

(H)

Central Administrative Tribunal  
Principal Bench: New Delhi

OA 969/96

New Delhi this the <sup>th</sup> 7 day of March 1997.

Hon'ble Mr N. Sahu, Member (A)

D.S.Malik  
Assistant Electrical Foreman  
Qr.No.203, B-2 Western Railway  
Railway Colony  
Tuglakabad  
New Delhi-110 044.

...Applicant.

(By advocate: Shri A.K.Bhardwaj)

Versus

Union of India

1. The General Manager  
Western Railway  
Church Gate  
Bombay
2. The Divisional Railway Manager  
Western Railway  
Kota Division  
DRM office, Kota.
3. The Sr. Divisional Electrical Engineer  
Western Railway  
Kota Division  
TRS Tuglakabad  
New Delhi.
4. The Sr. Divisional Electrical Engineer  
Western Railway  
Kota Division  
TRS Kota, Rajasthan.

...Respondents.

(By advocate: Shri D.S.Mahendru)

O R D E R

Hon'ble Mr N. Sahu, Member (A)

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This OA has been filed to quash order No.EEL/TRS/TRO/1026/1 dated 4.10.93 directing transfer of the applicant, an Assistant Electrical Foreman, from Tuglakabad to Kota. His representation against the transfer was rejected by the D.R.M., Kota by order dated 27.9.95 on the ground that there were several complaints from the shed staff and supervisors relating to several instances of violent behaviour and instances of masterminding unsavory incidents. The transfer was effected in order to maintain peace and amicable industrial relations. The objection that the application has been filed beyond limitation is unsustainable because the representation

was disposed of only on 27.9.95.

2. There was an earlier transfer on complaints of a large number of employees by order dated 28.5.93 to Ambala and on the interim order of this Court in OA 1304/93, the respondents retained the applicant at Tuglakabad itself and subsequently the OA was disposed of without finding any need to go into the merits. Later again, on complaints from several members, the impugned order of transfer was passed which is at Annexure A-2. The applicant's counsel states that there were several persons who have longer station seniority than the applicant. If there is an inevitable need to transfer, the junior-most should have been disturbed. It is further submitted that the order of transfer attaches a stigma because it is as a punishment that the transfer has been effected. Learned counsel for the applicant brought to my notice OM No. AB 14017/41/90 Estt.(RR) dated 15.2.91 wherein the Ministry of Personnel directed the department to take a sympathetic view in cases where government servants whose children are mentally retarded request <sup>for</sup> a particular place to avail proper facilities of medical care and special type of attention. According to the learned counsel for the applicant, Delhi is one such place. The second point made by the learned counsel was that if the complaint was so serious, then a regular enquiry should have been conducted and the applicant should have been punished. <sup>if found guilty. he</sup> Transfer was not an answer to such a complaint.

3. My attention was also drawn to a representation before the Hon'ble Minister for Railways in which the Hon'ble Minister's order to cancel the transfer in the interests of a retarded son was communicated to the General Manager, Western Railway. The order is dated 1.12.95. In the counter filed on behalf of the respondents, it is stated that the Railway Administration explained the circumstances behind the transfer and obviously the Hon'ble Minister of State for

Railways was convinced of the reasons and, therefore, the order was not made effective.

4. The learned counsel cited following decisions:

- (i) Rajinder Choubley Vs. UOI ATJ 1995 (1) p.260
- (ii) ATJ 1996 (2) p.222
- (iii) SLJ 1991 (1) P.322


The above decisions disapproved punishment transfers, frequent transfers and transfers violating guidelines of station seniority. Shri D.S.Mahendru, learned counsel for the respondents stated that the Ministry of Personnel's instructions Annexure-A17 are not applicable to railway employees. He states that Kota is a full-fledged town with all medical facilities. It is not the applicant's case that facilities for treatment at Kota are not available or inadequate. It is also submitted that there was no malafide involved in this transfer and it is not a case of bias or colourable exercise of power.

4. I have carefully considered the rival submissions. The law on the subject of transfer has been stated on a very firm basis by the Apex Court. This court cannot sit as a court of appeal against an order of transfer. The place of posting and the reasons for giving a particular posting are administrative decisions which are taken in the exigenceis of service. The record shows that there were repeated complaints by a large number of members of the workforce from the work shed about the behaviour and activities of the applicant vis-a-vis other workers. This has been considered by senior officers and supervisors and they felt that in the interests of amicable industrial relations and harmonious working among workmen, the applicant should not be retained. This decision has to

be respected because even after the Minister's order, the superior officers had again tried to stick to the transfer orders. The decision of the Railway Administration cannot be faulted because it is an administrative decision in the interests of a proper work culture. Therefore, the transfer has to be upheld.

4. The applicant has nowhere stated that there are no medical facilities for treatment of his son at Kota. It is worth mentioning that there are also special training centres for mentally retarded children. This court would direct the applicant to respect and obey the transfer order and if he finds that the facilities at Kota are either inadequate or non-existent, he may approach the respondents with a certificate from a recognised medical authority that such facilities are not available at Kota to treat his child and also a suggestion from them as to the possible place other than Delhi where such facilities are available in the Western Railways. The respondents will consider such a representation and dispose of it most sympathetically.

The OA is dismissed with the above observations.

  
[ N. Sahu ]  
Member ( A )

7/3/97

aa.