

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT CAMP : INDORE

Original Application No.180 of 2000

Indore, this the 12th day of April, 2004

Hon'ble Shri M.P.Singh - Vice Chairman  
Hon'ble Shri Madan Mohan - Judicial Member

Kishanlal S/o Mangilal Sharma,  
aged 47 years, resident of 1523/A,  
Road No.10, Old Rly.Colony, Ratlam

- APPLICANT

(By Advocate - Shri A.N.Bhatt)

Versus

Union of India represented by :

1. General Manager, W.Rly, Churchgate,  
Mumbai.
2. The Chief Motive Power Engineer (Diesel),  
W.Rly, Churchgate, Mumbai.
3. Divisional Rail Manager, W.Rly., DRM's office  
Ratlam.
4. Sr.Divisional Mechanical Engineer (Diesel),  
Diesel Shed, Ratlam.

- RESPONDENTS

(By Advocate - Shri Y.I.Mehta, Sr. Advocate assisted by  
Shri H.Y.Mehta)

O R D E R (Oral)

By M.P.Singh, Vice Chairman -

By filing this Original Application, the  
applicant has claimed the following main reliefs -

"8.1 The Respondents may kindly be directed that the refusals taken by the Senior Divisional Mechanical Engineer (Diesel) Ratlam under threat and duress should not be considered as refusal for promotion and it should be cancelled. It was requested for change of place and not a clear refusal in view of the representation and now there are vacancies at Ratlam itself. Hence Hon'ble Tribunal is prayed for direction to respondent no.1 to issue promotion order of applicant at Ratlam itself.

8.2 The debarment orders may kindly be quashed."

2. The brief facts of the case are that the applicant is working as Section Engineer (Diesel) in Ratlam Division of the Western Railway. He was promoted as Senior Section Engineer (Diesel) vide order dated 15.1.1998 and posted in Rajkot Division. He reported in Rajkot Division in April, 1998. A

subsequent order was issued by the Headquarters office on 8.5.1998 by which the applicant was posted vice Shri S.P.Mathur who was working in Rajkot Division as Senior Section Engineer. After issue of this order, the applicant had submitted his refusal for promotion vide his application dated 11.5.1998 (Annexure-A-13). Accordingly, the applicant was debarred for promotion for a period of one year from the date of his application in terms of the provisions of Para 224 of the Indian Railway Establishment Manual (for short 'IREM'). After completion of one year, the applicant was again considered for promotion and promoted vide order dated 9.6.1999 as Senior Section Engineer and posted in Vadodara Division. The applicant had again given his/conditional refusal for promotion vide his application dated 27.9.1999. Subsequently, he has given his unconditional refusal on 4.10.1999. Accordingly, he was again debarred for promotion to the post of Senior Section Engineer for a period of one year vide memo dated 30.11.1999. Aggrieved by this, he has filed this Original Application.

3. Heard the learned counsel for the parties.

4. The learned counsel for the applicant has submitted that there are vacancies of Senior Section Engineer at Ratlam and junior persons to the applicant have been promoted to the higher post of Senior Section Engineer and accommodated at Ratlam. The applicant is suffering from cancer and needs constant medical care, therefore, he should be promoted and posted by the respondents, to a nearby place where medical facilities are available.

5. On the other hand, the learned counsel for the respondents has stated that no person junior to the applicant has been promoted to the higher post of Senior Section Engineer. In fact one person who was promoted and accommodated at Ratlam was retiring within a period of two years from the date of issue of the order and as per the instructions issued by the Railway Board, a person who is retiring within two years is



required to be given choice posting. The learned counsel has also contended that the applicant has nowhere mentioned in his OA that he is a patient of cancer and requires medical treatment. The learned counsel has also drawn our attention to Para 224 of the IREM which states that the applicant is required to appear again in the selection after expiry of the validity period of the select panel. He states that the validity of the panel is already over as the applicant has given his refusal twice and he has been debarred twice also. He is now required to appear again in the selection and requires to be considered for promotion and posting only thereafter.

6. We have considered the rival contentions of the learned counsel of both sides. We find that the applicant was placed in the panel of Senior Section Engineer and was posted at Rajkot Division. The applicant has refused his promotion. He has been debarred for promotion for one year. Again in the year 1999 he has refused <sup>his</sup> promotion and he has been again debarred. Para 224 of the IREM provides as under-

"224. Refusal of Promotion  
I Selection Posts


(i) The employees refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection.

(ii) at the end of one year if the employee again refuses promotion at the outstation, his name may be deleted from the panel, deletion being automatic requiring no approval from any authority and the administration may transfer him to out-station in the same grade. He will also have to appear again in the selection notwithstanding the fact that he in the meantime, has officiated non-fortuitously against short term vacancy based on his panel position."

Since, the applicant has given his refusal twice and the validity of the panel is already over, the applicant is required to be considered again for promotion to the post of

Senior Section Engineer and question of considering his promotion and transfer can be considered only after his selection again by the respondents. The contention of the learned counsel for the applicant that junior persons have been promoted is baseless, without any foundation and is rejected. As now the applicant is not in the panel and his name has been deleted and he has to appear again in the selection, there is no question of his junior being promoted to the higher post.

7. In view of the above facts, the present application does not have any merit and is accordingly dismissed, however, without any order as to costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

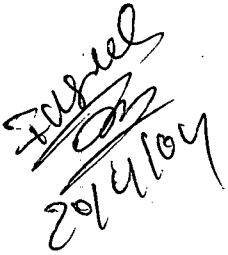
rkv.

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अवेगित-

- (1) सचिव, उच्च न्यायालय का एकाधिकरण, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के काउंसल AN Bhatt
- (3) प्रत्यर्थी श्री/श्रीमती/शु.....के काउंसल VI Mehta
- (4) वर्यपाल, कोषा. जबलपुर न्यायापीठ सूचना एवं आवश्यक कार्यवाही हेतु

  
उप रजिस्ट्रार

  
20/4/04