

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(22)

O.A.NO.674/2003

New Delhi, this the 19th day of April, 2004

Hon'ble Shri S.K. Naik, Member (A)

Shri Sushil Tirkey
s/o Shri Emmanuel Tirkey
Junior Engineer-I/C&W
under Sr. Section Engineer (C&W)
Northern Railway
Tughlakabad, New Delhi

(By Advocate: Shri B.S.Mainee)

..Applicant

Versus

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi
3. The General Manager
South Eastern Railway
Kolkatta (WB)
4. The Sr. Divisional Mechanical
Engineer (C&W)
Northern Railway
DRM Office, New Delhi

..Respondents

(By Advocates: Ms. Anju Bhushan for respondents 1 to 3 &
Shri Ashwini Bhardwaj for respondent 4)

O R D E R

The applicant in this OA - Shri Susheel Tirkey - is an employee of Delhi Division of Northern Railway. While he was working as JE Grade II in the scale of pay of RS.5000-8000/-, an application was made by him for a mutual transfer to the Bilaspur Division of South Eastern Railway in place of one Shri Rajesh Kumar Singh, who was similarly working as JE Grade II in the scale of Rs. 5000-8000/- in the Bilaspur Division. The reason for seeking the mutual transfer was on the ground of looking

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after his parents in their old age, who were living alone and were sick/ailing, who needed his care and support. The application along with consent of Shri Rajesh Kumar Singh for the mutual transfer was submitted by the applicant on 14.5.2001.

2. Soon after the filing of the application for mutual transfer, the applicant was promoted as JE Grade I in August, 2001 in the scale of Rs.5500-9000/-. In view of the promotion and placement in a higher scale of pay, the applicant vide his letter dated 6.11.2001 volunteered to revert to the post of JE Grade II in the scale of Rs.5000-8000/- in case his request for mutual transfer was accepted.

3. In the subsequent development, a selection for the post of Section Engineer in the grade of Rs.6500-10500/- was initiated by the respondents in which out of 16 vacancies, 3 were reserved for SC and 8 for ST candidates. The applicant being an ST employee appeared for the written test and viva voce and was placed at Sl.No.8 in a panel prepared by the respondents. Since the circumstances of the applicant had drastically changed materially and he had been selected for the higher supervisory post of Section Engineer in the grade of Rs.6500-10500/- and also because of the re-organisation of the Railway Zones under which Bilaspur did not remain in the South Eastern Railways, the applicant changed his mind. Vide his representation at Annexure A-6 dated 24.1.2003, he requested the respondents not to insist on his transfer to Bilaspur.

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Since Shri Rajesh Kumar Singh, with whom the applicant had worked out the mutual transfer arrangement, had been relieved by the Bilaspur Division of the South Eastern Railways and Shri Rajesh Kumar Singh had already joined in the new post, the respondents had passed the impugned order directing that the services of the applicant be spared immediately on reversion as JE-II in the scale of Rs.5000-8000/- to report to Bilaspur Division in place of Shri Rajesh Kumar Singh.

4. The applicant aggrieved against the said order is before the Tribunal seeking a direction to the respondents not to force him to move on transfer to Bilaspur Division on the basis of his request for mutual transfer made on 14.5.2001.

5. The counsel for applicant has contended that the request for mutual transfer as has been clearly stated in his application was aimed at looking after the aged and ailing parents who were living at his native place in Ranchi. When the request was made on 14.5.2001, Ranchi was within the jurisdiction of the Bilaspur Division of the South Eastern Railways and the applicant had hoped that he will be in a position to request the authorities to post him in the Adra Zone nearer to his home town Ranchi to facilitate frequent visit to his parents. However, with the re-organization, Bilaspur Division has now become the Headquarters of the South Eastern Central Railways whereas Ranchi has been taken out of its jurisdiction and continues to be a part of the South

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Eastern Railways. Thus, the counsel contends that the very purpose for which the mutual transfer was sought has been defeated.

6. Further, the counsel has urged that when his hopes were high and the parental obligations had prevailed upon him, he was willing even to forego his promotion of JE-I and was willing to be reverted to the post of JE-II and now as the situations have developed he has even qualified for being promoted to the post of a Section Engineer in the grade of Rs.6500-10500/-. If he is forced to move to Bilaspur in this situation, the counsel contends that it will amount to the applicant falling into the frying pan, as he would neither be able to take care of his ailing parents and at the same time he will have to forego two promotions, besides seniority, etc. His career will be completely doomed. All this has happened, the counsel contends, because the respondents took more than a year and a half to decide the matter. Had his request been considered soon after it was made, the applicant would not have had any regret but the inordinate delay and the changed circumstances certainly justify that the applicant should not be forced to move to Bilaspur Division.

7. The counsel further contends that the sincerity of the applicant can be judged from the fact that even now he would be willing to revert to the post of JE Grade II and join a post provided it is offered to him in the South Eastern Railways near or around Ranchi, so that his cherished desire of looking after his parents is fulfilled for which he is willing to make the sacrifice.

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The counsel, therefore, strongly pleads that either the applicant be permitted to continue in the Northern Railways where he is the next person to be promoted to the post of SE in the scale of Rs.6500-10500/- or in the alternative, the respondents should post him in the South Eastern Railway, so that the purpose for which he had made the original request for mutual transfer is achieved.

8. The counsel for respondents has filed his counter reply and has opposed the application. The main ground on which the respondents insist that the applicant must join the new post in Bilaspur Division is that the applicant had himself had applied for transfer on mutual exchange basis and on his request only, Shri Rajesh Kumar Singh was transferred to Delhi Division who has since resumed duty on 14.12.2002. In the normal course, the applicant should have been relieved immediately after the joining of Shri Rajesh Kumar Singh to proceed to Bilaspur Division to join duties there. But the counsel contends that the applicant himself had requested the respondents to grant him some more time till April, 2003, so that his children could complete their academic session. The respondents were considerate enough and considered his request and filing of the OA during the intervening period, the counsel contends, is a mischievous act by the applicant. The counsel contends that the applicant had not applied for the cancellation of the mutual exchange transfer nor did he object to the joining of his partner in exchange during December, 2002. On the contrary, he had sought time which was duly granted. The counsel, therefore, contends that by his own conduct, the

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applicant is now debarred from re-opening the matter. Further, since Shri Rajesh Kumar had already joined, the applicant cannot be permitted to be retained in the Northern Railways as there will be no post. With regard to the contention of the counsel for applicant that the very purpose of his mutual transfer has been defeated permanently because the applicant has not been posted in the South Eastern Railways and is being forced to join at Bilaspur Division which is totally new Railways, the counsel opposes the contentions of the applicant mainly on the ground that the applicant after having made the request for transfer on mutual exchange and further having sought extra time for joining in the new place of posting, he is now estopped from refusing the transfer on mutual basis.

9. I have carefully considered the arguments advanced before me by the counsel for the parties and have also gone through the records of the case. There is no denial of the fact that the applicant made the request for transfer on mutual exchanged basis on 14.5.2001. He had clearly stated in his request that the purpose for seeking the mutual exchange transfer was to look after his old, aged parents and ailing, who were living alone and remained sick. He had even given his willingness to revert to the post of JE Grade II after having been promoted to the post of JE Grade I, so as to achieve the purpose of getting nearer his parents. However, it took more than a year and a half for the respondents to finally decide the matter. It is an admitted fact that the applicant is on the panel for promotion to the post of SE in the grade of Rs.6500-10500/-. It has been

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contended that he is Sl.No.8 of the panel and all the 7 candidates above him have since been posted. He is the man now next due for promotion. The counsel for applicant has denied the claim of the respondents that Bilaspur Division continues to form a part of the South Eastern Railways even though they have said so in the counter reply. On verification, it has now been conceded by the respondents that Bilaspur Division does not remain part of the South Eastern Railways any more and that the averment made in their reply is actually not based on fact. Thus, with the changed scenario, if the applicant is forced to join at Bilaspur Division, he would not be joining the South Eastern Railways for which he had made the request but would be joining a totally new Railways and his dream of getting closer to Ranchi to look after his parents will certainly be defeated. The other ground on which the respondents express their inability to retain the applicant in the Northern Railways is on the ground that there would be no post for him. I, however, find that if the applicant is already on the panel of SEs and all the candidates above him have since been promoted and posted, I do not think that it would be difficult for the respondents to adjust him in the Northern Railways in the promoted post of SE and this can be done by extending his continuation in the present post until the date of his promotion. If the respondents have been considerate enough to extend his period on the ground of education of his children until April, 2003, I am sure it would be possible for them to extend the period for few more months, until he is given the promoted post of SE. In the alternative, as has been fairly requested for by the counsel for applicant, the respondents should consider

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him for being posted in the South Eastern Railways near or around Ranchi, so that it would be worthwhile for him to forego two promotions and discharge his divine duty of looking after his ailing parents.

10. In view of the discussions above, I partly allow the present application and direct the respondents either to consider extending his services in the present post of JE Grade I until his turn for promotion to ^(Sectional Engineers) SE and retain him in Northern Railways or in the alternative, consider posting him in the South Eastern Railways near or around Ranchi, so that the purpose for which he volunteers to forego two promotions and revert to a junior post, is subserved.

11. The OA is disposed of in these terms. No costs.

S. K. Naik
(S. K. Naik)
Member (A)

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