

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.4668/2015

New Delhi this the 29th day of August, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)

Ashes Kiran Prasad,
S/o Late Shri Dhanushdhar Prasad,
Aged 58 years,
R/o B-504, Shatabdi Rail Vihar,
B-9/4, Sector-62, NOIDA (UP)-201309.
Presently working as Sr. Administrative Grade Officer
In North Western Railway, Jaipur.
Residing in:
Room No.1, Loco Railway Officers' Rest House,
Ganapati Nagar, Hasanpura Road,
Jaipur-302006. .. Applicant

(By Advocate : Ms. Ayushi Kiran)

Versus

1. Union of India,
Through the Chairman,
Railway Board,
Rail Bhawan,
New Delhi-110001.
2. Member Traffic,
Railway Board,
Rail Bhawan,
New Delhi-110001. .. Respondents

(By Advocate : Shri Kripa Shankar Prasad)

ORDER (ORAL)

The grievance of the applicant is that he was transferred back from North East in 2007 to Jaipur after completing almost four years, against the stipulated period of three years, whereas as per

circular dated 19.05.1992 sub-para (ii), the applicant should have been given his choice posting at Delhi. When the applicant represented before the respondents on 27.12.2006, they required him to give three choices though he was required only to give one choice. The applicant complied with the direction of the respondents and gave three choices, viz. Railway Board, Northern Railway and CONCOR. The applicant was not adjusted against any of the choice places, but was posted in North Western Railway, Jaipur.

2. The applicant's case is that in reply to an RTI application dated 06.02.2015 (Annexure A/4), the respondents have accepted that six SAG/IRTS officers were posted in Northern Railway between October, 2006 to December, 2007, which according to the learned counsel for the applicant clearly shows that there was vacancy in Delhi against which the applicant could have very well been adjusted. The rejoinder filed by the applicant is taken on record.

3. The learned counsel for the respondents' first objection is that this O.A. is time barred as the cause of action arose in December, 2006, whereas this O.A. was filed in December, 2015.

4. Secondly, it is vehemently stated by the learned counsel for the respondents that at the time the applicant was transferred back from North East, there was no vacancy available in Delhi.

5. It becomes clear from Annexure-I, which is the applicant's representation dated 27.11.2015 regarding request for transfer to Railway Board, that the applicant was awarded a punishment of 'reduction in pay scale'. It is stated by the learned counsel for the applicant that this punishment order was quashed by this Tribunal in a separate O.A., but the writ petition filed by the respondents against that order was allowed by the Hon'ble High Court of Delhi. The applicant, therefore, filed SLP before the Hon'ble Supreme Court, which is admitted and is pending adjudication.

6. Learned counsel for the applicant opposes the objection of delay and limitation on the ground that Railway Board circular No.ERB-1/2013/2/70 dated 03.03.2014 (Annexure P-1 to the rejoinder) provides as follows:

“(viii) Only those officers whose Reports are graded as “Very Good” and above in the last five years of service and who are clear from the vigilance angle would be considered for the posting in the Railway Board.”

It is in view of this that the applicant was advised by the then Member Traffic that he should represent for choice posting after the punishment period is over, which ended in July, 2015.

7. I have heard the learned counsel for both sides at length and perused the respective documents.

8. The facts are as follows:

- (i) The circular dated 19.05.1992 states that official will be entitled to a choice posting "as far as possible".
- (ii) There is a punishment of 'reduction in pay scale' against the applicant which has been upheld by the Hon'ble High Court.
- (iii) IRTS officers have All India transfer liability.
- (iv) Posting at North Western Railway, Jaipur cannot be categorised as a vindictive or hard posting.

9. On the question of limitation, the sub-para (viii) of Railway Board's circular dated 03.03.2014, relied upon by the applicant, only establishes that applicant could not have represented for a choice posting in the Railway Board as there was a proceeding pending against him and, hence, he was not clear from vigilance angle. Circular dated 03.03.2014 is regarding posting in Railway Board only. It did not debar the applicant from giving choice of posting other than in the Railway Board. The learned counsel for the applicant came with an argument that the applicant was not aware of this rule and, hence, he applied for Railway Board's posting. This is rather a specious argument. The applicant is a very senior officer of the Railways and he cannot be ignorant of rules in his own department. Thus, there is indeed enormous delay by the

applicant to seek choice posting at this stage. Therefore, even on the ground of delay, this O.A. is not maintainable.

10. While I do not accept the arguments of the learned counsel for the respondents that there was no vacancy in Delhi in the light of reply given by them to an RTI application dated 06.02.2015, it is a fact that it is not binding on the Railways to give a choice posting as per circular dated 19.05.1992. Moreover, the applicant is a senior rank officer who has been awarded punishment of 'reduction in pay scale', which is quite a severe punishment. This punishment has been upheld upto the Hon'ble High Court. Therefore, even on merits, I do not wish to interfere in this matter.

11. In view of the above, the O.A. is dismissed. I, however, would like to place on record my appreciation for the excellent assistance provided by Ms. Ayushi Kiran, learned counsel for the applicant, and the thoroughness with which she had prepared and argued her case. No order as to costs.

(P.K. Basu)
Member (A)

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