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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1578/2002

M.A. NO.1269/2002

This the 29th day of July, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Harish Chandra Kohli S/O M.L.Kohli,
R/O RB-III/8A, East Railway Colony,
Post Office Sector 16-A, Faridabad (Haryana),
working as Jr. Engineer (Telecom)
in the Office of the Section Engineer
(Telecom), Central Railway,
Faridabad.

... Applicant

(By Shri D.S.Chaudhary, Advocate)

-versus-

1. Union of India through
Chairman, Railway Board,
Rail Bhawan, New Delhi.
2. Union Minister for Railways,
Government of India,
Rail Bhawan, New Delhi-110001.
3. Shri D.R.Sharma,
Executive Director (Vigilance),
Railway Board, Rail Bhawan,
New Delhi-110001.
4. Divisional Railway Manager,
Central Railway, Jhansi.
5. Shri V.K.Sharma,
D.S.T.E., Central Railway, Jhansi.
6. Shri Suresh Chandra Srivastava,
Area Manager, Central Railway,
New Delhi-110049.

... Respondents

(By Shri H.K.Gangwani, Advocate)

O R D E R

Applicant has challenged order dated 13.7.2000
passed by respondent No.3 with the approval of respondent
No.2 and order No.61/2000 dated 14.7.2000 passed by
respondent No.4 whereby applicant has been transferred
from Faridabad (Jhansi Division) to Solapur Division

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(Maharashtra). The orders challenged are marked as Annexure A-1 colly.

2. Learned counsel of applicant pointed out that orders at Annexure A-1 indicate that applicant had been transferred on administrative grounds out of the Division to a non-sensitive post. The learned counsel stated that these orders have not been served on applicant. Applicant made representations on 17.7.2000 (Annexure A-8) and on 25.1.2001 (Annexure A-9) stating that his transfer may be made within the Division in accordance with the rules in force and also that there are persons such as Shri R.K.Sharma, J.E., who have stayed for much longer period than applicant at Faridabad but have not been transferred out. He also stated that his wife has suffered heart stroke and is also a patient of ^aanemia. The learned counsel stated that applicant had been transferred on the orders of the Minister and his representations remained unattended.

3. The learned counsel also alleged mala fide against respondent No.3, Shri D.R.Sharma, Executive Director (Vigilance). He stated that a team of vigilance under the control of respondent No.3 had raided the reservation centre at Faridabad on 12.4.1998. One person, namely, Vijay Kr. Singh, was caught red-handed involved in corrupt practices. Applicant was present at the reservation centre at the time of the raid as he had gone there to attend to a fault in the system. He was made a witness to the said incident by the vigilance team. Departmental action was taken against the said

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Vijay Kr. Singh who was also transferred from the reservation centre. It is alleged that respondents 4, 5 and 6 manipulated applicant's transfer from Faridabad to Mahoba vide orders dated 24.6.1998 but the orders were cancelled on 4.9.1998 by the superior authorities. According to applicant, respondents 4, 5 and 6 got a charge-sheet dated 25.9.1998 issued against applicant which was quashed on 26.5.1999. It is further alleged that respondents 4, 5 and 6 became hostile to applicant as he was a witness against Shri Vijay Kr. Singh who was one of the members of the team of respondents 4, 5 and 6 who were involved in corrupt practices. The learned counsel also stated that respondents 4, 5 and 6 were instrumental in having adverse remarks recorded in the ACRs of applicant which were ultimately expunged. These respondents were frustrated and ultimately succeeded in securing the impugned transfer orders against applicant. The entire background of transferring applicant is, therefore, fraught with mala fide intention of respondents 4, 5 and 6.

4. The learned counsel of respondents stated that the Principal Bench of the Tribunal does not have territorial jurisdiction and also that this OA is barred by limitation.

5. The learned counsel stated that applicant has sought shelter under Annexure A-2 stating that he cannot be transferred out of the Division and that his preference had been sought for appointment in Jhansi Division alone. The learned counsel stated that the said

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circular dated 31.5.1993 does not indicate that applicant could not be transferred to another Division for all times to come. The learned counsel stated that applicant has fabricated allegations against respondents 4, 5 and 6.

6. Respondents have stated that the impugned order of transfer dated 14.7.2000 was served on applicant on 15.7.2000. However, applicant refused to acknowledge the same as witnessed by employees, namely, S/Shri R.K.Lawania, H.K.Bhutani, Radhey Shyam, Hodal Singh, Kanhaiya Lal and Mahesh Chand (Annexure-RA1), and he fled from the office and has remained unauthorisedly absent since then. The learned counsel stated that one Shri S.K.Bhatnagar, JE-II had been transferred on 4.8.2000 to Faridabad vice applicant and has resumed charge. He stated that applicant would not lose any seniority on his transfer to another Division as he has been transferred due to administrative exigencies.

7. Respondents have produced records relating to the transfer of applicant.

8. Whereas applicant has made allegation of mala fide against respondents 4, 5 and 6, they have not filed any counter reply in their individual capacities against the same.

9. As to the respondents' objection relating to territorial jurisdiction of the Principal Bench of the Tribunal over the matter, from the records I find that



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the impugned order has been reportedly passed at the instance of respondent No.2 and formal orders were issued by respondent No.3. Respondent No.5 has merely implemented the said orders. In this view of the matter, the impugned order is deemed to have been passed at New Delhi and the Principal Bench of the Tribunal is certainly competent to adjudicate in the matter.

10. As regards respondents' objection that this OA has not been filed within the period of limitation, applicant had filed MA No.1269/2002 seeking condonation of delay in filing the OA. It has been stated that he had filed representations against his transfer order to various authorities including the General Manager and the Hon'ble Minister which remained unresponded. His wife has been sick and is a chronic patient of heart disease and diabetes. Her heart operation has been delayed because of anemia. In the interest of justice MA-1269/2002 is allowed and delay in filing this OA is condoned.

11. Annexure A-2 relates to de-centralization of the posts of Signal and Telecom Inspectors Gr.III in S&T Department. Its narrative is as follows :

"It has been decided with the approval of the competent authority, in consultation with the recognised Unions, to decentralise the posts of Signal and Telecom Inspector, Gr.III, Gr. Rs.1400-2300 (PRS) in S&T Deptt. w.e.f. 1.6.93. Signal/Telecom Inspectors in Grade Rs.1400-2300 RP have to exercise their option in the enclosed Performa, indicating their preference of Division where they wish to work. You are requested to obtain options from the staff concerned and send the same to this office as early as possible, but not later than 1.8.93.

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Kindly confirm that this is noted by concerned SI/TCI III of the division and a certificate to that effect may be sent to this office for record."

Whereas it has been pleaded on behalf of respondents that the concerned officials could be transferred out of their Divisions as these orders cannot give them shelter all through their service, it has been contended on behalf of applicant that the import of these orders is that as applicant had given his option to remain in Jhansi Division, he could not have been transferred out of that Division. Respondents have not shown any orders of the Railway Board in supersession of these orders. If the posts of Signal & Telecom Inspector Gr.III had been de-centralised and options had been called from the concerned for different Divisions and when applicant had given his option to remain in Jhansi Division, certainly he could not have been transferred out of Jhansi Division as per the policy of the respondents themselves, unless this policy had been changed. Respondents were certainly wrong in transferring applicant out of the Division against the spirit of Annexure A-2.

12. Respondents 4, 5 and 6 against whom allegations of mala fides have been made by applicant have not rebutted the charges in their individual capacities. Applicant has enumerated various episodes indicating that these respondents could be unhappy with applicant and could be instrumental in organising his transfer out of the Division.

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13. I have perused the related file of applicant's transfer. This file does not reveal any administrative grounds on the basis of which applicant has been transferred out of the Jhansi Division. The Minister of Railways seems to have ordered that applicant should be transferred out of the Division to a non-sensitive post forthwith and not later than a week's time. Respondents accordingly issued the orders. The file does not disclose any information or background of applicant's transfer out of the Division at the level of Minister of Railways. What had led to applicant's transfer to a non-sensitive post has also not been revealed from the file. If at all applicant was to be transferred from a sensitive post, he could have been retained in any non-sensitive post within the Division as per the Railways' policy contained in Annexure A-2. Respondents have certainly acted in a very arbitrary manner in the present case. I do agree, on the basis of documents filed on behalf of respondents, that respondents had made their efforts to serve transfer orders on applicant, service whereof he had evaded as is clear from annexures enclosed with the counter reply of respondents. However, this does not absolve respondents from their responsibility of acting in a fair manner as per their own circulars and instructions.

14. Having regard to the discussion made and in the facts and circumstances of the case, transfer/posting order dated 13.7.2000 passed by respondent No.3 and order No.61/2000 dated 14.7.2000 passed by respondent No.4 (Annexure A-1 colly..) are quashed and set aside, with

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consequential benefits. However, respondents would be within their rights to transfer applicant within the Jhansi Division in terms of their own circulars/instructions.

15. The OA is disposed of in the above terms.

V. K. Majotra

(V. K. Majotra)
Member (A)

/as/