979. Thus, there is no infirmity or irregularity in their order of transfer of the applicant at his own

*Copy of A.S. - J*

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request to Jaipur Division on the post of Guard. Hence, it is submitted by the respondents that this application is devoid of any merit and deserves to be dismissed.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. For better appreciation of the case, we consider it appropriate to reproduce below the transfer order dated 6.7.1979 of the applicant:-

"No. E/L/11/40/3/1

DRM'S OFFICE: KOTA JN.

DT. 6/7/1979

Sub: - ....

Ref: COPS (E) CCG's letter No.EM/1140/8/7

dt. 6.7.79.

Shri R.N.Pathak Driver Gr. 'C' scale Rs. 330/560 (R) has been declared incapacitated to work as Driver 'C' permanently vide DMO KTT certificate No. MD/55/5/GGC dt. 21.6.79. In view of his incapacitation as Driver 'C' COPS (E) CCG's vide his letter dated above has accepted his request for change of category from Driver Gr. 'C' to Guard Gr. 'C' in Traffic Department and transferred and posted on Jaipur Division.

The change of category and transfer is at his own request and as such Shri Pathak will have to accept bottom seniority. No Joining time and transfer passes and transfer allowance are admissible to him as per extent rules. No. DAR/B&C/Vig. cases are pending against him.

Further posting orders will be issued by DRM's Office Jaipur. Shri Pathak should be relieved on transfer with immediate effect to report for duty at DRM JAIPUR.

*(Signature)*

The changes should be carried out and advice to this office.

for DRM (E) Kota".

It is clear from above order that having joined the Jaipur Division in compliance to these orders, the applicant has agreed to bottom seniority in the cadre of Guard Gr. 'C' in Jaipur Division. The applicant is raising his grievance of seniority now in the year 1997, though the grievance had arisen to him in the year 1979. The learned counsel for the applicant submitted that his representation has only been replied to by the respondents in the year 1996 vide Ann. Al, and hence this application has been filed within a period of one year from the date of rejection of his claim. Therefore, it has been pleaded by the learned counsel for the applicant that the OA is within limitation. In this OA the applicant is seeking seniority from the date of his initial appointment as per the rules applicable to medically decategorised employees. It is a fact that applicant had applied for his transfer outside Kota Division initially on different grounds. Subsequently, of course, the applicant was decategorised. Considering the request of the applicant for his transfer outside Kota Division, the respondents Department transferred the applicant to Jaipur Division on the post of Guard on the condition of bottom seniority in the year 1979 itself. The applicant has not raised the grievance about his seniority in the year 1979 or immediately thereafter. Thus, he accepted the bottom seniority in the Jaipur Division on the post of Guard and now after 18 years, he cannot be permitted to unsettle the settled position of seniority. The applicant had an opportunity to challenge his seniority in the year 1979 or immediately thereafter within the limitation period, which he failed. Thus, we are of the view that the application is hopelessly barred by

*(Signature)*

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limitation and can be dismissed on this count alone. On merits also, we do not find any infirmity in the action of the respondents in treating the transfer of the applicant from Kota Division to Jaipur division "at his own request" and giving him bottom seniority in the cadre of Guard Grade 'C'. In the light of above discussions, the application is devoid of any merit and deserves to be dismissed. Accordingly, we pass the order as under:-

The OA is dismissed with no order as to costs.

Gopal S  
(GOPAL SINGH)

Adm. Member

A.K.M  
26/7/1981  
(A.K.MISHRA)

Judl. Member