

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 2035/95

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Date of decision 3-10-1996

Shri V.S. Tyagi

... Petitioner

present in person

... Advocate for the Petitioner

Versus

U.O.I. Through Genl. Manager
N.R. and others.

... Respondent

Shri P.S. Mahendru

... Advocate for the Respondent

CORAM

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

1. To be referred to the Reporter or not ? *yes*
2. Whether it needs to be circulated to other *X*
Benches of the Tribunal ?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench.

O.A. 2035/95

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New Delhi this the 3th day of October, 1996

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

V.S. Tyagi,
S/o late Shri Bishamber Tyagi,
R/o 10/12, Railway Colony, Seva Nagar,
New Delhi.

..Applicant.

Applicant in person.

Versus

1. Union of India, through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Dr. Deepali Gupta, Sr. DMO,
Northern Railway, Anand Vihar,
New Delhi.
3. Sr. D.M.O. Northern Railway,
Anand Vihar,
New Delhi.
4. D.P.O. Northern Railway,
D.R.M. Office,
New Delhi.
5. A.P.O. Northern Railway,
D.R.M. Office,
New Delhi.

By Advocate Shri P.S. Mahendru.

O R D E R

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

The applicant who was working as Chief Pharmacist, Anand Vihar Dispensary of Northern Railway, New Delhi, is aggrieved by the transfer order dated 25.9.1995 passed by Respondent 5, transferring him from Anand Vihar Health Unit to C.M.S./Delhi on administrative grounds. A copy of this order has been annexed to the reply filed by the respondents.

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2. At the time of hearing, the applicant submitted that he was not pressing any of the/other grounds or relying ~~on~~ on the provisions of the Industrial Disputes Act and that his only plea is confined to the ground that the impugned transfer order has not been passed by the competent authority. When the case was heard on 12.9.1996, it was found in the impugned order that/ the sentence 'that the order has been passed with the approval of the competent authority' which was read out by Shri P.S. Mahendru, learned counsel for the respondents, from the copy in his own file, is missing in the court record (Annexure R-I). This discrepancy in the record as filed by the respondents is a serious matter. In the circumstances, the learned counsel for the respondents was called upon to produce the relevant record from which this order has been passed on the next date for perusal. The applicant's contention is that the impugned transfer has not been passed by the competent authority, i.e. the Chief Medical Superintendent who is the Medical Branch Officer who was competent to transfer him. The impugned transfer order has been passed by the Assistant Personnel Officer (APO) (Engg.). He submits that neither the APO nor the Deputy Personnel Officer (DPO) could have passed the transfer order without orders from the Chief Medical Superintendent who is the competent authority.

3. The learned counsel for the respondents has submitted the relevant file No. DRM/NDLS -940E/159/PE1/P3- Transfer of Medical Staff. On page 26 of this

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file, in the office copy of the impugned order dated 25.9.1995 below the signature of APO (Engg.), the following note appears:

"Kindly confirm your verbal orders for issue of the above orders.

Sd/- 25.9.95

D.P.O.

Yes pl.

Sd/-
25.9.95"

In the office copy of the order dated 26.9.1995 which is also signed by the APO (Engg.), Northern Railway, the above referred sentence, namely, that this has the approval of the Competent Authority is added. However, the counsel could not point out the relevant portion of the notes in the file wherein the approval of competent authority has been obtained. Further, it was also mentioned that the method of obtaining the approval of the DPO who is stated to be the competent authority is also not the normal procedure, as the same has been obtained in the office copy of the order and not in the note sheet. A mere perusal of the records shows that the respondents have not followed the normal office procedures in obtaining the approval of the competent authority before transferring the applicant. Apart from this, the applicant had also submitted that the competent authority to transfer him is the Chief Medical Officer and not the APO or the DPO who are/Senior Scale Officers. In this

connection, he had referred to Rule 103(51) on transfer read with Appendix VI of the Indian Railway Establishment Code (Vol.I), Fifth Edition, 1985, page 192. The applicant submits that the power of transfer from one post to another in his case is vested with the Head of the Department or with a Senior Scale Officer and neither the APO nor the DPO is the competent authority.

4. The respondents have not produced any material on record to show that the impugned transfer order has been passed with the approval of the competent authority as per the rules. From perusal of the relevant file, it is also seen that the method of approval adopted in this case by the DPO is ~~also~~ contrary to the established procedure and has, therefore, to be rejected on both ~~accounts~~, namely, as contrary to law, and normal practice and procedure.

5. In the facts and circumstances of the case, the impugned transfer order dated 25.9.1995 is quashed and set aside. Accordingly, the application succeeds. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'