

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 643/2001

New Delhi, this day the 6th September, 2001

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Naseer Ud din,
Station Master,
Northern Railway,
Aligarh Jn.,
R/o L/2-A, Railway Colony,
Badarbagh, Aligarh Applicant
(By Advocate : Shri M.L. Sharma)

Versus

Union of India through

1. General Manager,
Northern Railway,
Headquarters Office,
New Delhi
2. The Divl. Rail Manager,
Northern Railway,
Allahabad
3. Shri R.N. Shukla,
Station Superintendent,
Northern Railway,
Aligarh Respondents
(By Advocate : Shri B.S. Jain)

ORDER (ORAL)

Heard the learned counsel for both the parties.

2. The applicant in the present OA has assailed the transfer order issued on 30.1.2001 whereby he has been transferred from Aligarh to Somna. It has also been stated in the order that strict action may be taken to get the official accommodation vacated.

3. The learned counsel for the applicant has stated that the order of transfer is neither in public

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interest nor in administrative exigencies, but has been issued with malafide intention to punish the applicant. The learned counsel for the applicant by drawing attention to a complaint made against the Station Superintendent Shri R.N. Shukla, which has been filed by eight of the Station Masters including the applicant on 18.1.2001 stated that in pursuance of the complaint, the respondent No.3 has become instrumental in getting the applicant and other Station Masters transferred from Aligarh. It is also stated that the applicant has been transferred from SM to TI on 25.4.2000 and from TI to SM on 6.6.2000 and as such the present transfer is not covered under the Railway Board's instructions/transfer policy etc. In this background, it is stated that the applicant's present transfer cannot be termed as a periodical transfer as he has not completed five years after 6/6/2000. The applicant has been shifted only after completion of six months which is against their own master circular.

4. The learned counsel for the applicant has further stated that the applicant has attained the age of 58 and is running 59 and in terms of circular dated 24.7.1979 as a principle he should not have been shifted within two years of his superannuation. As such the transfer is against the statutory guide-lines. The learned counsel has further contended that the respondents are tantamount to cancel the Government accommodation and resorted to get the same vacated malafidely and for this he places

reliance on a decision in the case of Lal Singh Vs Union of India & Anr reported as SLJ 1995 (3) CAT/107 and has further placed reliance on a decision of the Lucknow Bench of this Tribunal in the case of U.C. Chaturvedi Vs UOI and others and reported as 1988 (3) SLJ/CAT 69 to contend that his transfer is not a routine one, but has been made to ease out an inconvenient worker. The same would be unsustainable in law. The learned counsel for the applicant has further placed reliance on the decision of the Andhra Pradesh High Court in the case of J. Ramchandani Vs. Andhra Pradesh State & Anr reported as 1993 (3) SLR at page 1 to contend that his transfer is for other purposes than the administrative interest and to accommodate another person for undisclosed reasons. The same is, therefore, bad in law. The learned counsel for the applicant has also placed reliance on the guide-lines of the Railway Board dated 27.4.1979 to content that periodical transfer in respect of Commercial Staff is not made before completion of five years. He also contended that the respondent No.3 who has been posted in the same station for the last 20 years has not been shifted. The applicant has been victimised by his present transfer. It is also contended that the complaint of the applicant is still pending and just to pressurise him to withdraw the same, the aforesaid transfer has been ordered.

5: On the other hand the learned counsel for the respondents stated that a person having transfer liability cannot compel the respondents to put him at

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a particular place indefinitely and in this context it has been stated that the applicant has been posted at Aligarh for the last 15 years. With regard to the contention of the applicant that his transfer is illegal on the ground that he has attained the age of 58 years, the learned counsel for the respondents states that he had not attained the age of 58 years at the time of issue of the order. It is also stated that the joint complaint made by the applicant against Shri R.N. Shukla, Station Superintendent was not served upon the Sr. Divisional Operating Manager, Allahabad till 8.3.2001 and the same was received on 16.3.2001 and as such even before receipt of the complaint the transfer had been ordered.

6. The learned counsel for the respondents has further stated that the case laws of the applicant are distinguishable and not applicable in the facts and circumstances of the present case and in the case of retention of Government accommodation, the same would be considered in accordance with the existing rules, in case any request is made to retain the accommodation. There is also a provision that if an employee is transferred from one station to another, he can apply for permission to retain Railway quarter at the same station or for the whole academic session. In the instant case the applicant has not made any such request for retention of the quarter.

7. I have carefully considered the rival contentions of the parties and also perused the

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material placed on record. In my considered view the applicant has miserably failed to prove any personal malafide in the action of the respondents in transferring the applicant. His contention that the present transfer ordered is an aftermath of the complaint made against the Station Superintendent is not legally sustainable in absence of any evidence to this effect. The joint complaint dated 18.1.2001 made by the applicant against the respondent No.3 has been received by the respondents only in March, 2001 whereas the orders of transfer were issued on 30.1.2001. As regards the circular instructions on which reliance has been placed by the learned counsel for the applicant, the provision regarding non-transferring of persons having two years of service left for superannuation, the same would have no application as the transfer order has been issued on 31.1.2001 and at that time he was yet to come in the purview by virtue of having not being attained the age of 59 years. The applicant's contention that he has a right to continue at the station till five years is concerned, the same is not legally tenable as the applicant has already been there for the last 15 years and the action of the respondents in transferring the applicant, by no means, constitute violation of any rules. Thus, I am of the considered view that in absence of any malafide or violation of rules and guide-lines, the transfer in the present case is justified. As regards retention of government accommodation, in case the applicant makes a request for the same, the respondents are directed to look

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into the matter favourably in accordance with the relevant instructions. However, the applicant will have to pay the normal rent.

8. The present OA is disposed of in the aforesated terms. No costs.

S. Raju

(Shanker Raju)
Member (J)

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