

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 18.08.2003

OA No.185/2003

Narottam Prashad Sharma s/o Shri Ramji Lal Sharma, aged about 33 years r/o 66, Bhormiya Nagar, Jothwara, Jaipur at present employed on the post of Depo Material Store Keeper (DMSK) Grade III under General Manager (P) Northern Western Railway, Jaipur.

.. Applicant

Versus

1. Union of India through General Manager, Northern-Western Railway, Jaipur.
2. The Dy. Controller of Stores, (Now known as Deputy Material Manager) Ajmer, Northern Western Railway, Ajmer.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant.

Mr. U.D.Sharma, counsel for the respondents

CORAM:

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

O R D E R (ORAL)

The applicant, who is presently working as Depot Material Stores Keeper (DMSK) Grade-III, has filed this application thereby praying that the applicant be allowed to work at Jaipur Headquarter under General Manager (P) as DMSK Grade-III and adverse order, if any, issued by the respondents which has not been communicated to the applicant may kindly be quashed.

2. The applicant was initially appointed as Clerk in the Western Railway in Ajmer Division. Subsequently, he was promoted to the post of Senior Clerk. While he was

66

working as Senior Clerk, he exercised option for transfer to North-Western Railway, Zone Jaipur vide his option dated 7.5.97. It may be relevant to mention here that consequent upon creation of new railway zones by the Railway Ministry, the Railway Board formulated a policy dated 6.12.96 (Ann.P1) thereby calling options from the staff to serve in the Headquarter of the newly created railway zone. Para 2 thereof lays down the procedure for calling options from the staff from various offices and units of the railways. However, as per para 2.2 of the said policy letter, staff working in the workshop and store depots were not included in the scheme of calling options for transfer. The provisions of the said policy were however extended to the staff working in the workshops and store depots who were borne in the Headquarter seniority and divisional seniority vide Railway Board letter dated 21.3.97. It was pursuant to this letter that the applicant exercised his option dated 7.5.97 (Ann.R2). The applicant again submitted option in pursuance to the Railway Board circular dated 23.7.97 (Ann.A4). The applicant has further averred that he was initially promoted to the post of DMSK Grade-III on ad-hoc basis and thereafter his services of the said post were also regularised vide order dated 14.09.02, which order was subsequently modified vide order dated 12.3.03 (Ann.A3) showing him to be promoted as DMSK-III w.e.f. 11.6.02. The applicant has further alleged that he again submitted a representation to the concerned authorities for his transfer to the vacant post of DMSK Grade-III in the Jaipur Headquarter which request was accepted by the respondents vide letter dated 25.3.02 (Ann.A11). Pursuant to the said transfer order, the applicant has joined at

Jaipur Headquarter against the vacant post of DMSE Grade-III. The grievance of the applicant is that the respondents are now repatriating the applicant to Ajmer Division without any rhyme or reason and has filed the present OA for the aforesaid reliefs.

3. Notices of this application were given to the respondents. The respondents have filed detailed reply. In the reply affidavit, it is stated that on account of creation of new railway zone, options were called from the staff to serve in the Headquarter of the new railway zone as per policy letter dated 6.12.96 (Ann.F1). As per para 2 of this policy letter, this facility was not available to the staff working in Workshops and the Store Depots to which category the applicant belongs. Subsequently, this facility was also extended to the staff working in the Workshops and Store depots vide Railway Board letter dated 21.3.97 and subsequently modified letter dated 23.7.97 (Ann.A4). Consequently, the applicant while working as Senior Clerk in the pay scale of Rs. 1200-2040 exercised his option vide letter dated 7.5.97 (Ann.F2). The option so exercised by the applicant alongwith options exercised by other employees in the office of respondent No.2 were forwarded to the Headquarter office, Western Railway, Mumbai vide letter dated 7.5.03 (Ann.F/2A). The name of the applicant finds place at Sl.No.8 showing him as Senior Clerk in the pay scale of Rs. 1200-2040. Thus, according to the respondents, the applicant has given his option for transfer in the post of Senior Clerk. The option given by the applicant pursuant to the letter Ann.A4 was also for transfer to the post of Senior Clerk, as can be seen from letter dated 4.8.97 (Ann.A5). It is further averred that

the Railway Board vide order dated 9.7.02 issued fresh instructions for calling fresh options from the staff for working in Headquarter at Jaipur latest by 15.9.02, which date was subsequently corrected to 31.8.02 (Ann.F3 and R4). The applicant submitted fresh option on 9.8.02 (Ann.A6) wherein at Sl.No.2 he has indicated his designation and grade as substantive DMSK Grade-III. It is further stated that the said declaration of his status as substantive as on 9.8.02 on which date he had given the said option, is false, inasmuch as vide order dated 28.12.99 (Ann.A1), the applicant was promoted as DMSK Grade-III in the pay scale of Rs. 5000-8000 on purely ad-hoc basis and his promotion was made regular w.e.f. 14.9.02 (Ann.A2). Thus, according to the respondents on 9.8.02 he was holding the post of DMSK Grade-III on ad-hoc basis and as such he was ineligible to exercise option for transfer on the post of DMSK Grade-III to the Headquarter Office in terms of Railway Board policy letter dated 6.12.96 (Ann.F1). Therefore, the said option given by the applicant on 9.8.02 was not in conformity to the stipulation given in para 5.1 of the letter dated 6.12.96 and hence was invalid and did not merit consideration for transfer to the post of DMSK Grade-III. It is further stated that the Headquarter office, Jaipur had given approval to the option given by the applicant for transfer to the post of Senior Clerk in the pay scale of Rs. 1200-2040 as revised to Rs. 4500-7000, which was the valid option given by him and the same had been conveyed to respondent No.2 vide letter dated 10.3.03 (Ann.F5). The applicant was, therefore, required to be transferred by respondent No.2 to the Headquarter office in his capacity as Senior Clerk but by inadvertence and oversight,

since the applicant was working as DMSK Grade-III, he was transferred to the Headquarter office vide letter dated 25.3.03. The applicant on the strength of the aforesaid letter dated 25.3.03 reported himself in the office of the respondent No.1 on 31.3.03 and submitted his application requesting that he may be allowed to resume duty. Since the Headquarter office has accepted his option only for the post of Senior Clerk and not for the post of DMSK Grade-III and had conveyed the approval for his transfer on the post of Senior Clerk vide letter dated 10.3.03 and there being no post of DMSK Grade-III available at Headquarter office, the applicant was not allowed to join at the Headquarter office, Jaipur. Accordingly, the applicant was repatriated to his parent office vide letter dated 24/25.4.2003 addressed to the Divisional Store Controller, Jaipur copy endorsed to the Chief Material Manager (E), Ajmer. The said letter was attempted to be given to the applicant so that on the basis thereof he could have resumed duty in his parent office. But the applicant refused to accept the delivery of the said letter with the result that a note was endorsed on the said letter duly witnessed by two officials that the applicant had refused to take the copy of the said letter. Copy of the said letter has been placed on record as Ann.E6. Thus, according to the respondents, the applicant stands repatriated to his parent office w.e.f. 24/25.3.03.

4. The applicant has filed rejoinder thereby reiterating the stand taken in the OA. It is further averred that the respondents have taken concious decision to transfer the applicant on the post of DMSK Grade-III in place of Senior Clerk. In fact, the fresh option was

called vide letter dated 9.7.02 and pursuant to this letter, the applicant has exercised his fresh option indicating that he is working on ad-hoc basis on the post of DMSK Grade-III pay scale Rs. 5000-8000. Last date of receiving the option was 31.8.02. The services of the applicant was regularised vide order dated 14.9.02 but this order was superseded vide order dated 12.3.03 and the applicant was regularised w.e.f. 11.06.02 and last date for exercising the option was 31.8.02. Thus the respondents cannot say that the option of the applicant was not in conformity with the Railway Board circular and hence was invalid.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

5.1 The question which requires my consideration is whether the transfer of the applicant from Ajmer to the headquarter of the newly created zone at Jaipur was to the post of Senior Clerk as contended by the respondents or to the post of DMSK Grade-III as alleged by the applicant. There is no dispute that the applicant was transferred from Ajmer to Jaipur Headquarter vide order dated 25.3.03 showing him to be transferred against the post of DMSK Grade-III in the scale of Rs. 5000-8000 (Ann. A1). Perusal of this document further reveals that the applicant was transferred pursuant to the approval conveyed by the headquarter vide letter dated 10.3.03. The respondents have placed on record copy of this order at Ann. E5. The name of the applicant finds mention at Sl. No. 16 and his transfer has been approved in the capacity of Senior Clerk in the pay scale of Rs. 4500-7000 and not in the capacity of DMSK Grade-III in the pay scale of Rs. 5000-8000. The

respondents have also placed on record letter dated 7.5.97 (Ann.R/2A) whereby the name of the applicant finds mentioned at Sl.No.8 and his case was recommended to the higher authorities for his transfer to the newly created zone in the capacity of Senior Clerk in the pay scale of Rs. 1200-2040 (revised pay scale Rs. 4500-7000). Thus, from the material placed on record, I am of the view that the transfer of the applicant was approved in the capacity of Senior Clerk in the scale of Rs. 4500-7000 and the contention of the learned counsel for the respondents that the order dated 25.3.03 (Ann.A11) was issued by the respondents No.2 by mistake and by inadvertence and oversight as the applicant at the relevant time was working on the post of DMSF Grade-III has to be accepted. The contention of the learned counsel for the applicant that he has subsequently exercised his option for the post of Depot Material Superintendent Grade-III vide Ann.A6 and his case was considered in the light of this option, cannot be accepted. Firstly, because the applicant has placed on record the option dated 9.8.02 on record as Ann.A6. In para 2 against the column 'designation and grade' and also whether substantive or officiating, the applicant has mentioned that he was Depot Material Superintendent Grade-III as substantive. This option cannot be said to be valid option as rightly contended by the learned counsel for the respondents that as on 9.8.02 the applicant was holding the post of DMSK Grade-III on ad-hoc basis and as such he was ineligible to exercise the option pursuant to para 5.1 of the Railway Board policy letter dated 6.12.96 (Ann.F1). Secondly, it is also not disputed that last date for exercising option was also extended vide Railway Board letter dated 9.7.02 which

option was to be exercised by 31.8.02. Admittedly, the applicant was regularised as DMSK Grade-III vide order dated 14.9.02 (Ann.A2) after the last date of exercising the option. Thus, the option exercised by the applicant for the post of DMSK Grade-III was not a valid option as he was not a substantive holder of the post on that date. The contention of the learned counsel for the applicant that his services were subsequently regularised w.e.f. 11.6.02 vide order dated 12.3.03 does not in any way improve the case of the applicant. The fact remains that the applicant was not entitled to exercise his option to the post of DMSK Gr.III pursuant to the Railway Board's policy letter dated 6.12.96 as he was not holding the post of DMSK Gr.III in substantive capacity at the relevant time. The option exercised on 9.8.02 (Ann.A6) thereby showing that he was working in substantive capacity was not in conformity with the policy letter Ann.B1. Hence, invalid and did not merit any consideration for transfer to the post of DMSK Grade-III.

6. In view of what has been stated above, the present application is devoid of any merit, hence dismissed. The interim relief granted on 29.4.03 stands vacated.


(M.L.CHAUHAN)

Member (Judicial)