

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 1750/1999

New Delhi this the 23rd day of March, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Sunil Kumar Goyal
S/O Sh.R.K.Goyal
working as Junior Clerk,
Electric Locoshed,
Western Railway, Tuglakabad,
New Delhi.

.. Applicant

(By Advocate Sh.K.K.Patel, learned counsel
through proxy counsel Sh.T.C.Aggarwal)

Versus

1. Union of India through
General Manager
Western Railway,
Church Gate, Mumbai.

2. Divisional Railway Manager
Western Railway, Kota.

3. Sr. Divisional Electrical Engr. (TRS),
Electric Locoshed (TKD)
New Delhi.

4. Shri Ram Chander
working as Junior Clerk
Electric Locoshed,
Western Railway, Tuglakabad,
New Delhi.

5. Sh. Mukesh Kumar
working as Junior Clerk
Electric Locoshed,
Western Railway, Tuglakabad,
New Delhi.

.. Respondents

(By Advocate Sh.H.K.Gangwani, learned
counsel through proxy counsel Ms.
Sumedha Sharma)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant is aggrieved by the orders passed by the respondents dated 29.7.99 and 31.7.99 rejecting his representation as Junior Clerk dated 23.7.99 and transferring him/from Tuglakabad to Vikramgarh Alot.

2. The applicant was issued Office Order dated 6.7.99 transferring him as Junior Clerk from the office of SRDEE (TRS) Tuglakabad to Sec. Engineer PW, Vikramgarh Alot by the respondents. He had filed an earlier application (OA 1613/99) which was disposed of by order dated 20.7.99. The respondents have submitted that in accordance with the directions given by the

js.

Tribunal in that OA, they have considered the applicant's representation but have not found it fit to accede to it and hence they have rejected the same. The rejection order of the representation of the applicant has now been impugned in the present OA.

3. Learned proxy counsel for the applicant has submitted that along with ^{the} rejection of the representation, the applicant was also given a sealed cover which contained the transfer and relieving order. In the circumstances, the applicant had no alternative but to report for duty at Vikramgarh Alot. However, he has submitted that the transfer order passed by the respondents dated 6.7.99 read with the orders dated 29.7.99 and 31.7.99 are illegal because they are not in conformity with the relevant rules and instructions. He has submitted that as per the Office Order dated 6.7.99, the reason is clearly stated that the applicant has been declared surplus along with others, and this is the reason for his ^B transfer to Vikramgarh Alot. If that is so, learned proxy has submitted that only the Jr. most employee could have been transferred in terms of the Railway Board's order dated 27.7.96 which has been reproduced in Tribunal's order dated 20.7.99. He has submitted that the contention of the respondents that this is ^a routine transfer cannot, therefore, be accepted, and the transfer order is, clearly outside the policy Rules. He has also submitted even if the contention of the respondents is taken that the applicant had been posted earlier in ^a sensitive post by order dated 4.6.98, thereafter he has been transferred to a non-sensitive desk, as the duties of the applicant in the present post include ^{only} dealing with Union cell, Audit cell, Audit Account, Compliance report preparation and correspondence of all its related papers, Court cases, return of medical bills, preparation of duty pass, issue of PTO to officers and to maintain records related to it and "injured on duty cases, leave reserve and correspondence relating to the same. According to the applicant, none of these duties can be considered as sensitive as given in RBE 244/89 dated

27.9.89. His contention is that the applicant does not come into contact with public and or contractors/suppliers to be termed as holding a sensitive post. In any case, he has only been transferred to this desk with these duties on 4.6.98 and has not completed four years of service as laid down in the RB Circular. For these reasons, learned proxy counsel has submitted that the impugned transfer order may be set aside as it clearly violates the relevant rules and instructions. He has further submitted that the applicant has joined duty at Vikramgarh Alot on protest and the OA has been filed on 10.8.99.

4. I have perused the replies filed by the respondents as well as heard Ms. Sumedha Sharma, learned proxy counsel.

5. In the additional affidavit, the respondents have submitted that the applicant has put in nine years of service at Tuglakabad and he has been transferred to Vikramgarh Alot. They have also submitted that it is not for the applicant to decide as to who should be transferred and who should be retained. According to them, they have transferred the applicant under the periodical transfer Scheme, by the impugned transfer order dated 6.7.99 as he was holding a sensitive post. They have further clarified that by "chance" he was also coming within the field of "surplus staff" which has been mentioned in the transfer order. They have stated that they have only two sanctioned posts of Jr. Clerks against which total six employees were working and as such four employees who were having the longest stay had to be transferred. According to them, since the applicant has been working at Tuglakabad since 1990 and had the longest stay, he comes in the field of surplus staff, being also the senior most so he had been correctly transferred to Vikramgarh Alot. They have contended that hence, the transfer order dated 6.7.99 has been passed in accordance with the relevant rules and instructions and have prayed that the OA may be dismissed.

6. From the replies filed by the respondent and, in particular,

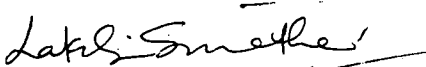
the additional affidavit filed on 24.2.2000, it is seen that the respondents have taken the plea that the applicant has been transferred due to periodical transfer and by chance he also comes within the field of surplus staff. In the impugned order dated 6.7.99 the reasons are clearly stated that the applicant and four others have been declared surplus and, therefore, they are transferred to other places. The Tribunal, in order dated 20.7.99 in earlier OA 1613/99 filed by the applicant, has referred to the Railway Board order dated 27.7.66 which deals with the subject of transfer in the event of curtailment of cadre etc. This order also states that where there is curtailment, Railway Board has desired that as a general rule the junior most employee should be transferred first whenever this occurs. According to the facts given by the respondents in the additional affidavit, the applicant is not the junior most employee working as Jr.Clerk at Tuglakabad as there are others who have joined there in 1994-95. It is also clear from the stand taken by the respondents that there is a shift in their reasoning, namely, by stating that the applicant has been transferred because he has been declared surplus staff, to change the stand to show that the transfer was merely a periodical transfer. The respondents have also apparently transferred the applicant from one desk to another by order dated 4.6.98. Considering the nature of duties, applicant has to perform in the post attached to him after 4.6.98, there is also merit in the contention of the applicant that it cannot be considered as a sensitive post, following the provisions of RB Order No.244/89 dated 27.9.89. It is also relevant to note that the respondents have not specifically denied the averments made by the applicant that he was not holding a sensitive post. In any case the present duty has been assigned to him only on 4.6.98 and, therefore, he has not completed four years assignment in that post.

7. From the above facts it is seen that the respondents have tried to shift their stand to justify their action in issuing the transfer order. In the facts and circumstances of the case

and having regard to the relevant instructions and transfer policy issued by the Railway Board in the Circular/Orders dated 27.7.66 and 27.9.89. it cannot be held that the action of the respondents is in conformity with the laid down principles and orders.

8. It is settled law that in the matter of transfer of a Govt. employee, normally, the Tribunals and Courts should not interfere with the same as this is a matter for the appropriate authority to decide as to who should be transferred and where. (See the Judgements of the Hon'ble Supreme Court in Union of India Vs. S.L. Abbas (1993(2)SLR 585) and Sh.N.K. Singh Vs. Union of India and Ors. (1994(28)ATC 246). However, the Apex Court has also held in these cases that if the impugned transfer order is vitiated by malafide or is in violation of any statutory provisions or rules, the Court can interfere, depending on the facts of the case. In the present case, for the reasons given above, it is seen that not only the respondents have now shifted their stand while giving the reasons for transferring the applicant from Tuglakabad to Vikramgarh Alot, but the same is also not in accordance with the aforesaid Railway Board Circular/Order. Therefore, this is one of the exceptional cases, where there is justification to interfere in the matter.

9. In the result for the reasons given above, OA succeeds and is allowed. The impugned orders dated 29.7.99 and 31.7.99 are quashed and set aside transferring the applicant from Tuglakabad to Vikramgarh Alot as Junior Clerk. The applicant may be allowed to resume his duties at Tuglakabad immediately and in any case within one month from the date of receipt of a copy of this order. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)