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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10932/2017 with CM Nos.44738-44739/2017

VIKASH KUMAR Petitioner

Through: Ms.Neelima Rathore, Advocate

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Ashok Singh & Mr.Ashish,
Advocates for UOI/Railways

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **09.01.2018**

1. The petitioner has assailed an order dated 16.11.2017, passed by the Tribunal in O.A. No.3995/2017, filed by him to challenge the order dated 29.09.2017, passed by the respondents/Northern Railway refusing his request to withhold his promotion to the post of Office Superintendent (Engineering) in Level-6.

2. On the last date of hearing, learned counsel for the respondents, was directed to obtain clear instructions from the department, particularly in the light of the averments made in para 3.3 of the writ petition, which was to the effect that the petitioner wishes to appear in the departmental examination for the post of WLI (Staff & Welfare Inspector), and a similar request made by one Mr.Shri Ajender Singh in the year 2013 for appearing in the departmental WLI examination after withholding his promotion to the post

of Office Superintendent, had been acceded to and the said officer was finally selected as a WLI in April 2013, whereas the request of the petitioner herein has been totally ignored.

3. Learned counsel for the respondents, states on instructions, that a provisional panel for the post of Office Superintendent was circulated on 23.05.2017 and vide Notice dated 31.05.2017, promotion and posting orders of 11 officers to the post of the Office Superintendent was issued. The name of the petitioner features at serial No.4 of the said Notice. Learned counsel handovers the supporting documents in this regard that are taken on record. He submits that despite repeated directions issued to the petitioner, he has failed to report to the place of his posting in the very same station where he is presently posted i.e. Meerut and join as an Office Superintendent. The relevant records produced before us include reminders dated 29.09.2017, 21.11.2017 and lastly 08.12.2017, wherein, the concerned department was informed that in the event the petitioner does not join as an Office Superintendent (Engineering), disciplinary action may be initiated against him, as per the extant Rules.

4. Learned counsel for the petitioner insists that discretion vests in the competent authority to consider the request made by the petitioner and take a decision as to whether he is entitled to refuse promotion for the reasons stated above. In this regards, she refers to the Master Circular No. 37 relating to the policy and procedure regarding Promotion of Non-gazetted (Group 'C') Staff to Non-selection Posts.

5. We may note that as per Clause 9.2 of the very same Circular, the staff promoted at the same station cannot decline such promotion. The petitioner herein was posted at Meerut and has been promoted as an Office

Superintendent at the same station and therefore, the reliance on the said Circular would not be of any assistance to him.

6. Having gone through the records and in view of the facts of the present case, we do not find any infirmity in the impugned order, for interference. The petition is accordingly dismissed. In the interest of justice, one week's time is granted to the petitioner as a last opportunity, to join his place of posting as an Office Superintendent, failing which, the respondent shall be at liberty to initiate disciplinary action against him, as per law.

HIMA KOHLI, J.

REKHA PALLI, J.

JANUARY 09, 2018
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