

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 4th day of July, 2006

ORIGINAL APPLICATION No 204/2006.

CORAM:

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

N.K.Sharma
s/o Shri Ramnath Sharma,
aged about 44 years,
r/o near Shiv Mandir Cinema,
Opp. Gayatri Sadan,
Anand Nagar, Sikar,
Presently working as
Sr. D.I.A., Ajmer.

..Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India,
through Chairman,
Railway Recruitment Board,
New Delhi.
 2. General Manager,
Western Railway,
Churchgate, Mumbai.
 3. General Manager,
North Western Railway,
Hasanpura, Jaipur.
 4. Financial Advisor and Chief Accounts Officer,
Western Railway, Mumbai.
 5. Sh. R.S.Rawat,
Sr. D.I.A., North Western Railway, Sikar.
- ve

.. Respondents

(By Advocate: ...)

ORDER (ORAL)

This is second round of litigation. The applicant has earlier filed OA No.558/2003 whereby he has challenged the order dated 4.6.2003 by which he was transferred and posted as Sr. T.I.A., A.D.I. Division, Headquarters, Ajmer. In that OA, the applicant has also challenged the letter dated 27.12.2002 by which his representation for transfer to Sikar was rejected. The said OA was disposed of by this Tribunal vide order dated February 3, 2005 by holding that the ^{ad. counsel for the applicant} has no grievance for rejection of his transfer or posting at Sikar under the policy of the respondents framed consequent upon re-organisation of Railway Zones. It was further observed that the only grievance of the applicant which survives was that his request for transfer based on the policy of spouse linked posting has not been considered in right perspective and his representation for his transfer to Sikar on the basis of spouse linked policy ought to have been considered. Accordingly, direction was issued to the Department to consider request of the applicant and pass reasoned and speaking order within a period of two months. It was further observed that request of the applicant should not be rejected only on the ground that such

consideration may open flood gates for more requests and his request be considered under the couple case policy. Accordingly, the matter was considered by the department in the light of the order passed by this Tribunal and request of the applicant was not acceded to. At this stage, it will be useful to quote relevant portion of the order which will have bearing in the present case and thus reads as follows:-

".....

The Railway Board vide their letter dt. 5.11.1997 for postings on spouse ground has laid down that these instructions are applicable for inter and intra Railway Transfer and spouse are to be posted at the same station when no administrative problems are expected to arise as a consequence. In the same letter it has been further clarified that in case where one of the spouse is a Railway servant and the other belongs to a State service, the Railway servant should be posted at the station/place in the Railway division/PU in whose territorial jurisdiction the place/state of posting of his/her spouse falls. If it is not possible if a request from the Railway servant to the controlling authority of spouse for her posting at the place of the posting of the Rly. Servant is received the same may be forwarded to the concerned authority for consideration.

In your case, your wife is working in the State government of Rajasthan whereas you are working as Sr. TIA on W.Rly. and are liable to be posted anywhere on Western Railway. According to extant policy your request for transfer on spouse ground is not applicable as the reorganization of Railways was one time exercise and the optees list was prepared strictly according to seniority. Moreover, it is stated that with the closure of the cadre of the new zones w.e.f. 31.10.2003 any transfer to NW Railway will have to follow the normal procedure for transfer of staff to other Railways. In terms of para 312 of IREM any transfer to new Railway are to be considered only in the grades in which there is element of direct recruitment. Your name is registered for inter Railway transfer at Sr. No. 31 for NW Railway but you have applied for transfer as TIA which is intermediate grade. You can be transferred only as Jr. AA i.e. initial recruitment grade as per your turn.

This issued with the approval of the FA&CAO of this Railway."

Now this order is under challenge in this

OA.

WA

2. I have heard the learned counsel for the applicant at admission stage. The learned counsel for the applicant argued that the case of the applicant has not been considered in right perspective in terms of the policy/guidelines which stipulates that as far as possible husband and wife should be posted at same place. It is further argued that vide order dated 28.9.2005 (Ann.A11) and order dated 15.5.2005 (Ann.A12) some employees were transferred in the same manner as the applicant has sought, whereas in the case of the applicant request of the applicant was rejected, as such, it is a case of discrimination.

3. I have given due consideration to the submissions made by the learned counsel for the applicant and I am of the view that there is no merit in this case. Admittedly, case of the applicant was to be considered in the light of couple case policy and the case was not required to be rejected on the ground that such consideration and acceptance may open flood gate for more requests in terms of order passed by this Tribunal in earlier OA. From the portion as extracted above and the guidelines issued by the Railway Board vide letter dated 5.11.1997 (Ann.A4), it is clear that if there are no administrative problem, husband and wife can be posted at the same place. As can be seen from the relevant portion of the order as extracted above, it has been categorically observed that in

terms of para 312 of the IREM any transfer to new Railway are to be considered only in the grades in which there is element of direct recruitment. It has further been observed that name of the applicant has been registered for inter-railway transfer at Sl.No.31 in North Western Railway but the case of the applicant cannot be considered for transfer as TIA which is intermediate grade whereas transfer can only be made in the grade of Junior AA i.e. initial recruitment grade as per turn. Thus, in terms of para 312 of the IREM, the applicant cannot be transferred from Western Railway to North Western Railway in the capacity of TIA which is intermediate grade whereas transfer can only be made in the grade of Junior AA. Thus, according to me, there is no infirmity in the order dated 10.5.2005 passed by the competent authority which has been impugned in this OA. Further, the Apex Court in the case of Union of India vs. S.L.Abbas, AIR 1993 SC 2444 has held that the guidelines which provide that as far as possible husband and wife should be posted at the same place does not confer upon a Government employee a legally enforceable right. The apex Court further observed that who should be transferred where is a matter for the appropriate authority to decide. Unless the transfer is vitiated by mala-fides and is made in violation of the any statutory provisions, the Court cannot interfere with it. Admittedly, the applicant has not made out a case

62

of mala-fide or violation of any statutory provisions, rather it is the case of the respondents that the transfer of the applicant in the capacity of TIA from Western Railway to North Western Railway is not permissible in terms of para 312 of IREM. Such transfer from one zone to another is permissible in the grade of Junior AA i.e. initial recruitment grade that too as per turn. Thus, there is no violation of any statutory provisions. Further, the contention raised by the applicant that some of employees were transferred in the same manner as the applicant has sought will not give any justiciable cause to the applicant. From perusal of Ann. A11 and A12 it is evident that the persons who were transferred were working as Sr/SA and Sr. SO whereas the applicant was working as Sr. TIA which is entirely different category. Even otherwise also, in case, the respondents have adjusted some persons in violation of provisions contained in para 312 of the IREM that will not give justiciable cause to the applicant as Article 14 is not attracted in such cases.

4. For the forgoing reasons, the OA is dismissed at admission stage with no order as to costs.


(M.L. CHAUHAN)

Member (Judicial)

R/