

28.09.2007

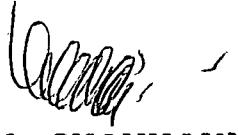
OA No. 330/2007

Mr. Sunil Samdaria, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondent Nos. 1 & 2.
Mr. Nand Kishore, Counsel for respondent No. 3.

Heard the learned counsel for the applicant.

The OA is disposed of by a separate order for the
reasons recorded therein.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 28th day of September, 2007

ORIGINAL APPLICATION NO. 330/2007

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P. SHUKLA, MEMBER (ADMN.)

Prithviraj Rawat son of Shri Vijay Singh Rawat aged about 44 years, resident of Geetanjali' Teja Chowk, Makhupura, Ajmer (Raj.) presently working as Head Clerk in Settlement Section of DRM Office, Ajmer (Rajasthan).

By Advocate: Mr. Sunil Samdaria

.....Applicant

Versus

1. Union of India through General Manager, North West Railway, Station Road, Jaipur.
2. Divisional Railway Manager, DRM Office (Estt.), Ajmer (Rajasthan).
3. Ram Singh Meena, Head Clerk, Settlement Section DRM Office, Ajmer.
4. Kamal Singh, Sr. Divisional Personnel Officer, DRM Office, Ajmer.

By Advocate: Mr. Anupam Agarwal (Respondent No. 1&2)
Mr. Nand Kishore (Respondent No. 3.)

.....Respondents

ORDER (ORAL)

This is the second round of litigation. Previously, the applicant has filed OA in this Tribunal, which was

registered as OA No. 213/2007 whereby he was aggrieved by the order dated 07.06.2007 (Annexure A/1) and the applicant was transferred from Settlement Section, DRM Office, Ajmer to Regional Railway Training Institute, Udaipur. The said OA was disposed of on 02.08.2007. It will be useful to quote Para Nos. 2 & 3 of the judgment, which thus reads:-

"3. During the course of arguments, Learned counsel for the respondent No. 3 has produced the provision in Chapter XXVI Para No. 26.1 of Brochure on Reservation for SC and ST in Railway Services which reads as under:-

"26.1 Representation in Personnel Branch. — There should be adequate representation of Scheduled Castes and Scheduled Tribes in the Personnel Branches in Headquarters and Divisional Offices, even by transfer of staff. Their representation in these Branches should not be less than 15 per cent for Scheduled Castes and 7-1/2 per cent for Scheduled Tribes or local percentages prescribed for initial recruitment. While posting Scheduled Caste/Scheduled Tribe Personnel on recruitment/promotion, opportunity should be taken to increase the representation of Scheduled Castes/Scheduled Tribes in the Personnel Branches even if it necessitates in certain cases, transfer of some of the other juniors from the Personnel Branches."

He further submitted that accordingly to these provisions, the applicant was rightly sent to Udaipur against a vacancy there to manage the work and the respondent No. 3 was thus given posting in Ajmer itself. He has also produced a copy of the letter dated 20.06.2007 mentioning therein that one Shri Pradeep Ramchandani, Head Clerk, Ajmer has been expired on 12.06.2007 and submitted that thus a vacancy of Head Clerk has arisen in Ajmer.

4. Normally on promotion the junior-most person is sent outside instead of disturbing the seniors who are already working and, therefore, to certain extent injustice has been caused to the applicant by transferring him from Ajmer to Udaipur. However, in view of the developed circumstances of the case, it is felt that applicant may make a representation to the respondents to adjust him at Ajmer itself in the new arisen vacancy due to sudden death of Shri Pradeep Ramchandani, Head Clerk, and the respondents in the interest of justice may sympathetically consider his representation and decide the same by passing a reasoned and speaking order as it seems that prima-facie some injustice has been caused to him."

2. Pursuant to the observation, as quoted above, this Tribunal directed the applicant to make a representation within a period of seven days from the date of receipt of a copy of the order and the respondents were directed to decide the same within a period of two months from the date of receipt of such representation by passing a reasoned and speaking order. The respondents were further directed not to disturb the applicant from his present posting till his representation is decided.

3. Pursuant to the order passed by this Tribunal in earlier OA, the applicant made a representation. The said representation had been decided by Sr. DPO, Ajmer vide

order dated 08.09.2007 (Annexure A/2). It is this order and the impugned order dated 06.07.2007 which is challenged in this case. When the matter was listed for hearing for admission on 14.09.2007, learned counsel for the applicant argued that the representation of the applicant has not been decided in accordance with the directions given by this Tribunal inasmuch as the respondent is neither the General Manager nor the DRM, who was directed to decide the representation whereas the representation has been decided by one Shri Kamal Singh, who is holding the post of Sr. Division Personnel Officer and thus it is not a valid order. Being prima-facie satisfied with the contention of the learned counsel for the applicant, notices were issued and ex-parte stay order was also granted.

4. The official respondents and respondent No. 3 have filed their reply. The respondents have justified their action.

5. We have heard the learned counsel for the parties and perused the material placed on record.

6. Learned counsel for the applicant has raised many contentions, namely, that the representation of the applicant had not been decided in terms of the directions given by this Tribunal as the representation is decided by Sr. Division Personnel Officer and not by General Manager/DRM Estt.) and thus the order is invalid. Learned counsel for the applicant has also argued that there was no short fall in the cadre strength of ST category candidates in the Ajmer Division as against six persons, there were already eight persons working. As such, Shri Ram Singh Meena (Respondent No. 3) would not have been accommodated on the ground that there was short fall in the cadre strength of ST candidates and as such, he was adjusted.

7. Learned counsel for the applicant has submitted that this Tribunal in the earlier OA has given specific direction to consider the case of the applicant against the vacancy caused due to death of Shri Pradeep Ram Chandani, Head Clerk and the respondents have not given due

consideration while deciding the representation of the applicant.

8. Learned counsel for the applicant further argued that as against the cadre strength of 35 candidates in DRM Office, Ajmer, already 40 persons were working and in case some-one has to be displaced, it should be the junior person being excess in that office and it was not incumbent upon the respondents to transfer the applicant, who was one of the senior most officer working there.

9. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view that the matter can be disposed of only on short ground that the representation of the applicant has not been decided in proper perspective and after giving due consideration to the contention raised by the applicant in his representation as well as the observation made by this Tribunal in earlier OA. Admittedly, the representation has been decided by Sr. Division Personnel Officer though he might have been delegated the power of establishment. Learned counsel for the applicant has also drawn our

attention to the transfer order dated 07.06.2007 (Annexure A/1). Perusal of this order would reveal that the transfer order has been effected after obtaining the approval of ADRM, who is admittedly superior authority than the Sr. DPO and DRM (E). Normally, the representation of the applicant was required to be decided by an officer not less than the DRM as there was always tendencies to uphold the order of higher authority by subordinate authority. It was in this context that the order of this Tribunal should have been interpreted by the respondents and in all fairness of things representation of the applicant should have been disposed of by superior authority. Thus on this short ground, without expressing any finding on merit of the case, the application is liable to be succeeded as the rejection of representation of the applicant by Sr. DPO cannot be said to be fair consideration.

10. That apart, learned counsel for the applicant has also brought out notice certain other facts which demolish the case of the respondents as pleaded before this Tribunal regarding the transfer of his client. Learned counsel while

drawing out attention to Annexure A-10 has argued that in the proceeding dated 06.06.2007, in para 2, it has been recorded that as against six posts meant for ST categories, eight persons are working. Thus there was no occasion to adjust the respondent No. 3 in terms of Para No. 26.1 of Brochure on representation for SC & ST.

11. However, learned counsel for respondent No. 3 has drawn our attention to the annexure attached with the reply which shows that one Shri Kailash Chand Meena, ST candidate, was promoted on 15.04.2004. Thus, there was shortage of cadre strength of Head Clerk in the ST category. Even this aspect of the matter is accepted, there was still one excess ST candidate as on 06.06.2007 and as such respondent No. 3 could not have been accommodated on the ground of short fall of ST candidate, when he was promoted on the next date.

12. The further submission made by the learned counsel for the applicant is that against the cadre strength of 35 candidates, 40 persons were working at DRM Office, Ajmer. Thus there were five excess candidates working the

DRM office, Ajmer. In that eventuality, the junior most candidate should have been transferred being surplus in the cadre.

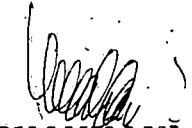
13. Without expressing any view on the merit of the case, the fact that the representation of the applicant was considered by authority which admittedly subordinate to the authority who has passed original order of transfer and thus cannot be said to be a fair consideration of representation as observed above and also the fact that this Tribunal in the earlier OA has specifically directed the respondents to consider the case of the applicant against the vacancy caused due to death of Shri Pradeep Ramchandani, Head Clerk., we are of the view that ends of justice will be met if the matter is remitted back to the General Manager, North West Railway, Jaipur to reconsider the representation of the applicant afresh after giving due consideration to the contentions to be raised by the applicant in his fresh representation, if the same is filed within ten days from today. In that eventuality, the General Manager, North West Railway, Jaipur (Respondent No. 1) will decide the same by passing a reasoned and

speaking order. Till such time, the representation of the applicant is not decided, the applicant shall be allowed to work in Settlement Section, DRM office, Ajmer. However, order dated 08.09.2007 (Annexure A/2), whereby the earlier representation was rejected, shall stand quashed and set aside.

14. With these observations, the OA is disposed of with no order as to costs.



(J.P. SHUKLA)
MEMBER(A)



(M.L. CHAUHAN)
MEMBER (J)

AHQ