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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

T.A. NO. 1241/2002
This the 7th day of February, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)

J.S.Gupta
S/o Sh. R.C.Gupta,
Aged about 47 years,
Resident of 18-D,
Railway Officer Colony,
Sardar Patel Marg,
Chanakyapuri,
New Delhi-110021.

And employed as:
Chief Engineer (Construction),
In the Northern Railway,
Kashmere Gate,
Delhi.

(By Advocate: Sh. B.B. Raval)

Versus

1. Union of India
through: The Chairman,
Railway Board,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Government of India,
Baroda House,
New Delhi-110002.

(By Advocate: Sh. H.K. Gangwani for Resp. 1
Sh. V.S.R.Krishna for Resp. 2)

ORDER

Applicant in this case has assailed his transfer order vide which he has been transferred from Northern Railway while he was working as Nodal Officer for Luni Barmer Nunabao Gauge Conversion Project.

2. Applicant submits that he is a member of Indian Railway Service of Engineers (IRSE) and he had worked on various assignments while posted in South Eastern Railway. He was also posted at Konkan Railways for certain period. He had also worked in Northern Railway. In the year 1998 applicant



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was transferred from Northern Railway to North-Eastern Railway but applicant made a representation. However, applicant was transferred to North Frontier Railway and posted to Guwahati. Applicant again made a representation on the grounds of sickness of his wife and study of children in senior classes. The said transfer was cancelled and applicant resumed his duties at Delhi, when his representation was accepted. Applicant was further transferred from Barmer Nunabao Gauge Conversion Project to the desk of Chief Engineer (Construction)(West) and made incharge of the works of Jodhpur area and incharge of project of gauge conversion of Luni Barmer Munabao of the Ministry of Defence. Applicant was again sought to be transferred to North Central Railway but applicant made a representation and his transfer to Allahabad was cancelled and he was again posted to Loni Barmer Munabao Project. Now the applicant alleged that he has again been transferred to North Frontier Railways once more. He has rendered 8 years in the Eastern Region as stated in 3 years stipulated period. The representation to this effect has also been made to the respondents but in the meanwhile applicant has filed the present OA. When the OA was filed, applicant had also prayed for interim relief and Court passed an order that meanwhile respondents are directed to maintain status quo.

3. Respondents are contesting the OA. They filed the reply and have opposed the interim relief as well.

4. I have heard the learned counsel for the parties and gone through the record.

[Signature]

5. Though the applicant has given a detailed history of his earlier posting but the same is irrelevant. The question which requires to be decided is whether applicant's transfer from the present Luni Barmer Munabao Project to North Frontier Railway can be sustained or it is required to be stayed.

6. In the grounds to challenge the same, the applicant has alleged that he had made two representations earlier which was accepted and the same ground still exist. Applicant's wife is still suffering from various ailments and his children are also studying in the senior school classes, so the same ground still exist.

7. Besides that applicant alleges that there is a malafide in removing the applicant from Luni Barmer Munabao Project because earlier the project was for a limited amount and now Ministry of Defence for whom the Luni Barmer Munabao Project was being undertaken has sanctioned a sizable fund of more than Rs. 100 crores and asked the Railways to complete the same within a stipulated period. The allocation of huge amount of fund has kindled interest in various quarters which resulted into unethical removal of the applicant from the post of Nodal Officer of this Project obviously for extraneous consideration.

8. Applicant was also asked to proceed on leave by his superior officers. Since applicant could not afford to antagonise he did proceed on leave and while he was on leave this transfer order was manipulated. Thus, the applicant alleges that this transfer is liable to be stayed because it is actuated by mala fide and Railways want to accommodate some



officer of their own interest, since huge funds have been pumped into by the Ministry of Defence for completion of this Project.

9. Respondents are contesting the OA. Respondents pleaded that there is no rule that the officer belonging to the service of IRSE cannot be transferred to Eastern Region. Though the applicant has pressed a circular that a person who has already served in the North-Eastern region for a period of 3 years cannot be transferred again. Respondents pleaded that the said circular applied only to ADRMs, DRMs and Coordinating Head of Department, Principal Head of Department or Executive Director in Railway Board but not to officers of IRSE. It is further submitted that as far the family condition of the applicant is concerned, the officers who were transferred to Northeast Frontier Railway they are allowed to retain accommodation at their previous place of posting and in case of applicant he will be allowed to retain accommodation at Delhi so that his family can stay in Delhi and the ailment of his wife and study of his children can be very well taken care of.

10. As regards the appointment of the applicant as a Nodal Officer to the Luni Barmer Munabo Project is concerned it is admitted that the Nodal Officer has to be appointed for a period of 5 years or for the duration of Project whichever is earlier but still in an exceptional case Nodal Officer can also be transferred with the approval of Secretary or Chairman, Railway Board and in this case the applicant has been transferred after following due procedure. Hence, he cannot claim to continue as Nodal Officer of the Luni Barmer Munabo Project, since the order of transfer has been issued

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with the approval of the higher authorities. Learned counsel appearing for the applicant has referred to his past career that he had served in the Eastern Region and has relied upon the circular which pertains to ADRMs but the said circular is not applicable to the applicant. I have also gone through the circular and have found that this does not pertain to the service to which applicant belongs. It applies only to those category of CHOD, ADRM, DRM etc. So in my view, this circular does not help the applicant at all and the applicant having an All India transfer liability can be transferred.

11. As regards his appointment as Nodal Officer, is concerned since the circular itself provides that in rare cases with the approval of the Chairman or the Secretary concerned even a Nodal Officer can be transferred before his tenure is complete and since in this case also the approval of the concerned authorities have already been taken, so to that extent, the applicant cannot take any objection. The only ground left in this case is that applicant has already served for 8 years in North East Region. To that extent. We have already observed that there is no rule or a policy decision that applicant cannot be transferred to that area since he is not in the category of those officers who has to serve a minimum tenure of 3 years and thereafter they can go back as DRM, ADRM and CHOD.

12. The next question is about the mala fide. The main contention raised by the applicant is that since the Ministry of Defence has pumped in more funds of Rs.100 crores so that has kindled the interest of various persons in the Railway Board and they want the officers of their own choice. As regards this contention is concerned, I find that this plea

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has no merits because applicant has not named any one particularly who is interested and who has acted in a mala-fide manner. Moreover, the level on which he is working wherever he is posted he has to handle various such projects where huge amount of fund is involved, so on that account also we find that there is no mala-fide.

13. I may further mention, it is the prerogative of the management to see as to how and where they can utilise the services of their employees in an optimum manner and it is entirely for the employer to decide as to when, where and at what time public servant is to be transferred and posted. Unless the case of mala fide is proved the Courts are not supposed to interfere in such like transfer matters. I find that there is hardly a case of any malafide and as such there is no case for interference in the OA.

14. Accordingly, I find that OA is devoid of merit and same is liable to be dismissed and is accordingly dismissed. Interim order granted earlier stands vacated.


(KULDIP SINGH)
Member (J)

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