

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A.NO.1715/2001

Tuesday, this the 8th day of January, 2002

Hon'ble Shri Govindan S. Tampi, Member (A)

Vakil
S/O Sh. Bashir Ahmed
Gangman, Gang No.9, Nagina
Under Permanent Way Inspector
Dhampur (Northern Railway)

Residential Address:

Vakil,
E-2-A, Railway Colony
Nagina.

..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.
3. The Divl. Supdt. Engineer-I
Northern Railway, DRM's Office
Moradabad.
4. Permanent Way Inspector
Northern Railway
Dhampur
5. The Assistant Engineer
Northern Railway
Najibabad.

..Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R (ORAL)

The applicant, Shri Vakil assails the order dated 7.6.2001 transferring him from Nagina to Bulandshahr and seeks that the same be quashed. He has obtained an interim order from the Vacation Bench on 26.6.2001 staying the said order.

2. Heard Shri G.D.Bhandari and Shri R.L. Dhawan, learned counsel respectively for the applicant and the respondents.

3. The applicant, who joined as Casual Gangman in 1975, became a regular Gangman on 5.2.1982 and was posted under Permanent Way Inspector (PWI), Dhampur where he has been working since then with a totally unblemished record of service. He is also the President of the All India Scheduled Caste and Scheduled Tribe Railway Employees' Association in Moradabad Division. He was originally transferred on 6.3.2000 from Nagina to Gajraula under PWI Bijnore on administrative grounds. This was on account of his being a trade union worker and though such a transfer should have been done only after due consultation with the Divisional Association, it was not done. The transfer did not take place. Two more transfers have been affected, all of which did not come into effect as he was not relieved. Finally, the impugned transfer order dated 7.6.2001 has been issued. He has every reason to apprehend that his transfer has nothing to do with administrative exigencies or public interest, but has been done only to deal with him for his role in collective bargaining on behalf of staff. A pretext has been made that he was involved in activities injurious to the Organization and/or that he has criminal record. These are all excuses designed to justify the transfer which was not correctly or properly made. Further, the transfer having come during mid-session, has affected the education of his children and caused irreparable damage. This act of the respondents which was improper, illegal and

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arbitrary and should be set aside and the individual should be restored to Nagina, is what Shri G.D. Bhandari prays.

4. Reply has been filed on behalf of the respondents reiterating the points raised in the written submissions, Shri R.L. Dhawan, learned counsel for the respondents points out that the order of transfer has been issued in correct exercise of the administrative jurisdiction and that the same cannot be successfully assailed. It would be seen, Shri Dhawan says that the individual had been transferred earlier^{also} but those orders have not been given effect to for some reason or the other and the present order of 7.6.2001 issued by the competent authority transferring him from Nagina to Bulandshahar should be implemented. Shri Dhawan also points out that the applicant had been working in the charge of PWI Dhampur for about 20 years and, therefore, the administrative interest also require that this transfer should be upheld. Besides, Shri Dhawan invited my attention to the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. S.S. Kaurav, (SC SLJ 1995 (1) 350) as well as that of Gujarat Electricity Board Vs. A.S. Poshani, (SLJ 1989 (3) SC 68) and averred that the order passed by the competent authority should be respected and the OA dismissed.

5. I have carefully considered the matter. Decisions of the Courts, especially of the Hon'ble Apex Court, galore in stating that the transfer as an administrative tool is within exclusive domain of the executive and shall not be disturbed unless it is against the stated or

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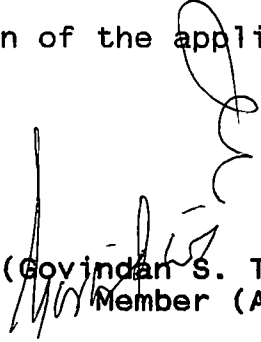
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declared guide-lines or the policy or it is malafide. Two decisions referred to by the respondents in S.S. Kaurav's and A.S. Poshani's case (supra) also exemplify the same. In this case, the applicant has been transferred out of Nagina to Bulandshahr by an order dated 7.6.2001. It is found that he was transferred in March 2000 to Gajraula, May 2000 to Dehradun, August 2000 to Bulandshahr and May 2001 to Puren, all from Nagina, but these orders some how or the other have not been given effect to. The order dated 21.5.2001 posting him to Puren has been modified and he has been posted back to Nagina on 24.5.2001. The present order is from Nagina to Bulandshahr and this, he has got placed in abeyance by approaching the Tribunal. It is clear from the above that the applicant has not acted in obedience to the orders of the superiors but has some-how or other been stalling the same. There does not appear to be any tangible reason to retain him in the same place where he has already done nearly 17 to 18 years. That being the case, the respondents' version that ^{the applicant} ~~he~~ has been shifted on administrative grounds would have to be believed and upheld. The only issue remaining is that personally we are in mid-academic session and relieving the applicant ^{immediately} is likely to place inconvenience for his school going children, if he has. In the interest of their education, the order could be kept in abeyance till the session is over. That is the only relief which the applicant can have in the OA.

6. In the above view of the matter, the application succeeds but only marginally and is accordingly disposed of. While upholding the illegality of the order dated 7.6.2001 transferring the applicant from Nagina to

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Bulandshahr, I direct that the order may be held in
abeyance till 30.4.2002 and be given effect to from the
next day as the current academic session would have come
to a close then and education of the applicant's children
could not suffer. No costs.


(Govindan S. Tampi)
Member (A)

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