

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

NEW DELHI, THIS THE 21<sup>st</sup> DAY OF JULY, 1998.

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN  
HON'BLE MR. N.SAHU, MEMBER (A).

O.A. No.1476/97.

J.J. Singh,  
Sr. Divisional Commercial Manager,  
Northern Railway, Ambala Division,  
Ambala Cantt.

....Applicant.

(By Advocate Shri G.D. Bhandari)

vs.

1. Union of India through Chairman,  
Railway Board, Rail Bhawan,  
New Delhi.
2. Sh.Shanti Narain,  
General Manager (P)-cum-Member (Traffic)  
Northern Railway, Hqrs. Office, Baroda House  
New Delhi.
3. Sh. V.K.Agarwal, Sh  
Member (Staff), mem  
O/o General Manager (P),  
Northern Railway, Hqrs. Office, Baroda House,  
New Delhi.
4. Sh. R.S.Grover Sh  
Divisional Railway Manager  
Northern Railway, Ambala Division,  
Ambala Cantt. Amba
5. Sh. M.S. Chalia Sh. M  
Divisional Safety Officer,  
Northern Railway, Ambala Division,  
Ambala Cantt. Amba

...Respondents.

(Shri R.L.Dhawan and Shri R.K.Shukla, Advocate.  
for Shri V.S.R.Krishna, Advocate)

O.A. No.2846/97 ✓

J.J.Singh,  
S/o Shri Puran Singh,  
Sr. Divisional Safety Officer,  
Northern Railway, Ambala Division,  
Ambala Cantt.

.... Applicant.

(By Advocate Shri G.D. Bhandari)

vs.

1. Union of India through  
The Chairman, Railway Board,  
Rail Bhavan, New Delhi.
2. The General Manager,  
Northern Railway, Baroda House,  
New Delhi.

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3. Shri R.S. Grover,  
Divisional Railway Manager,  
Northern Railway Ambala Division,  
Ambala Cantt.

4. Shri M.S. Chalia,  
Divisional Safety Officer  
Northern Railway Ambala Cantt.

...Respondents.

(Shri R.L. Dhawan and Shri R.K. Shukla, Advocate  
for Shri V.S.R. Krishna, Advocate)

O R D E R

JUSTICE K.M. AGARWAL:

Both these O.As shall be disposed of by this common order. The parties are the same and the subject matter is also the same in the sense that there were two transfer orders passed one after the other, which are challenged by filing the aforesaid two O.As on similar facts and grounds.

2. Since June 1992, the applicant was posted as Sr. Divisional Commercial Superintendent, re-designated as Sr. Divisional Commercial Manager, at Ambala Cantt. While so posted at Ambala Cantt., he was transferred to the post of Sr. Divisional Safety Officer, Ambala by the impugned transfer order dated 10.2.1997, contained in two documents filed as Annexures A-1 and A-1/1, after upgrading the post of Jr. Divisional Safety Officer by transferring the element of Jr. Administrative grade pay scale for the post. This transfer order is challenged in O.A. No. 1476/97 as mala fide, unreasonable and arbitrary.

During the pendency of this O.A., the second transfer order dated 11.11.1997, Annexure A-1 in O.A. No. 2846/97, was issued, transferring him from Ambala to Moradabad in the same capacity, after transferring the post of Additional Registrar, Railway Claims Tribunal, Chandigarh to Moradabad for upgrading the post of Jr. Divisional Safety Officer, Moradabad by transferring the element of Jr. Administrative grade pay scale of the transferred post of Additional Registrar to Moradabad. This is challenged

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in O.A. No.2846/97 on similar facts and grounds.

3. Both the applications are opposed by the respondents.

4. In B. VARDHA RAO v. STATE OF KARNATAKA, (1986) 4 SCC 131 = (1986) 1 ATC 558 (SC), the Supreme Court held:

"...It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post."

In E.P. ROYAPPA v. STATE OF TAMIL NADU, AIR 1974 SC 555, or in ARVIND D.DHANDE'S case, reported in (1997) 6 SCC 169, relied on by the learned counsel for the applicant the Supreme Court did not take any contrary view and on the face of these authorities of the Supreme Court, it does not appear necessary to mention the other cases of the Tribunal or those of Orissa and Gujarat High Courts cited by the learned counsel for the applicant. It may, however, be noted that in E.P. ROYAPPA'S case (ibid), the Supreme Court also said:

"Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility."

In the present case, the applicant has not disputed that he holds a transferable post and, therefore, he cannot challenge his transfer orders, unless he is in a position to show that they were or either of them was arbitrary, unreasonable or tainted with mala fides. By the first transfer order dated 10.2.1997, he was transferred from

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one post to another at one and the same place, i.e.,

Ambala. Since 1992, he held the post of Sr. Divisional Commercial Superintendent, redesignated as Sr. Divisional Commercial Manager in Ambala Division, Ambala and,

therefore, if he was transferred from that post to the post of Sr. Divisional Safety Officer, Ambala, what was wrong? Normally a Government servant expects his transfer

from one place to another, or from one post to another after expiry of a period of 3 years at a place or on a post. The transfer of the applicant was after expiry of more than 4 years service on a particular post. The

materials placed before us are not sufficient to hold that the transfer was bad on the ground of mala fide, unreasonableness or arbitrariness. The fact that the

transfer was after upgrading the post of Jr. Divisional Safety Officer to that of Sr. Divisional Safety Officer by transferring the element of Jr. Administrative grade pay scale will also not help the applicant so long as it is not shown that the respondents had no such power to upgrade the post. On the contrary, the applicant's own

document, Annexure A-6, would show that earlier after posting him as Sr. DCM/UMB, one Shri Gurdial Singh was transferred to the post of Sr. DSO/UMB by following the same procedure of upgrading the post. The relevant order in the notice, Annexure A-6, reads as follows:

"2. The J.A. grade post of Sr. DOM/Plg/JU has been transferred temporarily to UMB Division and designated as Sr. DSO against which Shri Gurdial Singh, Sr. DCM/UMB has been posted as Sr. DSO/UMB against the above transferred post."

The power may also be inferred by virtue of the Note appended to rule 110 of the Indian Railway Establishment

Code, Volume I, (in short, "IREC"). Rule 110 and the Note

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run as follows:

"110. Sanctioned strength of cadres.- Subject to any statutory provision in this regard, the strength including both the number and character of posts of the Railway Services, Group A and B shall be determined by the Railway Ministry. General Managers of Indian Railways will have powers to create gazetted posts in Group 'A' and Group 'B', only to the extent stipulated in Item (3) of Annexure II of Chapter V of Indian Railway Financial Code Vol.I (First Edition - 1982) subject to such limits and instructions as may be laid down by the Railway Ministry from time to time.

"Note.- Provided the total number of sanctioned gazetted post in any grade (Heads of Departments, Additional Heads of Departments, Deputy Heads of Department, Senior Scale, Junior Scale and Group B officers) of the service concerned is not exceeded, the General Managers are empowered to vary solely in the public interest having regard to changes in the work and responsibilities of the posts concerned (and not in the interests of officers) the distribution of posts within that grade for a period of not exceeding 12 month."

For these reasons, we are of the view that the first transfer order dated 10.2.1997 does not suffer from any infirmity and, therefore, it is not liable to be quashed.

5. So far as the second transfer order is concerned, it was made within a couple of months from the date of the first transfer order. The transfer was from the post of Sr. Divisional Safety Officer, Ambala to the same post at Moradabad, created by transferring Junior Administrative grade pay scale post of Additional Registrar, Railway Claims Tribunal, Chandigarh to Moradabad. This is challenged by filing the second O.A. No.2846/97.

6. It was argued in writing by the learned counsel for the respondents that on the date of second

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transfer order, the Railway Claims Tribunal (Group 'A' and posts) Recruitment Rules 1997, (in short, the "Recruitment Rules"), had not come into force. They came into force from 14.3.1998, when they were published in the Gazette of India Extraordinary dated 14.3.1998. Prior to the Rules, the General Manager was competent to transfer the "J.A. Grade element of the post of Addl. Registrar, Railway Claims Tribunal, Chandigarh for upgrading the post of Divisional Safety Officer, Moradabad in consultation with the approval of Railway Board. The formal approval of the Railway Board Member (Traffic) was obtained in the matter", pursuant to note below rule 110 of the Indian Railway Establishment Code, Volume 1, read with Section 12 of the Railway Claims Tribunal Act, 1987 (in short, the "Act"). (See paragraph 4 of the written arguments of respondents).

7. Section 12 of the Act reads as follows:

"12. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Claims Tribunal in the discharge of its functions and provide the Claims Tribunal with such officers and other employees as it may think fit.

"(2) The officers and other employees of the Claims Tribunal shall discharge their functions under the general superintendence of the Chairman.

"(3) The salaries and allowances and conditions of service of the officers and other employees of the Claims Tribunal shall be such as may be prescribed."

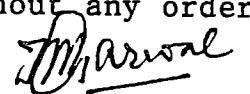
It would, thus, appear that the Central Government, (that means the Railway Board in the present case, as contended), may have power to determine the nature and categories of the officers and other employees required to assist the Tribunal in discharge of its functions and may provide the Tribunal with such officers and other

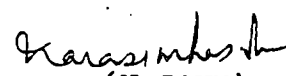
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employees as it may think fit, but it does not appear to have any power to transfer the post of Additional Registrar, Claims Tribunal, from one Bench to another, or at least, from a Bench to a place where there is no Bench of the Tribunal. (Emphasis supplied). Judicial notice of the fact that Moradabad has no Bench of the Railway Claims Tribunal may be taken. Accordingly the post of Additional Registrar of Chandigarh Bench of the Railway Claims Tribunal could not be transferred to Moradabad, where there is no Bench of the Tribunal. This has been done in the present case with a view to upgrade the post of Jr. Divisional Safety Officer to Jr. Administrative grade pay scale "by utilising J.A. grade element of the post of Additional Registrar, Railway Claims Tribunal."

(See paragraph 3 of the written arguments by the respondents). The transfer of the applicant, therefore, from Ambala to Moradabad was bad as there was no post of Sr. Divisional Safety Officer at Moradabad and as the post could not be created by transferring the post of Additional Registrar, Railway Claims Tribunal, Chandigarh to Moradabad.

8. For the foregoing reasons recorded in paragraph 4 of this order, the first transfer order dated 10.2.1997 does not call for any interference and accordingly O.A. No.1476/97 fails and it is hereby dismissed, but without any order as to costs. However, for the reasons given in paragraph 7 hereinabove, the second transfer order dated 11.11.1997 suffers from arbitrariness and deserves to be quashed. Accordingly O.A.No.2846/97 is allowed and the second transfer order dated 11.11.1997 is hereby quashed, but without any order as to costs.

  
(K.M. AGARWAL)  
CHAIRMAN

  
(N. SAHU)  
MEMBER (A)