

Central Administrative Tribunal, Principal Bench

Original Application No.1737 of 2000

New Delhi, this the day 16th of March, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)

Lakhu Oraon, s/o Shri Mahadeo Oraon, Chief
Goods Supervisor, Northern Railway Station,
Hathras Killa, R/o 10T/A, Railway Colony,
Hathras Junction.
(By Advocate Shri M.L.Sharma)

- Applicant

Versus

Union of India through

1. General Manager, Northern Railway,
Headquarters Office, Baroda House, New
Delhi.

2. The Divisional Rail Manager, Northern
Railway, Allahabad.

3. Shri A.A.Siddiqui, CMI, N.Rly, Aligarh,
thro' DRM/ Allahabad.

4. Shri Zauddin Khan, Sr.Goods Clk, N.Rly,
Hathras Fort Stn. Hathras thro
DRM/Allahabad.

(By Advocate Shri R.L.Dhawan)

- Respondents

O R D E R

Applicant was working as Chief Goods Supervisor (for short 'CGS') at Hathras Fort since 1996. Vide impugned order dated 25.8.2000 (Annexure-A-1) applicant has been transferred to Naini temporarily for a period of three months on administrative grounds.

2. The applicant has alleged that his transfer orders have been passed with a malafide intention to accommodate one Shri Zauddin Khan, Senior Goods Clerk on his promotion as Head Goods Clerk (for short 'HGS'). Shri Khan's earlier posting at Tundla has been cancelled on his own request and he has been temporarily promoted as HGS for a period of three months. It has also been made clear in Annexure-A-1 that the rules relating to vacation of Railway Quarters should be followed strictly. The applicant has pointed out that whereas Zauddin Khan has been stationed at Hathras Fort for the last 16 years, the applicant has been there for a period of 4 years only. The applicant has alleged that respondent 3 Shri A.A.Siddiqui, CMI has been

9

instrumental in accommodating respondent 4 Zauddin Khan being from the same community and the applicant who is a scheduled tribe, has been discriminated against. The applicant has also pointed out that whereas Annexure-A-1 order of transfer was signed on 25.8.2000, Shri Siddiqui respondent 3 had already sent a control message regarding transfer of applicant and Zauddin Khan on 23.8.2000 itself whereby instructions had been issued to relieve the applicant immediately. The applicant has also stated that respondent 3 had managed initiation of a major penalty charge-sheet against applicant on 15.5.2000 (Annexure-A-3) without any sufficient and good reasons.

3. The applicant has sought quashing and setting aside of Annexure-A-1 dated 25.8.2000 and also direction to the respondents to allow the applicant to remain at Hathras Fort station and retention of the Railway Quarter No.10TA Railway Colony, Hathras. The impugned order was stayed on 4.9.2000. The stay is continuing from time to time.

4. In their counter the respondents have stated that respondent 4 Zauddin Khan has not been posted in place of the applicant. He has been temporarily posted for a period of three months at Hathras Fort on a lower post. As regards retention of Railway quarter at the previous station of posting on transfer to any station, the respondents have stated that the applicant could have moved as per rules and instructions on the subject. The respondents have also denied that respondent 3 CMI Aligarh had any concern with respondent 4. The respondents have explained that control message dated 22.8.2000 regarding transfer of the applicant from Hathras to Naini was given by the Commercial Controller, Allahabad and on that basis CMI Aligarh

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issued control message dated 23.8.2000 (Annexure-A-2). The transfer orders were issued on 25.8.2000 (Annexure-A-1). According to respondents issue of control message in such cases is a normal practice followed by the department.

5. We have heard the learned counsel of both sides and perused the material on record.

6. The learned counsel of applicant has contended that whereas respondent 3 Zauddin Khan has been at Hathras Fort for the last 16 years, the applicant has been shifted just after 4 years of stay at Hathras. It is also true that the applicant has been moved to Naini which is at a distance of 481 kms for a short period of three months during which time the respondents have also issued instructions for vacation of quarter occupied by the applicant and his family.

7. Although the allegation of malafide cannot be held to have been proved in the present matter, the harassment being caused to the applicant is pretty obvious from the fact that he has been transferred for a period of three months only and he is expected to be vacating the Government quarters also. From the face of it, the orders appears to be arbitrary and without any human face. On the other hand the earlier order of posting of Shri Zauddin Khan has been cancelled and he has been continued for a temporary period of three months at Hathras Fort itself. It is true that Zauddin Khan would be working on a lower post of HGS but in combination with another employee Shri Virendra Singh, they would be in a position to substitute the applicant as is clear from Annexure-A-2.

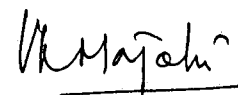
8. I am also not satisfied with the control message dated 23.8.2000 which is preceded the actual transfer order. It may be a practice as stated by the respondents but adoption of this practice in the present

12

11

case smacks of unfair and arbitrary action. On a perusal of the record in the case, I have not discovered any public interest or administrative exigencies in effecting the transfer of the applicant for a short-while to a very long distance and it appears that it has been made with a view to accommodate another person who has been at the same station for a much longer period than the applicant. Normally, the courts are not expected to interfere with transfers as it is generally a condition of service and an employee has no choice in the matter. However, in the peculiar facts of the case, in my view the transfer of the applicant for a short period of three months to a distant place in order to accommodate another person and with the direction for vacation of the quarter immediately, has not been made with any public interest or administrative exigencies. Certainly, some malafide intention seems to be operating behind the passing of the impugned order. Here is a case calling for interference from the Court. Although the applicant had been transferred from Hathras Fort to Naini for a period of three months only vide order dated 25.8.2000 (Annexure-A-1), which period has expired long ago, still having regard to the above reasons and discussions the impugned order dated 25.8.2000 is liable to be quashed and set aside.

9. In the result, the OA is allowed. The impugned order of transfer dated 25.8.2000 is quashed and set aside qua the applicant. No costs.


(V.K. Majotra)
Member (Admnv)