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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.361/98

Date of order: 9.4.1999

Chunni Lal S/o Shri Manphool Arya, aged around 43 years, R/o Plot No.41, Jawahar Jadugar Colony, Ajmer, presently working as Khalasi-Caneman, Western Railway, Ajmer.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer.

...Respondents

Mr.Vinod Goel - Counsel for applicant.

Mr.Azgar Khan - Proxy of Mr.M.Rafiq - Counsel for respondents

CORAM:

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.RATAN PRAKASH, JUDICIAL MEMBER.

Applicant Chunni Lal herein has approached this Tribunal under Sec.19 of the Administrative Tribunals Act, 1985, to quash the impugned order of his transfer as at Anxx.Al dated 17.7.98 from Ajmer to Swaroopganj with a further prayer to allow him to perform the work at Ajmer on the post of Caneman.

2. Facts in brief are that the applicant was initially appointed on the post of Khalassi-Caneman and that too by the direction of the Tribunal in an earlier O.A filed by the applicant. The applicant is a blind person and has been performing the work of Caneman. It is the grievance of the applicant that though he was performing the duties of a Caneman at Ajmer, the respondent department has transferred him from Ajmer to Swaroopganj vide order dated 17.7.98 (Anxx.Al). He made a representation to the respondents on 11.8.98 (Anxx.A3) which has not been responded by the respondents. Further the case of the applicant is that after his request was not acceded to; he reported for duty at Swaroopganj. He was not taken on duty at Swaroopganj by

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the respondent department. He made another representation on 15.9.98 but this representation has also not been responded to by the respondent department. The Tribunal therefore, directed vide order dated 20.10.98 to allow the applicant to join duty at Ajmer, till the date fixed. The applicant is working at Ajmer till today.

3. The respondents have opposed this application on the ground of jurisdiction as well as on merits. On the point of jurisdiction, it is stated that since Swaroopganj falls within the jurisdiction of Jodhpur, this O.A should have been filed at Jodhpur as this Bench has no jurisdiction. This plea is not sustainable as a part of cause of action as arisen at Ajmer. On merit, it has been contended that transfer is an incidence of Govt service and that the respondent department i.e. the Station Superintendent, Swaroopganj has further been directed by the Divisional Railway Manager, Ajmer, respondent No.2, to take the applicant on duty at Swaroopganj, vide their communication dated 23.7.98 (Annex.A5). It has, therefore been urged that the applicant has no legal right to remain at Ajmer and that too on the post of Caneman.

4. I heard the learned counsel for the parties and have examined the records. It appears that the applicant has been facing difficulties right from the very beginning while entering into the respondents' department to join his duties as Khalassi-Caneman. The argument of the learned counsel for the respondents that the applicant himself manipulated to get a letter issued by the Station Superintendent, Swaroopganj at Annex.A4 is not borne out by the contents of this letter. A perusal of this letter indicated that the Station Superintendent has shown his inability to allow the applicant to join there as against the two posts of Waterman two persons ^{were already} ~~were~~ working. It is also stated therein that looking to the nature of the work and the need of the Station, the applicant could not justicably



perform his duties at Swaroopganj. Though it is made out that the Divisional Railway Manager, Ajmer has written to the Station Superintendent, Swaroopganj vide his communication dated 23.7.98 that he should be adjusted at Swaroopganj by shifting one person who is working on the post of Waterman there; yet it is for the respondents themselves to sort out the things and the applicant cannot be made to run from pillar to post to join duty. Moreover, the applicant is a Scheduled Caste candidate and he is a blind person. It appears that the respondent Divisional Railway Manager, Ajmer, has not taken into consideration the capability and the physical state of the applicant while transferring him from Ajmer to a far off station like Swaroopganj which also falls within District Sirohi.

5. It is true that transfer orders cannot be interfered by Court /Tribunal unless it is actuated by malice or ^{or} in infraction of the rules or guidelines of transfer of the Govt employees. Yet in the instant case, it is made out that the applicant is a blind person and has been discharging the duties of Caneman while being appointed as Khalassi/Caneman by the respondent department. The fact that the applicant is a Scheduled Caste candidate also cannot be overlooked. Sending a low paid employee from Ajmer to Swaroopganj, a far off place is not justiciable in the facts and circumstances of the case. Moreover, before transferring the applicant from Ajmer to Swaroopganj, the Divisional Railway Manager, Ajmer should have weighed the pros & cons of the positions available at Swaroopganj, when the Station Superintendent, Swaroopganj has specifically mentioned that against both the posts of Waterman two persons are already working.

6. In view of above, the impugned order as at Annex.A1 dated 17.7.98 cannot be sustained which is hereby quashed. Since the applicant is already working at Ajmer though after the directions of



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the Tribunal dated 20.10.98, he would be entitled to receive all the salaries and payments which are due to him as if he was not transferred to Swaroopganj.

7. The O.A is disposed of accordingly at the stage of admission.
No order as to costs.



(Ratan Prakash)

Judicial Member.