

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(11)

ORDERS OF THE BENCH

13.09.2011

OA No. 430/2010

Mr. Kamal Singh Panwar, counsel for applicant.
Mr. R.G. Gupta, counsel for respondents.

Since the respondents' counsel has supplied the copy of the reply to the M.A. today only, the applicant's counsel prayed for adjournment of this matter. Put up the matter for hearing on 22.09.2011.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

22/09/2011
OA 430/2010

22/09/2011
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Mr. K. S. Panwar, counsel for applicant.
Mr. R. G. Gupta, Counsel for respondents.

Heard.

The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]
member (A)

K. S. Rathore
[Justice K.S. Rathore]
member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 430/2010

DATE OF ORDER: 22.09.2011

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Deepak Chand Sharma S/o Shri Amar Chand, aged about 49 years, R/o B29, Arawali Vihar, Vaishali Nagar, Ajmer. Working as Running Room Bearer in Area Training School, Ajmer.

...Applicant

Mr. K. S. Panwar, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Jagatpura, Jaipur.
2. The Divisional Rail Manager, North Western Railway, Ajmer Division, Ajmer.

...Respondents

Mr. R.G. Gupta, counsel for respondents.

ORDER (ORAL)

(Per Hon'ble Mr. Anil Kumar, Member (A))

The applicant has filed the present Original Application praying for the following reliefs: -

- "(i) That the respondents be directed to allow the applicant to work as Running Room Bearer in Area Training School, Ajmer by quashing order dated 26.07.2010 & 16.07.2010 (Annexure A/1 & A/6).
- (ii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iii) That the cost of this application may be awarded."

2. The brief facts of the case, as stated by the applicant, are that the applicant was initially working as Assistant of Commission Vender since 01.12.1983, and was absorbed in the same capacity in the Railway w.e.f. 08.11.1991 under catering unit. Thereafter, the applicant was regularized on the post of Gangman vide order dated 05.04.2006 (Annex. A/3), and



subsequently, vide order dated 18.05.2010 (Annex. A/4), he was transferred to Traffic Department on the post of Running Room Bearer on his own request with the approval of the General Manager. However, the respondent no. 2 vide order dated 26.07.2010 (Annex. A/1) cancelled the posting of the applicant in the Traffic Department on the basis of the oral orders from the Chief Personnel Officer, Jaipur, and transferred him to his original department (Engineering). Aggrieved by this order dated 26.07.2010 (Annex. A/1), the applicant has filed this Original Application.

3. We have heard the learned counsels appearing for the respective parties, and carefully perused the pleadings and documents available on record.

4. Learned counsel appearing for the applicant argued that the order 26.07.2010 (Annex. A/1) passed by the respondent no. 2 cancelling the posting order of the applicant as Running Room Bearer in the Traffic Department without obtaining the approval of the competent authority i.e. the General Manager, is arbitrary and malafide. The posting order in the Traffic Department was cancelled on the verbal order of the Chief Personnel Officer, Jaipur, who is below in the rank of General Manager, and as such the lower authority cannot change, amend or modify the orders passed by the higher authority. The Venders were regularized as Gangman due to lack of vacancies in the Traffic Department at that time, and now there are vacancies and on his option, the applicant was posted in the Traffic Department. The age of the applicant is 48 years and he is not fit to work as Gangman. No



reason for cancellation of previous posting order has been given by the respondents, and, therefore, the order dated 26.07.2010 (Annex. A/1), whereby posting of the applicant as Running Room Bearer in the Traffic Department has been cancelled, is bad in law, and; hence, the order dated 26.07.2010 (Annex. A/1) may be quashed.

5. On the contrary, the learned counsel appearing for the respondents argued that the department of the applicant was changed from Engineering to Traffic Department vide order dated 03.06.2010 (Annex. A/5), but immediately the order dated 03.06.2010 has been treated as provisional i.e. the aforesaid order is provisional till further order of the Headquarter, Jaipur vide order dated 16.07.2010 (Annex. A/6). The verbal order of the Headquarter has been received by the respondent no. 2, who has correctly issued the order dated 26.07.2010 (Annex. A/1) whereby the applicant has been sent to his parent department i.e. Engineering Department. The respondents have not disputed that the applicant was regularized in the Railway Service vide order dated 05.04.2006 (Annex. A/3). The department of the applicant and other persons have been changed from Engineering to Traffic / Mechanical Department on the sanction of the General Manager vide order dated 18.05.2010 (Annex. A/4). Therefore, the change of the department of the applicant was not made on the approval of the General Manager, but it has been made on the sanction of the General Manager. The order dated 26.07.2010 (Annex. A/1) has been passed by the respondent no. 2 on the instruction/verbal order of the



respondent no. 1, as the respondent no. 1 is a higher and controlling authority of the respondent no. 2. The instruction of CPO is on the basis of the General Manager as the General Manager can delegate his power to the lower authority and the same authority can act on the basis of higher authority. Thus, the action of the respondent no. 2 is perfectly legal and within the rules on the subject, and, hence, this Original Application has no merit and needs to be dismissed.

6. Having heard the rival submissions made on behalf of the respective parties and upon careful perusal of the pleadings and documents available on record, we find that it is not disputed between the parties that the Annexure A/4 order dated 18.05.2010 vide which the applicant was transferred to Traffic Department on the post of Running Room Bear on his own request was issued with the sanction of the General Manager, but the cancellation order dated 26.07.2010 (Annex. A/1) has been issued on the oral order / instruction of the Chief Personnel Officer, Jaipur, who is below the General Manager. It has nowhere been pointed out by the respondents that the Chief Personnel Officer, Jaipur acted on the directions of the General Manager while issuing the verbal orders/instructions.

7. Learned counsel appearing for the applicant drew our attention towards the Rule 3 General (2) (iii) & (iv) of Chapter 17 of the Railway Service (Conduct) Rules, 1966 (Annex. A/12), which is reproduced as follows: -


"3.(2)(iii). The direction of the official superior shall ordinarily be in writing, and where the issue of oral



direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter; and

(iv) A Railway servant who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible whereupon it shall be the duty of the official superior to confirm the direction in writing."

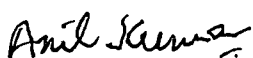
8. In the present case, neither the official superior, who issued the verbal orders confirmed them in writing immediately thereafter, nor the official, who carried out the oral directions of his superior, sought confirmation of the same in writing from the superior officer who gave verbal directions. No opportunity of being heard was also given to the applicant before issuing the order dated 16.07.2010 (Annex. A/5) whereby his transfer to Traffic Department on the post of Running Room Bearer with the sanction of the General Manager vide order dated 18.05.2010 (Annex. A/4), was treated as provisional, and subsequently the respondent no. 2 passed the impugned order dated 26.07.2010 (Annex. A/1) cancelling the posting order of the applicant as Running Room Bearer in the Traffic Department on the oral orders / instructions of the Chief Personnel Officer, Jaipur. Once the applicant was transferred to Traffic Department vide order dated 18.05.2010 with the approval of the General Manager, in such situation for transferring him back to his old position i.e. Engineering Department, sanction / approval of General Manager should have been obtained. But in this case, the oral orders have been issued by the Chief Personnel Officer, Jaipur, who is lower in rank than the General Manager; therefore, the order dated 26.07.2010 (Annex. A/1) is not permissible under the eyes of law; moreover no compliance of the Rule 3 (2) (iii) & (iv)



(supra) has been made. Thus, the order dated 26.07.2010 (Annex. A/1) deserves to be quashed and set aside.

9. Consequently, the order dated 26.07.2010 (Annex. A/1) is hereby quashed and set aside. However, the respondents are at liberty to issue fresh orders in this regard, if necessary, after giving an opportunity of being heard to the applicant and after obtaining the sanction / approval of the General Manager in accordance with the provisions of law.

10. With these observations and directions, the Original Application stands disposed of with no order as to costs.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)

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