

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

HON. SHRI R.K. AHOOJA, MEMBER (A)

DA NO. 2653/1996

NEW DELHI, THIS 29TH DAY OF *January*, 1997.

SHRI H.N. SHARMA
S/o Shri R.N. Sharma
Senior Chief Health Inspector
Northern Railway
Bareilly (UP)

...APPLICANT

(By Advocate - Shri R.K. Kamal)

VERSUS

Union of India, through

1. The Secretary
Railway Board,
Rail Bhawan, Rafi Marg,
NEW DELHI

2. The General Manager
Northern Railway
Baroda House
NEW DELHI

3. The Divisional Rail Manager
Northern Railway
Moradabad (UP)

...RESPONDENTS

(By Advocate - Shri Rajeev Sharma)

ORDER (ORAL)

R.K. AHOOJA, MEMBER (A)

The applicant who is working as Senior Chief Health Inspector, Bareilly, under the overall control of the General Manager, Northern Railway, Delhi, is aggrieved by his transfer from Bareilly to Roza. He states that he is an office bearer of the Uttar Railway Mazdoor Union and Vice-President of the Line Branch of Bareilly and as

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per the standing policy enunciated by a letter of the Secretary Railway Board, prior consent of the President of the Union Head Office, New Delhi, is required to be taken before any office bearer is transferred from one station to another. The respondents had issued his transfer orders to Hapur earlier in violation of this policy and had gone to the extent of deleting his name from the list of office bearers, and later, as per A-4, before issuing further orders pended his transfer for three months retaining him at Bareilly.

2. The respondents in reply deny the allegation and state that the consent of the Union had been taken and there is no violation of the policy in this respect. Further more, the applicant had put forth a representation explaining his problems regarding education of his children and more particularly the fact that his daughter is studying in M.Sc. under the Meerut University and the earlier transfer to Hapur would have created problems, in as much as the educational institutions there are under a different university. It was in consideration of the personal difficulties of the applicant that the matter had been reconsidered by the respondents and the transfer orders were changed from Hapur to Roza, a place 69 to 65 kms. only from Bareilly, by transferring the post held by him from Bareilly to Roza.

3. When this matter had come up before the Bench on 26.12.1996, the respondents were called upon to show cause as to why the applicant cannot be allowed to stay till the end of the academic session, i.e., May 1997 in the light of the decision of the Hon. Supreme Court in

the case of DIRECTOR OF SCHOOL EDUCATION, MADRAS & ORS.
 v. KARUPPUTHEVAN 1994 SCC (L&S) 1980.

4. I have heard the 1d. counsel on both sides. Shri Kamal, 1d. counsel for the applicant, has urged that the background of the transfer should be examined since this would show that the action of the respondents is arbitrary in nature and constitutes malice in law. He submits that the transfer orders were issued despite the fact that the applicant being Vice-President of the Union, his transfer could only have been done by obtaining prior consent of the President of the Association and this would have involved a reference to him also as Vice-President of the Union. This was never done. Further more, the applicant has a college going daughter and with only four years of service left to him, he has to arrange for her marriage and the respondents should have kept the personal difficulties of the applicant in view. Further more, according to Shri Kamal, the applicant has been humiliated by the action of the respondents as he has been transferred to a station where his status and jurisdiction would be lower. Shri Rajeev Sharma, counsel for the respondents, on the other hand submits that as has been mentioned in the counter, the consent of the Union had been obtained and it was after giving due consideration to the applicant's personal problems that his place of posting was changed from Hapur to Roza. As regards the question of retaining him in Bareilly till May 1997, Shri Sharma submits that the applicant had already handed over charge on 5.11.1996 and the orders of transfer of the post have also become effective.

5. I have considered the rival contentions and have also gone through the pleadings on record. There is no allegation that the transfer is in violation of any guidelines, except in regard to the consent of the Union in respect of transfers of its office bearers. There is no mention that any person who had longer stay at Bareilly has been kept behind while transferring the applicant. There is no reason to doubt the submission of the respondents that the transfer has been effected after consulting the Union. This would also appear to be corroborated by the fact that the applicant himself in his representation at A-5 mentioned that in the council meeting of the Line Branch he asked the Branch Secretary about the funds collected from the members and the latter failed to show any account, ^{relying on} resulting on the fact that his name had been deleted. This will indicate that his removal from the post of Vice-President had at least tacit consent of the Union. The only ground which the applicant has for a legitimate grievance is his transfer during the middle of the academic session. The transfer has already been pended for three months by the respondents. It is submitted that the university exams. of the applicant's daughter would be over by April/May 1997. Shri Sharma fairly submits that the respondents would be willing to allow the applicant to retain the quarter allotted to him till end of the academic session. In view of this submission, the O.A. is disposed of with a direction that respondents will allow retention of the accommodation allotted to the applicant till May 1997 end on payment of normal rent. No costs.

R. K. Ahuja
R.K. AHOOJA
MEMBER 'A'

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