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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1292/2001

This the 5th day of April, 2002.

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

Hasan Mohd. S/O Zaheer Hasan,
Head Parcel Clerk,
Railway Station, Northern Railway,
Najibabad (UP).

... Applicant

(By Shri G.D.Bhandari, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Moradabad.
3. Prem Chand, Head Clerk,
Railway Station, Najibabad (UP).
4. Nazar Abbas, Head Clerk,
Railway Station, Najibabad (UP).


... Respondents

(By Shri Rajinder Khatter, Advocate)

O R D E R (ORAL)

Applicant has challenged order dated 5.3.2001 (Annexure A-1) whereby he has been transferred to Nagina Station as Head Booking Clerk on administrative grounds. It is alleged that he has been transferred with mala fide intentions although respondent No.3 Shri Prem Chand and respondent No.4 Shri Nazar abbas, both juniors to applicant and with stay of 15 and 16 years respectively, have been retained as Head Parcel Clerks.

2. Learned counsel of applicant Shri G.D.Bhandari stated that by counting applicant's period of working from 1.5.1995 to 31.3.2000 in the Booking Office, he was transferred from the post of Head Booking Clerk (HBC) to the post of Head Parcel Clerk (HPC) at the same station



by way of periodical transfer and as such he started working in the Parcel Office from February/March, 2000. As such he has not yet completed the usual tenure of four years which would expire in March, 2004 only. Drawing attention to Annexure A-5 dated 8.4.1991 which are instructions of Railway Board on transfers of Group 'C' and Group 'D' railway servants, it was contended that as per instruction 4.3(i), railway servants holding sensitive posts can be transferred after every four years. Instruction 4.3(i) reads as follows :

"Railway servants holding sensitive posts and who come into contact with public or/and contractors/suppliers etc., should be transferred out of their existing post/seat or station as the case may be, after every four years."

3. Learned counsel of respondents, at the outset, raised the objection that whereas in para 7 of the OA which relates to "matters not previously filed or pending with any other court", applicant has stated not to have previously filed any application, writ petition or suit regarding the same subject matters, applicant had indeed filed an OA being OA No.4/2001 before the Allahabad Bench of the Tribunal challenging the same transfer as assailed herein, which was dismissed as withdrawn without any liberty to file an OA afresh vide order dated 16.4.2001 (Annexure R-I to the counter affidavit of respondent No.2). In this background, the learned counsel stated that this OA is hit by res judicata. In this behalf, the learned counsel of applicant stated that in paragraph 4.10 applicant has mentioned about the earlier OA No.4/2001 which was filed before the Allahabad Bench. He stated that the OA was withdrawn in the context of a compromise between the union and respondents. Whatever

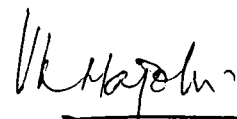
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the context of withdrawing the earlier OA on the same subject ~~be~~, applicant should have stated about having filed the same in paragraph 7 of the OA. Having stated that, we find from the Tribunal's order dated 16.4.2001 whereby the earlier OA was dismissed as withdrawn that no liberty was granted to applicant to file the OA afresh. Present OA is certainly hit by res judicata and is not maintainable.

4. In addition, learned counsel of respondents stated that instructions on transfers contained in Annexure A-5 dated 8.4.1991 do not prohibit transfer of railway servants from their existing post/seat or station even before expiry of four years, on administrative grounds. Applicant had been transferred on administrative grounds as per Annexure A-1.

5. On a perusal of Annexure A-5 dated 8.4.1991, we are in agreement with learned counsel of respondents that whereas normally railway servants holding sensitive posts should be transferred after every four years, there is no bar in transferring them earlier than four years, on administrative grounds. Respondents have also given their reasons regarding non-transfer of respondents 3 and 4 vis-a-vis applicant, with which we are satisfied.

6. Having regard to the discussion made above, we do not find any merit in the OA which is dismissed. No costs.



(V. K. Majotra)
Member (A)

/as/