

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 20.1.2000

OA No. 266/99

Suresh Chand Dubey Son of Shri Jagdish Prasad aged about 55 years, resident of Govindji Ka Mandir, Mori Charbagh, Bharatpur.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota.
3. The Deputy Controller of Stores, Western Railway, Kota.

.. Respondents

Mr. Ashok Gaur, counsel for the applicant

Mr. R.G.Gupta, counsel for respondents Nos. 1 and 2

Mr. U.D.Sharma, counsel for respondent No.3

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

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that impugned orders dated 4/7.12.1998 and 23.3.1999 may be quashed and set-aside and respondents be directed to adjust the applicant at Bharatpur in any office under DRM, Kota on the post of Head Clerk.

2. The facts of the case are that the applicant is

orthopaedically handicapped, having to get both his legs amputated because of a railway accident. He is presently posted as Head Clerk in the office of the Deputy Controller of Stores (Division), Kota. He was earlier transferred on 17.10.1997 to the office of Controller of Stores (Divisional), Ratlam. Against this transfer order he had filed OA No. 494/97 which was decided on 17.2.1998 (Ann.A1) with the direction that "In the interest of justice, the applicant is directed to make a detailed representation to the General Manager, Western Railway, Churchgate, Mumbai as also to the D.R.M., Kota through proper channel; making a request to post him in the office of P.W.I. Bharatpur. Respondent No.1 would dispose of the said representation within a period of two months from the date of receipt of the representation." He was subsequently transferred to Deputy Controller of Stores (Division), Kota vide order dated 4/7.12.98 and joined there on 15.12.98. In response to the order dated 17.2.1998 of this Tribunal and the representations consequently made by the applicant on 25.1.1999 (Ann.A4), the GM, Western Railway considered the matter and came to the conclusion that it was not possible to post him at Bharatpur as there was no store activity going on at that place and he belonged to a different seniority unit. Aggrieved by this and the earlier order dated 4/7.12.1998, he filed this Original Application.

3. A reply was filed by the respondents. It has been stated on behalf of the respondents that though the applicant has challenged two orders but he has not been able to make out any case as to what statutory rule was violated or as to how these orders are vitiated by bias. In fact, the applicant had to be transferred out to Ratlam vide order dated 16.7.1996 because of the closure of the Stores Depot at Bharatpur in

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1996 and relieved on 20.7.1996. He, however, reported at Ratlam only after more than 14 months. Thereafter, considering his representations, he was first posted to the office of Divisional Controller of Stores (Division) Ratlam vide order dated 17.10.1997 and then to District Controller of Stores, Ratlam to facilitate his going to office. It has also been stated that the applicant has not approached the Tribunal with clean hands and that he has tried to twist the directions given by this Tribunal vide its order dated 17.2.1998 since there was no direction to post the applicant at Bharatpur. His averment that he was working in office in the first floor was also not correct as he was working on the ground floor in the office of Depot Stores Keeper and could not have any difficulty in attending the calls made by the officers. Just because the applicant was earlier posted at Bharatpur, it does not confer any right even though he is an handicapped person and it is not understood as to how he has entertained apprehension of losing his life if he works at Kota instead of Bharatpur. The applicant has also not explained as to why his family cannot shift to Kota and look after him at Kota. The respondents have denied that after closure of the Stores Depot at Bharatpur some employees have been allowed to remain at Bharatpur and he has been discriminated against. ~~there~~ It has been stated by the respondents that not a single employee of the Stores Department in Bharatpur has been retained there in the same capacity. As far as the names cited by the applicant, it has been clarified that Shri Keshav Dev, Poen was initially transferred to Tuglakabad Depot and it was only on his submitting an application for transfer by accepting bottom seniority in the lower grade on reversion that he was posted as Peon in the lower grade at Bharatpur. Smt. Phoolwati was working as Safaiwala and was transferred to Ratlam on the

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closure of the Depot. She also submitted an application to post her at Bharatpur on bottom seniority basis in the lower grade and accordingly she was posted at Bharatpur in the initial grade of Group 'D' cadre on the bottom seniority. Shri Rishi Kumar belonged to the staff falling within the jurisdiction of the Divisional Railway Manager's office and was having his lien, seniority etc. while working in the Stores Depot at Bharatpur. On closure of the Bharatpur Depot, he was transferred and posted at Tuglakabad Depot.

4. The applicant has also filed a rejoinder in which he has reiterated his averments. It has also been stated that the applicant was earlier transferred from Mechanical Department to Garage Department and thereafter in the General Branch to Establishment and the General Manager has got all powers to transfer one employee from one unit to another unit or Department of the railways in the interest of the administration. It has also been stated that the applicant is prepared to join at Bharatpur in any of the Department in the pay scale of Rs. 5000-8000 which is being drawn by the applicant.

5. We have heard the learned counsel for the parties and have carefully perused the material on record.

6. On a perusal of the representation of the applicant dated 25.1.1999 (Ann.A4) it appears that the applicant was very much thankful to the Chief Personnel Officer, Western Railway for having considered his request for posting under DCOS (Division) Kota by which he admitted that some relief has been given to him. However, he mentioned that he was facing some problems in attending officers who were having their

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chambers at the first floor whereas he was given seat for working on the ground floor. He also mentioned that he has to maintain double establishment of his family, one at Bharatpur and other at Kota which is pinching him and since he is a handicapped person and living at Kota without the assistance of his family members, he may be posted at Bharatpur as per the order of the CAT, Jaipur. We also notice that the direction given by this Tribunal vide its order dated 17.2.1998 in OA No.494/97 was to the effect that the applicant will make a detailed representation which will be disposed of by respondent No.1 within two months from the date of receipt of the representation. The order dated 23.3.1999 disposing of the representation of the applicant has also been perused by us. It is stated therein that it was not possible to post him at Bharatpur where no store activity was going on and he belonged to a different seniority unit. His request for posting at Kota or Jaipur was considered and he had already been posted at Kota under DCOS and given a place of work on the ground floor in view of his physical disability. This was done on humanitarian ground even though to start with there was no vacancy available at Kota. Thus, it is clear that the respondents have been quite sympathetic to the problems of the applicant and his posting was changed from Ratlam to Kota on humanitarian grounds even though to start with there was no vacancy available at Kota. From the representation of the applicant (Ann.A4) it is seen that the applicant himself admitted that he has got partial relief with the posting at Kota but he has mentioned two difficulties. First his seat was at the ground floor and he has to frequently go to officers who had their chambers at the first floor. The respondents in their reply have stated that this averment of the applicant was not correct as he is working on the ground floor under the

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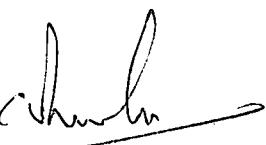
Depot Stores Keeper-I and as such he cannot have any difficulty in attending calls made by the officers. The second difficulty was the applicant having to maintain double establishments. For Government servants it is nothing extraordinary. In fact, in this case the applicant has not mentioned at all as to why his family cannot move to Kota with him and extend all possible assistance to him. We do appreciate the fortitude of the applicant in performing duties as Head Clerk with his disability but the applicant also has to understand that the superiors may have their own limitations in acceding to his personal requirements. The legal position with respect of the role of the Tribunal vis-a-vis transfer matters is quite settled. In Dr. J.D.Srivastav vs. Union of India, reported in 1999 (3) SLJ (CAT) 123, it has been held that the Tribunal cannot interfere in normal transfers and in Union of India and Ors. v. S.L.Abbas, reported in JT 1993 (3) SC 678, Hon'ble the Supreme Court has held that "unless the order of transfer is vitiated by mala fide or is made in violation of the statutory provision, Court cannot interfere with it." There are a catena of other judgments upholding this principle. In the present case the applicant himself has not alleged violation of any specific statutory provision in the impugned order of transfer and has also not based his case of transfer having been made on account of any bias. In view of what has been discussed in this paragraph and the legal position, we are not in a position to interfere with the impugned orders dated 4/7.12.1998 and 23.3.99.

7. We have also noticed from the order dated 23.3.99 of the General Manager, Western Railway, Mumbai that one of the reasons as to why the applicant could not be posted at

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Bharatpur was that the applicant was in a different seniority unit. The plea of the applicant that on the closure of the Bharatpur Depot, certain other officials were allowed to remain at Bharatpur has been effectively controverted by the respondents. The applicant in his rejoinder has stated that he is prepared to join and work at Bharatpur in any other Department in the pay scale of Rs. 5000-8000 which is being drawn by the applicant and the learned counsel for the applicant has stated at Bar that the applicant would be ready for being considered for a posting at Bharatpur on bottom seniority basis. Therefore, in view of the fact that the applicant suffers from a severe disability and if he submits an application for transfer on bottom seniority basis, respondent No.1 would perhaps still be able to consider such a request on humanitarian grounds.

8. We accordingly dispose of this application with a direction to respondent No.1 to reconsider the case of the applicant for posting at Bharatpur in case the applicant makes an application, within one month of this order, for his transfer to Bharatpur in other Units/Departments foregoing his seniority and accepting bottom seniority in the pay scale Rs. 5000-8000. Such consideration may be done within a period of two months from the date of receipt of necessary application from the applicant. No order as to costs.


(N.P.NAWANI)

Adm. Member


(S.K.AGARWAL)

Judl. Member