

(17)

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 291/97

New Delhi this the 9th day of October 1997

Hon'ble Shri S.R. Adige, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Gurpreet Singh Gill,
S/o Shri Niranjan Singh Gill,
Head Ticket Travelling Examiner,
Northern Railway,
Ferozepur Division,
Ferozepur.

.....Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Ferozepur Division,
Ferozepur.

3. The Senior Divisional Personnel Officer,
Northern Railway,
Ferozepur Division,
Ferozepur.

.....Respondents

(By Advocate: Shri P.S. Mahendru)

ORDER (Oral)

By Hon'ble Shri S.R. Adige, Vice-Chairman (A)

Applicant impugns respondents' order dated 24.1.97 (Annexure A-1) transferring him from Ferozepur Division to Allahabad Division.

2. By the impugned order, applicant alongwith three others were transferred from Ferozepur Divisions, to outlying Divisions on administrative grounds. Respondents state in their reply that the reason why the applicants

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were transferred was because disciplinary cases were pending against them. The other three persons transferred by the impugned order dated 22.1.97 approached CAT by the Chandigarh Bench in OA 98/97 B.M.Monga Vs U.O.I. & Ors and two connected cases. The three OAs were disposed of by a common judgement dated 30.4.97, wherein the right of the respondents to transfer the applicants was up-held in the light of the rules and instructions which were produced before the Bench. However the Bench observed that in the facts and circumstances of the particular case before them, they failed to appreciate why those three applicants had been transferred to distant Divisions when they could have been transferred to a nearby Division in terms of Railway Board's circular dated 16.10.87. Without interfering in the impugned transfer order, the three OAs were disposed of giving liberty to those applicants to represent to the respondents for a transfer to a Division adjoining Ferozepur Division on receipt of which the respondents were called upon to consider the request sympathetically within a specified time limit. Discretion was also given to the respondents to post those three applicants on non-sensitive posts.

3. Shri Maine contended that although in terms of respondent's letter dated 25.3.67 (Annexure A-2), non gazetted staff against whom disciplinary cases were pending, were not normally to be transferred from one Railway/Division to another Railway/Division till the departmental proceedings were concluded, and relied upon the Hon'ble Supreme Court's judgement in AIR 1978 SC 284 to support his contention that the said circular had statutory force, he would have no objection if the benefit of the judgement in Brij Mohan Monga's case (supra) was extended

to the present applicant also. In this connection he stated that in pursuance of the said directions those three applicants had represented to the respondents and their representation had been sympathetically considered and they had been posted to a nearby Division.

That?

4. Shri Mahendru however argued subsequent to the judgement in Brij Mohan Monga case(supra), the same Chandigarh Bench of the Tribunal, in OA 516/97 decided on 22.8.97, had dismissed the challenge to certain transfer order on the ground that those transfers were legally valid and could not be impugned in court. Shri Mahendru also relied upon the Judgements of the Hon'ble Supreme Court in State of MP Vs S.S. Karauv JT 1995 (2) 498; State of Punjab Vs J.S. Bhat AIR 1993 SC 2486 and Rajender Roy Vs U.O.I. AIR 1993 SC 1236, upholding the right of the Government to transfer its employees in the public interest and further holding that such transfers should not be interfered with by Courts/Tribunals, unless there are strong and pressing grounds rendering the transfer orders illegal because of violation of statutory rules, or on account of malafides.

5. We note that the Chandigarh Bench's judgement in B.M. Monga's case (supra) in no way violates the ratio of the Hon'ble Supreme Court's judgements cited by Shri Mahendru. The said judgement only gave liberty to those applicants to represent to the respondents for a transfer to an adjoining Division, in ^{the} background of the Railway Board instructions dated 16.10.1987 and the respondents were called upon to consider the requests sympathetically, with unrestricted liberty given to them to post those applicants to non-sensitive posts.

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6. In the facts and circumstances of this case therefore we hold that the judgement in Brij Mohan Monga's case (supra) is fully applicable to the facts and circumstances of the present case also, because the present applicant has been transferred by the same order by which the other three applicants were transferred. Accordingly we dispose of this OA holding that in the event the applicant files a representation to the respondents within one week from today for a transfer to an adjoining Division in the background of Railway Board's instructions dated 16.10.87, respondents should consider the same sympathetically, and dispose of that representation in accordance with rules and instructions within 30 days of its receipt of a representation. We leave it open to the respondents to post the applicant to any non-sensitive post.

7. The O.A. stands disposed of accordingly.

No costs.

A. Vedavalli

(Dr. A. Vedavalli)

Member (J)

S.R. Adige

(S.R. Adige)

Vice-Chairman (A)

cc.