

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

This, the 13th day of December, 2005

ORIGINAL APPLICATION No. 410/05

CORAM:

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

Kuldeep Singh
s/o Shri Gopi Chand,
aged 40 years
r/o L-23, Beawar Road,
Ajmer,
presently working as A.M.M. at Ajmer.

.. Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India
through General Manager,
North Western Railway,
Station Road,
Jaipur.
2. General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Controller of Stores,
N.W.R.Railway,
Station road,
Jaipur.
4. Controller of Stores,
Northern Railway,
New Delhi
5. Shri P.N.Sharma,
Asstt. Material Manager,
N.W.Railway,
Jaipur.

.. Respondents

(By Advocate: Mr. Anupam Agarwal for resp. 1 to 4)

O R D E R

Per Hon'ble Mr. M.L.CHAUHAN

The applicant has filed this OA thereby praying for the following reliefs:-

- “(1) The original application preferred by the applicant may kindly be allowed and the respondent may be directed to treat the applicant the employee of NW Railway.
- (2) The order dated 29.8.2005 where by the applicant was transferred to the Northern Railway may kindly be quashed and set aside.
- (3) Any other order or relief which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly be passed in favour of applicant.
- (4) Cost of the original application be awarded in favour of the humble applicant.”

2. Brief facts of the case are that the applicant was initially appointed on the post of Depot Material Superintendent-3 (hereinafter referred to as DMS) in the year 1989 at Ajmer. It is further stated that thereafter he was given promotion on the post of DMS-2 in the year 1994 and subsequently he was further promoted as DMS-1. It may be stated that before creation of new railway zone, Ajmer was part of the ~~Northern~~ Railway and on account of creation of new zone, Ajmer is under territorial jurisdiction of the newly created zone of Northern Western Railway (NWR). The respondents undertook combined selection for promotion from Group-C to Group-B post of Assistant Material Manager (AMM) against 30% of LDCE quota for

11 vacancies viz. 2 vacancies arising for the assessment period from 1.12.2002 to 31.3.2003 and 9 vacancies for the assessment period from 1.4.2003 to 31.3.2005. These vacancies were notified vide notification dated 18.9.2003 (Ann.A2) followed by another clarificatory notification dated 11.3.2004 (Ann.A3). It is mentioned in the notification that the combined selection to the post of AMM shall be done in accordance with the Railway Board letter dated 13.5.2003. As per the notification Ann.A2, Group-C staff who had earlier lien on the Northern Railway and who are presently working in the new zones (NWR and NCR) either in the headquarter office or in the divisions, workshops etc. transferred from the Northern Railway (NR) to the NWR and Northern Central Railway were made eligible to appear in the selection. It is also made clear in the said notification that after formation of fresh panel for the post of AMM against 30% quota vacancies, the empanelled candidates can be posted on either Railway i.e. NR or NWR/NCR depending upon availability of vacancies, but they will have seniority in Group 'B' on the parent Railway. The applicant being one of such candidate having his lien with NR applied pursuant to the aforesaid notification. The respondents prepared a provisional panel in which name of the applicant has been shown against the vacancy for assessment period 1.12.2002 to 31.12.2003 (Ann.A5). In para 4 of the

said letter dated 21.10.2004 (Ann.A5) it has been stated that the provisional panel has been prepared by the Northern Railway keeping in view the instructions contained in railway Board letter dated 13.5.2003 taking into account the reported vacancy of NWR and NCR. Accordingly, Northern Railway itself will issue promotion orders of the empanelled persons, only. This was followed by another order of transfer and posting dated 9.11.2004 (Ann.A6) whereby the applicant on promotion to Group-B service in Stores Department was posted as AMM under GM, NWR. However, vide impugned order dated 29.8.2005 (Ann.A1), the applicant was transferred to the Northern Railway. It is this order which is under challenge. The grievance of the applicant is that since he was throughout working in the jurisdiction of subsequently created Northern Western Railway and that he appeared in the selection for the post of AMM as an employee of NWR and he was given posting in the NWR, it is not open for the respondents to now transfer him to NR thereby accommodating respondent No.5 who has been transferred to NWR on bottom seniority, contrary to the Railway Board letter dated 23.11.2004 (Ann.A12).

3. Notices of this application were given to the respondents. The respondent Nos. 1&3 and respondent Nos. 2&4 have filed separate replies. By way of preliminary submissions, the respondents have

submitted that the applicant has suppressed material fact from this Tribunal and has thus obtained ex parte stay, as such the present OA is liable to be dismissed on this ground alone. It has been stated that pursuant to the impugned order dated 29.8.2005 (Ann.A1), the applicant was relieved on 1.9.2005 and the person appointed vice him has assumed charge of the post on that day itself. The respondents have also placed on record copy of the assumption report submitted by respondent No.5, Shri P.N.Sharma on record as Ann.R1. The respondent Nos. 2 and 4 in their separate reply have also stated that pursuant to passing of the impugned order Ann.A1, the applicant has submitted his joining report to the General Manager (Personnel) Northern Railway, New Delhi on 2.9.2005 for his further posting order. The respondents have placed copy of the said joining report as Ann.R2 and thereafter the General Manager, Northern Railway had issued another order dated 6.9.2005 (Ann.R3) whereby the applicant was posted as AMM in C.O.R.E, Allahabad. It is stated that instead of taking charge of AMM, C.O.R.E., Allahabad, the applicant filed the present OA and procured interim direction dated 6.9.2005 without disclosing the aforesaid facts. On merits, the respondents have stated that the applicant has never opted for the newly created zone of NWR. It is further stated that perusal of the notification and alleged impugned order would clarify that lien of the

applicant was with NR. Thus, he has no right to remain with the NWR after availability of the selected candidates with it. The respondents have stated that the selection process was carried by the NR for and on behalf of NR, NWR and NCR and the order of posting after selection of the candidates had also to be passed by the NR. It is further stated that since the applicant being an appointee of the NR, was an employee of the NR and continued as such till date, he cannot be said to be an employee of NWR, more particularly, when he has neither opted nor absorbed with NWR. The respondents have also placed on record, unequivocal undertaking given by the applicant while applying for selection to Group-B post of AMM. Regarding posting of respondent No.4 who has been brought with bottom seniority from WR, the respondents have stated that such instructions are not of mandatory nature but are only obligatory which will not afford any cause to the applicant.

4. The applicant has also filed rejoinder thereby reiterating the submissions made in the OA. Alongwith rejoinder, the applicant has also placed on record his option dated 26.7.2002 (Ann.A8) for his absorption in the newly created zone of North Western Railway.

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

5.1 I am of the view that the applicant is guilty of suppressing the material fact from this Tribunal. As such, he is guilty of *suppreso veri* and *suggestionis falsi*, and the OA is liable to be dismissed on this score alone.

5.2 As can be seen from the facts as stated above, the applicant in this OA has challenged the impugned order dated 29.08.2005 (Ann.A1). In fact, the applicant cannot be said to be aggrieved by this order as can be seen from the reply submitted by the respondents. Pursuant to order dated 29.8.2005, the applicant has been relieved on 1.9.2005 from the office of NWR to report to Northern Railway for his further posting. Thereafter, the applicant submitted his joining report dated 2.9.2005 (Ann.R2) with NR. Pursuant to submission of joining report in the NR, the applicant was posted as AMM, C.O.R.E., Allahabad vide Ann.R3. The applicant suppressed these facts from this Tribunal and obtained *ex-parte* stay on 6.9.2005. According to me, these facts were material for the purpose of decision of the case, as such, the applicant is guilty of suppressing the material fact from this Tribunal. Once the applicant was relieved and on relieving he has joined pursuant to the impugned order of transfer dated 29.8.2005 and submitted his joining report to the General Manager (Personnel), NR, New Delhi dated 2.9.2005, it was not open for the applicant to challenge the original order of transfer

dated 29.8.2005 as the same stood already implemented. Thus, the respondents were within their right to pass further order of posting of the applicant vide order dated 6.9.2005 (Ann.R3) which order is not under challenge in this OA. As such, validity of this order cannot be gone into. Accordingly, I am of the firm view that the OA is liable to be dismissed on the principal of *Supreso veri* and *suggestio falsi* and also no relief can be granted to the applicant in view of subsequent order dated 6.9.2005, validity of which is not under challenge in this case.

5.3 Even on merit, the applicant has got no case whatsoever. The applicant in para 4 of the OA has specifically stated that that "applicant though not submitted the option for retaining the NW Railway however he was retain in the NW Railway and given posting at Ajmer. The applicant, if directed to opt, would have been opted the NW Railway as he is the bonafide resident of Ajmer and he is posting in the Ajmer." Admittedly, the applicant has not exercised his option for absorption in NWR pursuant to his selection in Grade-B post. He was supposed to exercise his fresh option pursuant to Railway Board letter No. E(GP)2002/1/18 dated 22.8.2002 which the applicant has not exercised at all. The option dated 26.7.2002 (Ann.A8) which was exercised by the applicant prior to issuance of the Railway Board letter was regarding his absorption in the grade of Rs.5500-9000 i.e. in Group-

C category. The applicant has never submitted his option for Group-B post in NWR as per the criteria laid down in the letter dated 22.8.2002 by which options for Group-B were called and the applicant was aware of the said circular and he has also given such undertaking while applying for the post of AMM. At this stage it will be useful to quote para ii) and iii) of the undertaking given by the applicant on 22.10.2003:

“I Kuldeep Singh s/o Shri Gopi chand, do hereby declare that I have gone through the instructions as contained in item Nos: 5, 9(i) and 9(iii) of GM/P/NR/BH, New Delhi's letter No. 752-E/82-Pt.23/30%/AMM/EiA dt. 18.9.2003 that:

- i)
- ii) In the event of my empanelment against 30% quota vacancies, as notified there in, I can be posted on either Railway viz. NCR/NWR or NR, depending upon the availability of vacancies, however, I will have my seniority in Group 'B' on my parent Railway and that
- iii) My permanent absorption in the New Zone will, however be decided, on my option for the same on the basis of criteria laid down in Railway Board's letter No. E(GP) 2002/1/18 dt. 22.8.2002.”

5.4 Thus on the basis of undertaking given by the applicant which is reproduced hereinabove, the applicant has got no right whatsoever to be absorbed in NWR on the post of AMM especially when he has not exercised his option on the basis of letter dated 22.8.2002 despite such undertaking given by the applicant. Further the applicant has no right to be posted in NWR in view of clause ii) of the undertaking whereby he has agreed that he can be posted at either Railway viz. NWR, NCR or NR depending upon availability of vacancy and that his seniority in

Group-B be kept in the parent railway which in the case of the applicant is Northern Railway. Further, as per the railway board letter dated 13.5.2003, which is basis for selection to Group-B post of AMM, Group-C staff who have opted for a new zone is empanelled, he can get Group-B promotion only in the parent Railway and cannot be posted in Group-B on the new zone based on this panel. As already stated above, not only this while filling proforma for selection also, the applicant has given undertaking to have his seniority in the parent Railway. This fact coupled with the fact that the lien of the applicant was with the Northern Railway and he has not exercised his option for absorption in NWR for Group-B post, he has no right to remain in NWR. Thus, the applicant cannot be heard to say that the respondents have brought Shri V.K.Jha and P.N.Sharma with bottom seniority from Western Railway in order to defeat the claim of the applicant for his absorption in NWR especially when the applicant has never exercised his option for absorption in NWR.

6. For the foregoing reasons, the present OA is bereft of merit which is accordingly dismissed with no order as to costs. Interim direction granted on 6.5.2005 and continued from time to time is hereby vacated.


(M.L.CHAUHAN)
Judicial Member

R/