

Central Administrative Tribunal, Principal Bench

O.A.No.1617/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 27 day of November, 1997

Mahender Pal Singh
s/o Shri Gopender Singh
r/o 104/B-2, Western Railway Colony
Tughlakabad
New Delhi - 44.

... Applicant

(By Shri A.K.Bhardwaj, Advocate)

Vs.

Union of India through:

1. General Manager
The Western Railway
Church Gate
Bombay.
2. The Divisional Railway Manager (Estb.)
Western Railway
Kota Division
Kota Rajasthan
3. The Senior Divisional Electrical Engineer
Vidyut Loco Shed
Northern Railway
Delhi Division
Tughlakabad
New Delhi.

... Respondents

(By Shri P.S.Mahendru, Advocate)

O R D E R

The applicant is aggrieved by his transfer from
Tughlakabad (Kota Division), Western Railway to Mumbai, Central
Division.

2. The facts of the case in brief are that the applicant was appointed as Electric Fitter Grade-III in the Western Railway on 27.9.1982. He was transferred from Lakheri to Tughlakabad on his own request w.e.f. 3.2.1989. One of the grounds for seeking transfer to Tughlakabad was that one of his daughters was a victim of polio. While he was in Tughlakabad, he became an office bearer of a staff union known as Karamchari Parishad. He was also allotted a railway quarter in Tughlakabad and got his

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children admitted in the MCD School. Vide impugned order dated 30.4.1996, he was transferred from Tughlakabad to Mumbai Central Division.

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3. The impugned order is assailed on various grounds. The applicant submits that he had come to Tughlakabad, on bottom seniority, in view of his personal difficulties. The present transfer order is therefore unduly harsh because he is being reverted back to another division. He also submits that inter divisional transfers are to be done in very rare circumstances. Moreover, the transfers of office bearers of Trade Union are to be ordinarily avoided and can only be done with the approval of the General Manager. The applicant also states that he is neither the senior most nor the junior most in terms of stay at Tughlakabad and therefore no principle or policy is involved in his transfer. The applicant alleges that the impugned transfer order is the result of malafide as the respondents are upset by his vigorous pursuit of Trade Union activities in the interest of the welfare of railway employees.

4. The respondents in reply have denied the above allegation. They state that the Karamchari Parishad Trade Union is not a recognised Trade Union and therefore the instructions of the Railway Board in regard to the transfer of the office bearers of recognised Trade Unions do not apply in the case of the applicant. The respondents further submit that the transfer had been made in the interest of the administration and in this light it would not be necessary that the applicant should have had the longest stay in Tughlakabad.

5. The learned counsel for the applicant, Shri A.K.Bhardwaj has argued that since the impugned transfer is neither in compliance of a transfer policy or guidelines nor with a view to

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utilise the special skills of the applicant in his new place of posting, it must be necessarily be viewed as a transfer for punitive and collateral reasons. The learned counsel for the applicant also relies on the decision of this Tribunal in *Chattar Singh Vs. Union of India & Others* 1996(2) ATJ 222. The learned counsel for the respondents on the other hand, has sought to rely on the *State of Punjab & Others Vs. Joginder Singh Dhatt*, AIR 1993 SC 2486 in which it was held that it is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting and ordinarily the courts have no jurisdiction to interfere with the order of transfer. He also cited the case of *State of Madhya Pradesh Vs. Shri S.S.Kourav & Others*, JT 1995(2) SC 498 in which the Supreme Court has held that the Courts or Tribunals are not expected to interdict the working of administrative system by transfer of officers to proper places and the decision of the administration shall stand unless it is vitiated either by malafide or extraneous consideration.

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6. The learned counsel also produced the file of the department in which the representation of the applicant against his order of transfer has been dealt with.

7. I have carefully considered the matter. Undoubtedly, administration is the best judge to decide the proper place of posting of a Government employee and in the normal course an order of transfer is not to be interfered in a judicial review unless it can be shown that it is the outcome of malafide or extraneous considerations. In the present case the applicant who had been already working in Western Railways had in 1989, sought posting to Tughlakabad on compassionate grounds. In the process he had also foregone his seniority. By the impugned order he has again been sent out of Tughlakabad and transferred to another

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Division. The Railway Board has laid down in its letter No.E(NG)I-68SR6/28 dated 25.1.1969 that when transfers are made by the Administration from one Seniority Unit to another in the interest as a result the chances of promotion of the staff in the lower grades in the unit to which persons have been transferred an adversely affected. Therefore Board considered that such transfers be only made when absolutely in- escapable in the interest of Administration. The learned counsel for the respondents, on the other hand, has drawn attention to the reply of the Western Railways to the Railway Board dated 26.11.1996 regarding the impugned transfer order in which the following has been stated.

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"Shri Mahendra Pal Singh, ELF Gr.III TRS/TKD of KTT Division has been transferred to Bombay Division in the interest of Administration.

Shri Mahendra Pal Singh with his Association, was in habit of creating problems in day today working in KTT Shed and was involved in instigating to the staff working with him, to stop the shed working on one and other plea.

On several occasions he, forcefully entered in the chamber of Sr.DEE(TRS/TKD) and compelled the officers to discuss the items of "Western Railway Karmchari Parishad". On the ground of his above act of misbehaviour and habit of instigating the staff against the administration. In the interest of maintaining peace and smooth working in the shed. His case was considered for transfer, in the interest of administration.

The employee belongs to General community."

8. In my view this statement of Western Railway clinches the issue. It is clear therefore, that public interest sought to be served is that the applicant should be removed from his present place of posting where he is proving to be a headache to his superiors. It leaves no doubt that the impugned transfer order has been issued as a punitive measure considering that the applicant had originally come to the present place on compassionate grounds. His children are staying in the same station-and he has in possession of the railway quarter. The proper course in such situation would have been for the authority to take or initiate appropriate action and not to adopt the easy

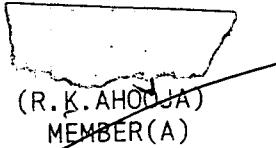
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way out by means of transfer of the applicant. Even if he had to be transferred, it need not have been to another Division altogether where questions of inter-se seniority would inevitably arise.

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9. In view of the above discussion, I allow the OA following the earlier judgment in Chattar Singh Vs. Union of India & Others. The impugned order of transfer is quashed. It is however made clear that it would be open to the respondents to consider the transfer of the applicant to another station within the Division if it is considered essential in the interest of the Administration or in the public interest.


(R.K. AHUJA)
MEMBER(A)

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