

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1259 of 1989

Date of decision: 20.7.89

Shri Jagdish Hare Nigam

Applicant

Vs.

Union of India ...

Respondents

PRESENT

Shri R.L. Sethi, counsel for the applicant.

Shri B.K. Agarwal, counsel for respondent No.1s

Shri M.A. Siddiqui, counsel for respondent No.2

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Jagdish Hare Nigam, Booking Supervisor, Northern Railway, New Delhi, against his transfer in the same capacity to Shakurbasti Station.

2. The case of the applicant is that his date of superannuation is 3.4.1991 and, therefore, he is being transferred during the period of two years from his retirement which is against the mandatory instructions of the Railway Board. He has been working at New Delhi since August, 1985 and has not completed five years of his tenure. According to the applicant, he is the seniormost Booking Supervisor due for promotion as Chief Booking Supervisor and his present transfer will be an unnecessary harassment if he is transferred again on promotion. There are eight posts of Booking Supervisors at New Delhi Railway Station and 14 at Delhi Station. The applicant has no objection to accommodate respondent No.2 at New Delhi, but he should not be disturbed, specially as he is a heart patient. According to the impugned order (Annexure A-1), respondent No.2, Shri Ansari, is to be posted to a place where no public and cash dealing is involved, but the present post of the applicant involves both. The learned counsel for the applicant said that the order of transfer is punitive as the applicant is being shifted

in public interest only to accommodate respondent No.2 who is putting pressure on the authorities for his transfer. He said that Annexure A-1 clearly indicates that this is a case of transfer and this is not permitted under the mandatory instructions of the Railway Board. It is the declared policy of the Northern Railway, as contained in Railway Board's letter dated 14.3.74 (S. No. 6024) that "On Northern Railway it has been decided that transfer of staff from one station to another in the same grade should not as a matter of principle be made within two years of the date of superannuation."

3. Respondent No.1 in the counter has stated that there has been no representation against the impugned order. It has been stated that the applicant is not the seniormost Booking Supervisor. One Shri Tirke is the seniormost Booking Supervisor. It has been stated that the applicant has not been disturbed at all and his posting from one place to another in the same district in Delhi is not a transfer at all but a posting from one station to another in the exigencies of service. The applicant has been posted only at Shakur Basti and will continue to stay at Shahdra where he is living now and the family would not be disturbed. The distance is hardly 11 KMs from the present posting of the applicant. The posting has been necessitated in the interest of service by way of exigencies to accommodate a handicapped person who has been directed by the medical authorities to be posted at a place where there is no public and cash dealing. It is on this compassionate ground that respondent No. 2 was posted there. It has been stated that respondent No.2 has already joined at New Delhi and the handing over charge will take about one month as it amounts to transfer of tickets stock which will be in thousands.

4. The learned counsel for respondent No.1, Shri B.K. Agarwal, said that the applicant's post is the only post of a Booking Supervisor where there is no handling of cash or public dealing. The work is to hand over tickets and time tables to the counter clerks handling cash and deposit the same at

the counter in which the Booking Supervisor plays no part.

5. Respondent No.2 in his reply has stated that not transferring a person within two years of retirement is only an administrative instruction which can be disregarded in the case of exigencies of service. In the peculiar circumstances of the present case, Respondent No.2 being a patient suffering from medical disability had been declared fit for lighter duties not involving cash or public dealing. It took the respondent Railway Administration nearly a period of five months to allot a post of such nature to Respondent No.2. Respondent No. 2 denies that the transfer is in colourable exercise of power to accommodate him and he denies there has been any pressure brought by him. The learned counsel for Respondent No.2 cited a decision of the Calcutta Bench of the Tribunal in OA 96/86 decided on 30.4.86 - SLJ 1986 (2) CAT 92 - where the Bench has considered the question of transfer within two years prior to the date of retirement and held that in the exigency of service this can be done and the courts need not interfere in such cases.

6. The learned counsel for the applicant stated that the Railway Board's circular makes it mandatory that there should be no transfers within two years of superannuation and he cited the case of Shri K.K. Jindal where the Tribunal has laid down that if there has to be any deviation from the declared policy, adequate reasons must be given for deviating from such a policy and such a reasoning is totally absent in the present case. He also said that the Calcutta authority may not be applicable to the Northern Railway as the principle laid down by the Northern Railway will apply to that Railway only. He also said that there are three or four Booking Supervisors at New Delhi where public dealings and cash are not involved. He also said that although Respondent No. 2 had reported for duty, he has not yet joined at New Delhi on account of the stay order granted by the Tribunal. He said that the applicant being a heart-patient and expecting promotion should not be disturbed at the fag end of his service.

7. I have gone through the pleadings and the arguments by the learned counsel. While it is true that officials should not be transferred from one place to another within two years of their superannuation, ^{but} these instructions are based on the principle that a person should not be disturbed from his place of posting so that his family is not disturbed and that his pension papers can be pursued properly. This generally means a transfer from one place to another. ~~While~~ The Calcutta Bench has observed that such transfers can be done in the exigencies of service, the family life of the applicant would not in any case be disturbed ^{and} ~~since~~ the pension papers etc. would also be processed at the same place and it would not amount to any serious dislocation in the case of the shifting of the applicant from New Delhi to Shakur Basti Railway Station, ^{both being in Delhi.} The applicant himself has no objection to the posting of Respondent No. 2 at New Delhi Station, but his objection is to his being shifted from that place. The Supreme Court in Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani - Judgments Today 1989 (3) S.C. 20 - has held that the transfer is an incident of service and an employee has no choice in the matter. No Government servant or an employee of a public undertaking on transferable posts has any legal right for being posted at any particular place. In this case it has been established that the transfer of Respondent No.2 has been done in public exigencies and as such the application is liable to be dismissed. The applicant has, however, stated that there are posts of Booking Supervisors at New Delhi Railway Station itself where there are no public dealings or handling of cash and he or Respondent No.2 can be accommodated to one of these posts. This is, however, a matter for the authorities to consider. Since the applicant has less than two years of service before superannuation, the respondents may consider his application for retaining him at New Delhi,

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but this is not a fit case where courts ^{should} ~~would like to~~ interfere.
With the above observations, the application is dismissed. There
will be no orders as to cost.

B.C. Mathur
(B.C. Mathur) 27/8
Vice-Chairman