

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2068 of 2000

New Delhi, this the 13th day of July, 2001

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Nathu Ram Chaudhary
S/o Shri Hira Lal
at present working as
Junior Engineer Train Lighting
(Electrical) Grade-II,
New Delhi Railway Station,
Western Railway,
New Delhi.

....Applicant

(By Advocate: Shri K.K. Patel)

Versus

1. Union of India
Through the General Manager,
Western Railway,
Church Gate,
Mumbai.

2. Divisional Railway Manager,
Western Railway, Kota.

3. Senior Divisional Personnel (ESTT),
Western Railway,
Kota.

-RESPONDENTS

(By Advocate: Mrs. Meera Chhibber)

O R D E R (ORAL)

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant in this OA has challenged the order dated 1.2.2000 issued by Senior Divisional Personnel (ESTT) vide which the applicant had been transferred from New Delhi to Bhawani Mandi at Shamgarh. Assailing the order of his transfer, the applicant alleges that the transfer order has been purported to be issued on administrative exigencies which is illegal, arbitrary, mala fide and is in violation of statutory instructions of Railway Board and the same has been issued to harass the applicant and his family and, therefore, is a colourable exercise of power and statutory instructions.

km

✓

.2.

2. The main grounds to challenge the impugned order is that the applicant's children are studying in school and there is no exigency of service in transferring the applicant when his children are in mid school session and second is that the applicant is taking medical treatment in the All India Institute of Medical Sciences on reference by Central Hospital, Northern Railway, New Delhi.

3. The next ground taken by the applicant is that he is the union office bearer, i.e., the President of the All India SC/ST association of Tughlakabad Branch and is Vice President of Kota Branch and being an office bearer of the Union, he could not be transferred from Tughlakabad, New Delhi within a span of 2 years and it is submitted that there is no administrative exigency on the basis of which he could be transferred, as such it is prayed that the OA be allowed.

4. The respondents are contesting the OA and they submitted that in the month of October, 1990 the applicant was transferred as ELC to Tughlakabad, Delhi and since then he has completed 10 years in Delhi from year 1990 to 2000 and as such it cannot be said that he should not be transferred.

5. As regards the medical ground taken by the applicant is concerned, the respondents submitted that medical facilities are available at Railway Hospital Shyamgarh, Bhawani Mandi and Kota and the applicant is no more on the sick list of railway medical authorities and

kr

.3.

the applicant is only an outdoor patient in AIIMS and not an in-door patient, therefore, medical treatment, if any required by the applicant, can be taken at Bhawani Mandi.

6. The respondents further say that the post of ELC Bhawani Mandi is an important post and has fallen vacant due to voluntary retirement of the person who was posted so it is essential that the applicant joins duty there in the interest of administration, hence it is submitted that the action of the respondents is without any mala fide motive and the transfer is a routine transfer and is made in exigency of service. It is submitted that the transfer is an incidence of service and applicant has no right to say that he should not be transferred.

7. As regards the ground that the applicant is an office bearer of the SC/ST Union of the Railways, the respondents have referred to the latest instructions on the subject vide Annexure R-1 and submitted that whenever transfers are considered essential the controlling authority after satisfying himself according to the administrative needs can transfer the office bearer of the Association and respondents have passed the order of transfer in the interest of administration as well as in the interest of the applicant.

8. I have heard the learned counsel for the parties and gone through the records of the case.



9. Shri K.K. Patel appearing for the applicant has submitted that since the applicant is an office bearer of the recognised union so he should not have been transferred. However, this contention of the applicant has no merits because annexure R-1 which contains instructions with regard to transfer of office bearer of SC/ST Association states that no discrimination should be shown against officers belonging to SC/ST association and there should be no incident of harassment and they should not be transferred without valid grounds. But it nowhere prohibits the railway authorities from transferring the office bearers of the Unions of the SC/ST employees and if the controlling authority is satisfied that the transfer order has a valid reason and is considered essential, then the employee can be transferred and in this case it has been submitted that the post of Junior Engineer (Electrical) Bhawani Mandi is quite a significant post and same is lying vacant since the incumbent there had sought voluntary retirement and as such that post cannot be kept vacant since the applicant has spent 10 years at Delhi as such he could be transferred as valid reason exist for his transfer. To my mind also it is a well settled law by now that transfer is an incidence of service and an employee can challenge the transfer order if it is in violation of statutory provisions or in violation of the policy adopted by the department for the purpose of transferring the employees and in only those circumstances, the court can intervene and can review the order of transfer. However, if the transfer order is passed in exigencies of service then there is no scope for the judicial intervention for quashing of the same. In the present

km

.5.

case I am satisfied from the affidavit of the respondents that the transfer order of the applicant has been passed in exigencies of service as according to the respondents Bhawani Mandi is an important station where post cannot be kept vacant and applicant who has already enjoyed posting of 10 years at Delhi should not hesitate to join at a place where he is transferred. Moreover the transfer order has been made within the division itself so the applicant cannot have any objection to the same.

10. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.



(KULDIP SINGH)
MEMBER (JUDL)

/Rakesh