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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.2663/2001

New Delhi, this the 9th day of November, 2001

Sh. Bhagwati Prasad
s/o Sh. K.N.Gairola
working as SOM in the Office of the
CAO (Construction)
Northern Railway
Kashmiri Gate
Delhi.

... Applicant

(By Advocate: Shri S.K.Gupta)

Vs.

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Chief Administrative Officer (Construction)
Northern Railway
Kashmiri Gate
Delhi.
3. Dy. Chief Personnel Officer
O/o the Chief Administrative Officer
(Construction)
Kashmiri Gate
Delhi.
4. Chief Engineer Central (Estt.)
O/o the Chief Administrative Officer
Kashmiri Gate
Delhi.
5. Senior Personnel Officer
O/o the Chief Administrative Officer (Construction)
Kashmiri Gate
Delhi. ... Respondents

(By Advocate: Shri H.K.Gangwani)

O R D E R

By Shanker Raju, Member (J):

The applicant, who is holding the post of
SOM/Supervisor in the office of the respondents, has
assailed an order dated 1.10.2001 passed by the
respondents whereby he has been transferred from Delhi
to Katra (Jammu) having worked in the grade of
Rs.4500-7000.

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2. Briefly stated the applicant having been in the cadre of Supervisor (Works) and is employee of the Divisional Railway Manager, Delhi, he has been deputed to Construction Works and the seniority list of the applicant shows the place of working with respect to the applicant is Delhi. In 1994, the applicant was transferred to Jammu and there he remained upto 19.8.1996. The applicant is incharge of Soil Mechanical Laboratory and deals with all administrative matters. During the litigation of OA 676/94 filed by Smt. Suman Bala the applicant has been pressurised to file an affidavit regarding the designation of the applicant therein, i.e., Smt. Suman Bala should be shown as Khalashi instead of being Typist. The OA was allowed and thereafter filing another OA 2646/2000 against reversion the OA was allowed with a cost of Rs.25000/-. It is stated that number of seniors and the persons having longest stay at a particular station have been retained and the applicant has been transferred. The transfer has been done in the mid session whereas the sons of the applicant are studying in IVth and Vth classes in public school in Faridabad. The other allowances including perks like bonus, packing allowances are still to be paid to him. The learned counsel for the applicant further contended that he had been working in the pay scale of Rs.4500-7000 and 19 persons are working at present who are seniors or juniors to the applicant at construction division. The applicant has a separate seniority list where his seniority figures at Sl. No.14 the other persons juniors to him have been retained and as well as seniors and are not

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subjected to any transfer. The respondents, due to urgent requirement of staff of SE/JE(Works)-II for posting at JURL Project (Jammu) requested the Headquarters, NR for 10 posts of SE/JE which has been circulated among all the DRMs of Northern Railway vide letter dated 20.12.2000. The requirement was pertaining to JE in the grade of Rs.5000-8000/6500-10500 and only willing staff may be sent who will be given usual incentive of 5 advance increments/one ad hoc promotion plus two advance increments as the case may be admissible as per the PS No. 11031. Referring to the same PS, it is contended that therein Clause-2 as the Jammu is a hard station Railway Board has decided that the workcharged posts are to be filled in several working projects may be called from various divisions of Northern Railway including the staff already working in the above project, placed upto two grades below the grades in which the work charged posts are to be filled in have been sanctioned, to put incumbent/staff who volunteers for these posts. In this background, by referring to the New International Webster's Concise Dictionary of the English Language it is stated that the meaning of word 'Volunteer' which contains that one who voluntarily enters voluntary service; To enter or offer to enter into some service or undertaking of one's free will. In this conspectus, it is stated that the posting of those persons staff is to be made on the project at Jammu who have volunteered to join there and the applicant who is not falling in the same category and moreover he is not falling in the scale of Rs.5000-8000, he cannot be transferred against his will. It is also stated that the juniors as well as

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seniors to the applicant have been retained and as the respondents having malafide intention as he refused to accord a certificate in Smt. Suman Bala's case he has been made a scape goat by pick and choose method and transferred him not in public interest and exigency rather it is malafide and against PS 11031 of 1995 as such the same cannot be countenanced.

3. On the other hand, strongly rebutting the contentions of the applicant, it is stated that as no specific person has been impleaded as respondents the applicant is estopped and that no malafides have been proved by the applicant, his transfer cannot be legally sustainable. It is stated that from the pleadings no legal malafide is borne out. It is also stated that transfer is an administrative exigency and after circulating the letter no willing person has represented and in these circumstances, in public interest and in the interest of service, as the applicant was having experience and had earlier worked and the fact that the project is being delayed with heavy financial losses to the railways the applicant has been picked up. It is further stated that the applicant has all India transfer liability and similar circumstances some of the employees were already sent to the project and the applicant was spared on 5.10.2000, he is running unauthorisedly absent. It is further stated that the grade of the applicant has not a criteria for his transfer, according to the PS 11031 the staff placed upto two grades below the grades in which they are working the work charged staff filled in can be transferred. The learned counsel for the respondents has stated that the applicant has been

posted in exigency of service, and his plea of malafide as to non-issuance of certificate is of no avail as the applicant was not competent to give any certificate to Smt. Suman Bala and he was not forced to do the same. It is also stated that in view of the urgency of work at JURL Project, the applicant has been deputed and his bills, etc. are in the process and the same would be disbursed to him. It is lastly contended that this Tribunal is precluded from interfering with the transfer which is neither malafide nor against extant rules and instructions.

4. I have carefully considered the rival contentions of the parties and also perused the material on record. I am of the considered view that the claim of the applicant is not justifiable and is liable to be rejected. The transfer in the exigency of service and in public interest cannot be questioned unless it is established that the same is vitiated by malafides or against any statutory provisions or rules. The applicant although was posted at Jammu and has an all India transfer liability the respondents in pursuance of their notification dated 20.12.2000 even if called for volunteers to attend to the projects at Jammu but as nobody has reported voluntarily, they resorted to picking up the applicant and transferred him on the basis that as he has already been there and gained experience at Jammu his services can be best utilised at Jammu the same is definitely in exigency of service. As regards the contention of the learned counsel for the applicant that the only voluntary staff may be posted, is not correct, when nobody has volunteered to go of their own the respondents have

picked the right person, who is having good experience and to run the project efficiently which has already started and is delayed resulting in financial losses to the Railways. The interest of administration should be the paramount consideration.

5. The contention of the learned counsel for the applicant that as he has been working in the grade of Rs.4500-7000 and whereas the required persons are from the scale of Rs.5000-8000 the applicant does not fall in that category, he cannot be deputed to Jammu. I do not agree with the same. As per Clause-II PS 11031 the staff who is even two grades below the grades in which the workcharged posts are can be deputed and transferred to the project. This is a policy decision of the Government which cannot be interfered by the Court. As regards the malafides are concerned firstly the applicant has not alleged any personal malafides as far as the legal malafides are concerned, the contention of the applicant is that as he failed to give false certificate in Smt. Suman Bala's case supra he has been subjected to punitive measure to transfer him is not borne out from any documents which has been produced by the applicant. It is the applicant who has to establish a legal malafide in order to sustain his contention of transfer order being illegal. As the applicant was not at all competent to issue such a certificate he could not have given the certificate in Smt. Suman Bala's case. Having failed to prove personal or legal malafides, the claim of the applicant is liable to be rejected. As regards the seniority is concerned and the question of longer stay, I find that in pursuance

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of the aforesaid notification issued by the respondents, nobody has turned up voluntarily and as the applicant was the most experienced and having rendered service of four years at Jammu, he has been picked up by the respondents. Not only the applicant but other staff is also deputed on the project and this process is carried on still by the respondents despite willingness or deputed staff in the administrative exigency and in public interest of the project for smooth functioning of the administration which cannot be found fault with.

In view of the discussion made above, I find no merit in the OA. The same is accordingly dismissed. The interim order already passed stands vacated. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

/RAO/