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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 3167/2003

New Delhi this the 15th day of March 2005

Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Kishan Swaroop,
S/o Shri Hori Lal,
Guard (Goods),
Railway Station,
Moradabad.

... Applicant.

(By Advocate Shri G.D. Bhandari)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
Moradabad.

... Respondents.

(By Advocate Shri Rajinder Khatter)

ORDER

Hon'ble Mrs. Meera Chhibber, Member (J).

The short grievance raised by applicant in this case is that even though he was in the grade of Rs.5000-8000 as Head Stores Issuer in Moradabad Division on the date he was declared surplus yet he had been redeployed as Guard



(Goods) in a lower grade of Rs.4500-7000 illegally vide orders dated 1.2.2002 and 7.10.2002.

2. It is submitted by the applicant that in similar circumstances the Signallers, who were also declared surplus, were redeployed as Head Ticket Collectors in the grade of Rs.1400-2300 revised to Rs.5000-8000 vide order dated 24.12.1996 and were given training subsequently. Therefore, there is no justification to put or re-deploy the applicant in a lower grade. He could also have been redeployed in a similar post having the grade of Rs.5000-8000.

3. It is submitted by the applicant that being aggrieved, he gave three representations dated 8.10.2002, November, 2002 and August, 2003. His appeal was, however, rejected. Therefore, he had no other option but to file the present O.A. Counsel for the respondents, on the other hand, took a preliminary objection to the maintainability of the O.A., on the ground that this is barred by limitation as the order of redeployment was passed on 1.2.2002 whereas OA has been filed on 30.12.2003 and no order rejecting the appeal has been annexed by the applicant with the O.A. Therefore, it cannot be said that any fresh cause of action arose in favour of the applicant in December, 2003. On the contrary, services of applicant were utilized at different places before his permanent absorption on redeployment as Guard (Goods), which was given to him as per his own willingness. In any case, applicant has not suffered any financial loss as his pay has been protected even in the grade of Rs.4500-7000 by giving him his personal pay. Moreover, since he has been redeployed against a running post of Guard, he is having other additional benefits, like 30% running allowance besides his salary also. They have thus submitted that there is no merit in the O.A. The same may accordingly be dismissed.

4. We have heard both the counsel and since the whole case of respondents was that applicant was redeployed in the lower scale of Rs.4500-7000 as per his willingness which was disputed by the applicant while counsel for respondents had submitted that no appeal was given by the applicant nor it was rejected as it is not on record, we had directed both the counsel on 10.2.2005 to produce the



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order regarding rejection of applicant's representation dated August, 2003 and counsel for respondents was directed to produce official records regarding willingness of the applicant to accept the lower post of Guard (Goods). This was to be done within a week's time. A week has already passed by. Neither applicant's counsel has produced the order of rejection of his appeal nor the counsel for respondents has produced willingness of the applicant. Therefore, we have no other option but to decide the case on the basis of the pleadings available before us.

5. From the documents placed on record, it is seen that the post of Senior Store Issuer was declared surplus on 2.12.1994 (page 27) whereafter applicant had been utilized on different posts but no redeployment order was ^{being} issued. Applicant gave representations which were duly forwarded and only vide order dated 1.2.2002, the applicant was redeployed as Guard (Goods) in the scale of Rs.4500-7000 in terms of PS No. 12145 on acceptance of bottom seniority as per declaration given by him (page 21). Thereafter, vide order dated 7.10.2002 after applicant was declared medically fit and had passed the Guard (Goods) Training Course held from 30.4.2002 to 19.6.2002 at Chandosi and had also undergone 21 days practical line training as well, his pay was fixed by giving him the benefit of his personal pay in the grade of Rs.4500-7000 (page 20). It is thus clear that in both the letters dated 1.2.2002 as well as 7.10.2002, it was specifically written that applicant has been redeployed as Guard (Goods) in the grade of Rs.4500-7000 in terms of PS No. 12145 on acceptance of bottom seniority as per declaration given by him. If applicant had any objection to such a declaration having been assigned to him, he ought to have challenged it then and there within the stipulated period. Though applicant has stated that he gave his representation on the dates as referred to above, but perusal of the representations which are stated to have been given on said dates show that there is no acknowledgment on the said representations. Respondents have categorically stated that no such representation was given to them. In fact, applicant has stated that his appeal was rejected and has mentioned in the index

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also at Serial No. 9 rejection of appeal as Annexure A-3 but no such order has been annexed with the O.A. as page 25 is missing from the paper book. We had given the opportunity to the counsel for the applicant to place the said order on record but he has failed to do so. Therefore, we can reach to only one conclusion that no such order was passed by the respondents rejecting his appeal in 2003. Therefore, his cause of action, if any, would arise from 1.2.2002 on which date applicant was redeployed as Guard (Goods) in the grade of Rs.4500-7000 on acceptance of bottom seniority as per declaration stated to have been given by him. The period of limitation is one year from the date of cause of action as stipulated under Section 21 of the Administrative Tribunals Act, 1985. Therefore, the O.A. should have been filed ^{by B} on 31.1.2003. Admittedly, the present O.A. has been filed on 30.12.2003. Therefore, it is barred by limitation. Counsel for the applicant had submitted that respondents had not taken any such objection in the counter reply. However, it is too well settled by now that legal objections can be taken even orally. In any case, we had given full opportunity to the counsel for the applicant to produce the order which he has not been able to do. In such a situation, the question is whether we can entertain this petition? We only have to refer to the judgment in case of Ramesh Chand Sharma Vs. Udham Singh, reported in AISLJ 2000 (1) SC 89 wherein Hon'ble Supreme Court observed that Tribunal cannot entertain a petition being barred by limitation. Limitation cannot be waived unless it has been applied for.

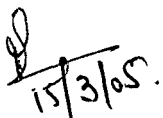
6. In view of the above judgment, we do not think that we can entertain this petition. It is liable to be dismissed on this ground alone. Even otherwise, we would only like to refer to two pages which have been annexed by the applicant himself i.e. on page 40 the representation given by the applicant on 24.8.1998 wherein he had himself stated in the note at the bottom of the representation that in case of redeployment as Guard (Goods) if his pay scale is reduced, he would have no objection. He had requested that a decision may be taken at the earliest for redeploying him. Similarly, on page 44, in his representation dated April,



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2001, applicant had stated categorically that in case applicant's redeployment as Guard (Goods) in case a post carrying the pay scale of Rs.5000-8000 is not available, he will be prepared to accept the lower post of Guard (Goods) in the pay scale of Rs.4500-7000 and will have no objection. Both these documents have been annexed by the applicant himself which clearly show that all that applicant was interested at that relevant time was to get redeployment even if he had to be put in a lower scale. In case any post in the grade of Rs.5000-8000 was available for redeployment, applicant would not have made such prayer as is mentioned above. It is thus clear that applicant had himself given his willingness to be redeployed even in a lower scale. Therefore, now he cannot turn around and challenge the orders passed by the respondents for redeploying him in a lower scale as he is estopped from doing so. Even otherwise, respondents have stated categorically in the reply that applicant's pay has been protected by treating it as his personal pay and he is being given 30% extra allowances due to his redeployment on the running side besides his salary. Therefore, no financial loss has been caused to the applicant. Applicant has referred to certain other persons and has stated in para 4.21 that there were vacancies of Head Ticket Collector in the grade of Rs.5000-8000 in June, 2001 and February, 2001 but we have seen the applicant was redeployed on 1.2.2002. Therefore, the position as on 1.2.2002 would be relevant and not the position earlier than 1.2.2002. In any case, applicant never agitated the matter in the year 2001. Therefore, at this point of time, he cannot be allowed to state that in 2001 vacancies were available.

7. In view of the above, we find no merit in the O.A. The same is accordingly dismissed. No order as to costs.


15/3/05.

(MRS. MEERA CHHIBBER)
MEMBER (J)



(V.K. MAJOTRA)
VICE CHAIRMAN (A)