

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

OA No.395/2006 with MA No.284/2006.

Jaipur, this the 26th day of October, 2006.

CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN.

Shri Charan Das
S/o Shri Mohan Singh
Aged about 31 years,
R/o Quarter No.423/B, Guard Colony,
Phulera (Rajasthan).

.. Applicant.

Advocate : Shri Nand Kishore.

Vs.

1. Union of India
Through General Manager,
North Western Railway,
Hasanpura Road, Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Power House Road,
Jaipur.
3. Suresh Vikram Singh
S/o Shri Vishvanath Singh,
Aged about 42 years,
R/o House No.19, sharkambar Colony,
Phulera, Jaipur.

... Respondents.

By Advocate : Mr. Anupam Agarwal for Respondent No.1&2.
Mr. Manish Bhandari for Respondent No.3.

: ORDER (ORAL) :

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

"(i) The order issued on 19.09.2006 (Annexure A/5) for holding in abeyance may be declared null and void and set aside.



(ii) The applicant may be allowed to continue at Jaipur in accordance with transfer order dated 12.09.2006 (out of turn) (Annex. A/1) issued by Respondent No.2.

(iii) any other directions and orders, which are deemed proper in the facts and circumstances of the case may kindly be allowed to the applicant."

2. The facts in brief are that the applicant vide Annexure A/1 dated 12.09.2006 was transferred from Phulera to Jaipur at his own request. At that time, the applicant was working as a Loco Superintendent in the pay scale of Rs.6500-10500/- (Survey, Phulera). After this order, Annexure A/1, the applicant submitted a joining report dated 13.09.2006 by resuming ~~pat~~ Jaipur vide Annexure A/6 and his resumption report was forwarded by the authorities. However, subsequent to that, vide Annexure A/5 order dated 12.09.2006 was kept in abeyance and the applicant has filed this OA against the said order dated 19.09.2006 (Annexure A/5) for holding the order Annexure A/1 kept in abeyance.

The applicant claims that since he is a territorial army personnel and he had applied for out of turn transfer and got his name noted in the separate Register meant for the same and his order of transfer has been issued. But now he apprehends that the order Annexure A/1 shall be cancelled.

3. In the grounds to challenge the same the applicant has stated that he had been transferred being a territorial army personnel as per the policy of Railway for out of turn transfer. He has further pleaded that since the applicant has already carried out the order dated 19.09.2006, keeping the order dated 12.09.2006 kept in abeyance ~~as~~ not survives.



On issuing notice on the OA, an interim relief was granted by the Tribunal by directing the respondents to maintain status quo with regards to the applicant till the next date. In the meanwhile, Respondent No.3 moved an MA for being impleaded him as a party, which was allowed. Respondent No.3 is also contesting the OA. The Official respondents in their reply have submitted that the OA has been filed for implementation of order Annexure A/1. But this Tribunal has no jurisdiction to interfere with the ~~same~~ ^{any} writ of mandamus to implement ~~in~~ such order. Learned Counsel for the official respondents submits that order Annexure A/1 for out of turn transfer was passed in view of the request and keeping in view in mind the facts about the enrollment of the applicant in Railway Engineering Territorial Army at Kota. Further the applicant has also submitted a request to Administrative Officer of Territorial Army on 25.09.206. In response to this, the Administrative Officer had replied to Respondent No.2 by his letter dated 25.09.2006 which shows that the applicant has been discharged from the Territorial Army Service and he cannot be called anymore and as such he is not eligible for any benefits tenable to Railway Territorial Army employees. Thus the submission with regard to the same is without any substance. Hence it is submitted that the applicant is not entitled to any benefit for out of turn transfer being a member of Territorial Army.

4. Mr. Manish Bhandari, Learned Counsel for Respondent No.3, also submits that initially the respondent No.3 moved



an application for transfer from Phulera to Jaipur. He had mentioned about his domestic problems and Respondent No.3 has also made request for out of turn transfer and got his name noted down in the Register maintained for the same and ^{in time} his request was earlier than the applicant and thus he is senior for transfer on out of turn transfer basis and preference should be exercised in his favour. When this was realized by the Railway Administration, the impunged order Annexure A/5 was issued whereby the transfer was kept in abeyance. As regards the status of the applicant being a Territorial Army Personnel is concerned, the Private Respondent also submitted that it is only after the transfer orders have been passed, the applicant wrote to the Administrative Officer of Railway Engineering Territorial Army, Kota, for getting a recommendation letter from Territorial Army for his out of turn transfer to Jaipur. In response to that, the Administrative Officer ^{Kota} informed the DRM Office, Jaipur Division, that the individual is being ~~discharged~~ ^{discharged} ~~transferred~~ ^{transferred} ~~on administrative~~ grounds and will not be called for anymore and the individual is not entitled to any benefit being a member of Territorial Army. Learned Counsel for Respondent No.3 also pleaded that since the applicant is not eligible for the benefit of out of turn transfer being a member of Territorial Army so he could not be given transfer on out of turn transfer basis and as regards his domestic problems are ^{to be considered} ~~concerned~~ with Respondent No.3, Respondent No.3 has to be given preference as his name has been noted earlier in time in the Register than the applicant himself.



5. I have heard the Learned Counsel for the parties and gone through the material placed on record.

6. Learned Counsel for the applicant ~~further~~ ^{also} submitted that as per Annexure A/4 he is a member of Territorial Army so he is entitled to the benefit which are eligible to a member of Territorial Army with regard to the transfer on out of turn basis and moreover the order has been implemented so the same cannot be kept in abeyance now.

7. In my view both the contentions of Learned Counsel for the applicant has no merits because as regards the applicant's claim to the benefit for out of turn transfer being a member of Territorial Army is concerned, since the ~~Administrative~~ Commanding Officer has written a letter to the Railway authorities that the applicant is not eligible for any benefit which are eligible to a member of Territorial Army so the applicant cannot claim for out of turn transfer being a member of Territorial Army. The order Annexure A/1 also does not suggest that the applicant has been transferred from Phulera to Jaipur on the basis of benefit being extended to him as he is a member of Territorial Army.

8. Though as per Annexure A/6 the applicant had reported for duty before the Jaipur authorities and has resumed under the Jaipur authorities but that fact alone is not enough to restrain the respondents from passing any order

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regarding the posting of the applicant because it is for the Railway administration itself to see as to where an employee is to be posted according to their own policies. As regards the claim of the applicant for out of turn transfer from Phulera to Jaipur being a Member of Territorial Army is concerned, since the Commanding Officer of Territorial Army has not recommended his case, the applicant is not entitled to be posted from Phulera to Jaipur on out of turn basis being a member of Territorial Army.

9. It seems that some mistake has been committed by the respondents while passing order Annexure A/1 whereby the applicant has been transferred from Phulera to Jaipur as Respondent No.3 is claiming preference over the applicant on out of turn transfer basis at his own request as he claims to be senior for having made a request earlier in time than the applicant. So the administration can pass any order regarding the posting of any employee at any place in accordance with their policies. The Tribunal cannot restrain the respondents in the matter of posting of the employees of the respondents. But the fact remains that order Annexure A/1 has been implemented. However, the respondents are at liberty to pass any order regarding the posting of any of their employees including the applicant. The order Annexure A/5 vide which the order dated 12.09.2006 has been kept in abeyance cannot be quashed because order Annexure A/1 had already been implemented and order Annexure A/1 also suggested that the order is to be



implemented immediately and since the applicant in compliance of the order Annexure A/1 had reported for duty at Jaipur so he had rightly reported for duty at Jaipur. Thus, the order having been implemented cannot be kept in abeyance. However, the respondents are at liberty to pass any order with regard to the posting to the applicant in accordance with their rules and policies of transfer.

10. For the foregoing reasons, the OA is disposed of with no order as to costs. In view of the order passed in OA, no order is required to be passed in MA No.284/2006, filed for vacation of stay order, which stands dismissed accordingly.



(KULDIP SINGH)
VICE CHAIRMAN

P.C./