

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.365/99

Date of order: 14/9/2000

B.L.Mahawar, S/o Shri Bheru Lal, working on the post of Senior Section Engineer (MWT), O/o CWM, W.Railway, Kota.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Fly, Churchgate, Mumbai.
2. Chief Works Manager, Parel, Mumbai.
3. Chief Works Manager (WRS), W.Railway, Kota.

...Respondents.

Mr.P.V.Calla - Counsel for applicant.

Mr.T.P.Sharma - Counsel for respondents Nos.1 & 2.

Mr.U.D.Sharma - Counsel for respondent No.3.

CORAM:

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

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

By this Original Application, the applicant has challenged the order dated 27.5.99 (Annex.A1) and order dated 15.4.99 (Annex.A2) and made a prayer to quash and set aside the above orders on the following grounds:

- i) The applicant belongs to SC community and he was selected against a permanent vacancy on the post of Sr.Section Engineer on regular basis and there was a vacancy available at Kota but the applicant on promotion was posted at Dahod Workshop with malafide intention although there is a practice to retain the incumbent at the same station. It is also stated that the applicant is a resident of Latheri village, near Kota, therefore, being SC candidate, he should have been posted at Kota, as per Railway Board's circular issued in connection with SC&ST employees.
- ii) The applicant was selected against a permanent vacancy arisen due to voluntary retirement of Shri Bangali Babu and he was selected on the post after following the regular process of selection and the post was

also available at Kota, but inspite of all this, the impugned orders were issued.

2. Reply was filed. It is stated in the reply that due to restructuring, revised cadre of MW Trade was issued according to which there are only two regular post of Sr.Section Engineers at Kota Work Shop against which Shri T.R.Verma and Shri C.S.Mishra are working whereas Shri Bangali Babu was working on work charge post whose currency expired on 31.12.98. It is stated that the applicant was found suitable against the post which was fallen vacant due to voluntary retirement sought by Shri Bangali Babu therefore the applicant was posted at Dahod Workshop. It is also stated that no regular post of Sr. Section Engineer is available at Kota and no workcharge post is in operation at Kota, therefore, the question of retaining the applicant at Kota did not arise and the applicant is not entitled to any relief sought for.

3. Rejoinder has also been filed reiterating the facts as stated in the O.A which is on record.

4. Heard the learned counsel for the parties and also perused the whole record.

5. It is not disputed that the applicant belongs to SC community. But merely the applicant belongs to SC community gives no special privilage to the applicant in the matter of transfer.

6. In Choudhary Roosevelt Vs. G.M. South Central Rly, Sihundrabad & Ors, CAT(FE) Hyderabad, has held that member of SC/ST employee enjoys no special privilage in the matter of transfer. Circular/letter No.78-(SCT)15/25 dated 16.7.78 is not enforceable by law.

7. In Bank of India Vs. J.S.Mehta, (1992) 1 SCC 306, Hon'ble Supreme Court held that the guidelines issued by the govt for posting of husband and wife at one station do not give legal right to claim posting at one station if authorities consider such posting as not feasible.

8. In UOI Vs. S.L.Akkas, 1994 SCC (L&S) 230, Hon'ble Supreme Court held that guide lines issued by the Govt do not confer upon employee any

legal enforceable right.

9. In Laxmi Narain Mehar Vs. UOI & Ors., 1997 SCC(L&S) 643, it was held by Hon'ble Supreme Court that SC/ST employees are entitled to be considered for posting near their home towns but subject to administrative exigencies only

10. In the instant case, it has been made very clear in the reply filed by the respondents that no regular post of Sr.Section Engineer is available at Kota and no work charge post is in operation at Kota, therefore, the claim of the applicant for Kota on the basis of being SC candidate is not tenable.

11. The learned counsel for the applicant also argued that the applicant was regularly selected on promotion for the post of Sr.Section Engineer and there has been a practice that the person promoted against permanent post on regular basis is posted at the same Station if the post is available. But the applicant failed to establish the fact that person on promotion shall be retained at the same station due to prevailing practice. The applicant should have proved this fact by giving examples so as to prove that there was a prevailing practice and one illustration cannot be termed as prevailing practice. No malafides could be established against the respondents in issuing the impugned orders whereas the respondents have categorically denied in the reply that there was any malafide on the part of the applicant while issuing these orders and also made it clear in the reply that the said two regular posts are already occupied by two regularly selected persons, therefore, question of posting the applicant against these posts does not arise. It is also made very clear in the reply that the applicant cannot be posted against the work-charge post as he is regularly selected person and cannot be given promotion on ad hoc basis against workcharge post. Therefore, on the basis of above all I am of the considered view that the applicant has no case for interference by this Tribunal and this C.A having no merits is liable to be dismissed.

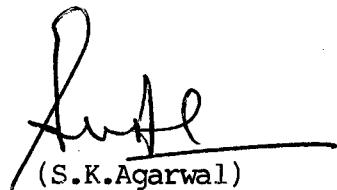
12. I, therefore, dismiss the C.A having no merits. The interim order

*Subh*

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issued on 1.6.99 stands vacated. However, a liberty is given to the applicant to file a representation to the respondents' department for redressal of his grievances and the respondents' department is expected to consider the grievance of the applicant sympathetically by passing a reasoned and speaking order.

13. No order as to costs.

  
(S.K. Agarwal)

Member (J).