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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 660/1999 with MA No. 864/99

New Delhi this the 26th day of June 2000

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S.P. Saraswat,
Son of Late Shri K.L. Saraswat,
R/o 11/10 Railway Colony,
Sewa Nagar, New Delhi.

Working as Technician Gr. I
with the Respondents and was posted at Delhi
under Dy. CSTE/SW/NDLS but has now been posted
at JGR/MW/Station under SSE/T/MWM/TDL,
Uttar Pradesh. Applicant

(By Advocate: S/Shri S.S. Tiwari & T.D. Yadav)

Vs.

1. Union of India,
through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Mrs. Aruna Singh,
Dy CSTE (Const),
N. Railway, DRM Office,
New Delhi.
3. Dy CSTE (MW) (Maintenance),
N. Railway, DRM Office,
New Delhi.
4. Sr. Sec. Engineer (Tele)/SW-1,
N.R, Lothiyan Bridge,
Delhi. Respondents

(By Advocate : Shri H.K. Gangwani)

O R D E R

Hon'ble Dr. A. Vedavalli, Member (J)

The applicant, Shri S.P. Saraswat, a Railway servant, working as Technician (Gr.I) under the respondents, is aggrieved by his transfer from Delhi to TDL (Tundla) in Uttar Pradesh. He has Challenged the concerned spare Memo dated 12.2.1999/ 8.3.1999 issued by Respondent No. 4 and the transfer order dated 11.3.1999 (Annexure A) issued by Respondent No. 3 in this OA.

2. The applicant joined in September 1974 as a Casual Labourer in the Construction Department of Northern Railway in Delhi. Later, he was selected and appointed as Wireless Maintainer. Subsequently, he was promoted as Technician Grade I and was working in that capacity in Delhi at the time of his transfer. He has challenged the impugned orders on the grounds mentioned in the OA and has prayed for quashing and setting aside the aforesaid orders. He has also sought a direction given to the respondents to allow him to join in Delhi in the same capacity in the Construction Department.

3. The OA is contested by three Respondents. One counter was filed by Respondent 3 and another counter was filed by 1 and 2. Rejoinder to the said counters have been filed by the applicant.

4. Heard the learned counsel for both the parties. Pleadings, material papers and documents placed on record have been perused. OA is being disposed of at the admission stage.

5. The first main ground urged by the learned counsel for the applicant, Shri S.S. Tiwari, is that the impugned orders are vitiated by malafides. He has submitted that the applicant had been spared by Respondent No. 2 in a pick and choose manner since his seniors as well as juniors are still working in the Department whereas he has been picked up from the middle. He has also submitted that the applicant had an argument with Respondent 2 in the year 1998 and

that she transferred him with a view to harass him and not in public interest. Moreover, motive behind the transfer is also to accommodate one Shri Ashwani Kumar in Delhi.

6. The second main ground urged by the learned counsel for the applicant relates to illegality. He contended that the post in which the applicant was working does not have any transfer liability and hence the impugned orders are illegal. He has argued vehemently that against medical advice, the applicant was transferred out of Delhi in total disregard of the provisions of para 573 of the Railway Manual, 1988. Learned counsel for the applicant prayed that on the above grounds, the impugned orders deserves to be quashed and set aside and OA allowed with costs.

7. Learned counsel for the Respondents, Shri H.K. Gangwani, in reply to the first ground urged by the learned counsel for the applicant as to malafide submitted that the allegations made by the applicant are totally baseless as no strict proof regarding the same has been given by him. He argued that the transfer is not vitiated by any ulterior motive or malafides and hence cannot be set aside.

8. Re the second ground relating to illegality pressed by the learned counsel for the applicant, it was submitted by the Learned Counsel for the working as Technician Grade I which is a Group 'C' post and the said post has transfer liability under the provisions of Rule 226 of the Indian Railway Establishment Code (IREC) (Vol. I). He contended

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that the applicant's transfer is within Northern Railway and not to any other Railway and hence there is no illegality involved in the said transfer.

9. Regarding the question of ignoring medical advice and para 573 of the Indian Railway Medical Code, 1988, Learned counsel for the Respondents submitted that as the applicant has been found fit for being given light duty as per medical advice dated 5.2.1999. He can be given light duty if he joins his post at the place to which he has been transferred. He prayed that the OA may be dismissed as it is without any merit.

10. I have given my careful consideration to the matter. So far as the ground of malafides raised by the applicant is concerned, the same has been denied by the Respondents. The applicant has failed to establish with strict proof regarding the existence of any malafides on the part of the Respondents in issuing the second impugned order. In the circumstances, the plea of the applicant regarding the ground of malafides is rejected.

11. Regarding the ground of illegality with reference to the non transferable nature of the job pressed by the applicant, it is seen that the provisions of Para 226 of IREC (Vol. I) 5th Edn.-1985 are as under.

"226. Transfers.- Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it

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shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India, may be exercised by the General Manager or by lower authority to whom the power may be delegated."

12. However, the applicant has not denied that he is working in a Group 'C' post. Neither has he been able to establish with reference to the relevant provisions of the Rules and instructions concerned, if any, as to why he has submitted in the OA that his post has no transfer liability. The contention of the applicant regarding transfer liability is, therefore, devoid of any merit and is rejected.

13. Regarding the ground of illegality urged by the applicant with reference to the ignoring of the provisions of para 573 of the Railway Medical Manual, 1988, (Copy submitted by the Applicant) and the relevant medical advice by the Respondents, it is seen that the provisions of the said Railway Medical Manual are as follows:

"573. List of posts on which employees should not be deputed after recovering from Mental Illness.

(a) Duties where Engine or moving vehicles are involved i.e. Driver, Shunter, Guard etc.

(b) Duties linked with Engine or moving vehicles where involvement of the employees may result in an accident.

(c) Duties pertaining to Signal arrangements.

(d) Any duty pertaining to the movement/control of trains wherein the employee is under mental strain/tension.

(e) Technical duty where more than normal tension and self-confidence is required.

(f) Duties pertaining to public dealing where one has to be polite e.g.

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platform inspector, Asstt. Station Master, Booking Clerk, Ticket Collector etc.

(g) Any duty involving more than normal cash dealings/cash distribution like wage clerk, cashier etc.

(h) Any duty where loss of control and self-confidence may result in damage to life and property.

(i) Any other post which has not been referred to above, but where mental imbalance may not be suitable in the discretion of Departmental Head or Divisional Head."

While so, it is seen from the factual picture given by the applicant in the OA that in November, 1998 he fell sick. He went to the Railway Hospital on 18.11.1998 and was advised bed rest for 30 days and was diagnosed as to be suffering from Psychiatric problems and was referred to the Institute of Human Behaviour and Allied Sciences, Shahadara, Delhi on 24.12.1998. The applicant was given fitness for light duty as per noting dated 5.2.1999 given by the Treating Doctor. A copy of the out-patient card issued on 29.12.1998 is at Annexure 'C'

14. Later the applicant was referred to the Railway Hospital. The Railway doctor advised on 8.2.1999 that the applicant should be given duties under instructions of Para 573 of the Indian Railways Medical Manual, 1988 (Supra) and that he should come to him with his work report at one monthly interval with a responsible family member and that the said report should mention his attendance, punctuality, quota of work, amenability to discipline, relations with seniors etc. (Annexure 'D'). On 16.3.1999 also he opined thus:

"Mr. S.P. Saraswat is still not well properly. He has to continue treatment for long time. He will not transfer to other place till improve his condition.

He should come to me every month with his responsible family member"

15. The Respondents in their counter have denied only the receipt of OPD Slip of the Railway Hospital dated 16.3.1999 (Annexure 'D'). However, they have not denied the genuineness or the authenticity of the medical report cited (Supra). Neither they have given any explanation as to why they have ignored the specific medical advice against transfer of applicant out of Delhi, nor have the Respondents given any reason as to why they have not given any reply to the representation dated 6.3.1999 (Annexure 'F') submitted by the applicant. Neither the impugned sparing order dated 12.2.1999/8.3.1999 nor the impugned transfer order dated 11.3.1999 (Annexure 'A') contained any reference to any need or necessity or "Public interest" being the reason for the issue of the said order. There is not even a whisper in the impugned order about the light duty to be assigned to the applicant as per medical advice under the provisions of Para 573 of the Railway Medical Manual (Supra).

16. In view of the facts and circumstances of this case and the foregoing discussions, I find that the Respondents have totally ignored the specific and categorical medical advice (supra) and have violated the provisions of Para 573 of the Indian Railways

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Medical Manual also. They have also not taken into consideration that the applicant is aged about 56 years at the time of filing of this OA and has only few years more for his superannuation and that the state which is supposed to be a model employer ought to be humane also which includes consideration of the physical or mental condition of an employee when he is suffering from health problems. The aforesaid impugned orders have been issued in a routine and mechanical manner without any application of mind and are highly arbitrary and unfair. Such orders cannot be sustained under the law.

17. In the result, the first impugned order dated 12.2.1999 regarding the sparing of the applicant is quashed and set aside. The second impugned order dated 8.3.1999 is also quashed and set aside so far as it relates to the applicant. Respondents are directed to give the applicant all the consequential benefits available to him under the law including a suitable posting in Delhi and assignment of duty strictly as per the medical advise within a month from the receipt of a copy of this order.

O.A is allowed in terms of Para 17 above.

M.A. No. 864/99 is dismissed. No costs.



(DR. A. VEDAVALLI)
MEMBER (J)