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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2300/1989.

DATE OF DECISION: March 12 1990.

Lal Singh Meena	....	Applicant.
Shri S.K. Bisaria	....	Advocate for the Applicant.
V/s.		
Union of India & Others	....	Respondents.
Shri M.L. Verma	....	Advocate for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*.
3. Whether his lordship wishes to see the fair copy of the Judgement? *No*.
4. To be circulated to all Benches of the Tribunal? *No*.

(P.C. JAIN)  
MEMBER(A)

(3)

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JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as Head Clerk (G) in the office of Senior Divisional Commercial Superintendent, Jhansi, Central Railway, has challenged his transfer to the office of CCS, Bombay, vide order dated 16.8.89, and has prayed that the impugned transfer order be declared as illegal, unconstitutional, bad and void and the same may be quashed.

2. The applicant's case, in brief, is that he was appointed as a Junior Clerk on 22.1.83, was promoted as Senior Clerk in June, 1984 and then as Head Clerk vide order dated 24.9.85 with effect from 1.1.1984. A charge-sheet was issued to him on 5.5.1989. Inquiry has been started and disciplinary proceedings are pending. According to him, the transfer from one Division to another is not permitted and by the impugned transfer, his seniority as well as his chance of promotion would be adversely affected. He has also referred to the instructions of the Railway Board, according to which the transfer of Scheduled Caste and Scheduled Tribe employees should be confined to their native districts or adjoining districts or places where the administration can provide quarters, subject, of course,

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to the exigencies of service. Reference to instructions about transfers in cases where husband and wife are working at the same station, has also been made. He has also alleged that the transfer order has been passed with mala-fide intentions and ulterior motives and in colourable exercise of powers to harass the applicant, so that he may not make any representation against his supersession in promotion. He represented on 6.9.1989 against the impugned transfer order. His representation was rejected on 15.9.89. He preferred an appeal on 15.9.89, which is said to be pending.

3. The case of the respondents, in brief, is that the applicant is involved in a vigilance case and major penalty charge-sheet was issued to him vide letter dated 5.5.89, which is still pending. They have refuted the contention of the applicant that as a result of the impugned transfer order, he would lose his seniority and have asserted that transfers from one Division to another Division within the same Railway are within rules. It is further stated that his transfer is in the interest of administration and based on very strong reasons. The instructions about the posting of husband and wife at the same station are said to be not rigid and these are to be followed as far as possible. They have also taken the plea that the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 and that it is also bad for misjoinder of unnecessary Respondents 2 to 4.

4. I have perused the material on record and have also heard the learned counsel for the parties.

5. The applicant's main contention that transfer from one Division to another Division is not permissible under the rules is stated to be based on a rule which has been reproduced in the application as under: -

"Normally a Railway servant is employee through his service on the same Railway or Railways establishment to which he is posted on the

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first appointment and he cannot claim as a matter of right to be transferred to any other railway or establishment."

"Following are the various kinds of transfers: -

1. Transfer on promotion
2. Transfer in the interest of Administration
3. Transfer on the request of the employees

Intra-divisional and inter-railway transfers at employees request are allowed only in the initial recruitment grade or in such intermediate grades in which there is an element of direct recruitment and the staff in such cases of transfer is assigned bottom seniority in the relevant grade."

A perusal of the above would show that it is applicable only when an employee himself seeks transfer from one Division to another and from one Railway to another. This is not so in this case. Moreover, the respondents have categorically denied that as a result of his transfer, the applicant would lose his seniority. The applicant has not been able to show anything to the contrary. In fact, in his rejoinder, he has stated on this point that "there is every likelihood / possibility that the applicant shall not only lose his seniority but also due promotion based on seniority." He is thus himself relying on conjectures rather than on any hard evidence in terms of rules and instructions on the subject.

6. The instructions on transfer of Schedule Caste / Schedule Tribe employees, as referred to by the applicant in the application itself, themselves provide that these are to be followed to the maximum extent possible subject to the exigencies of service. The instructions reproduced by him in his application in cases where both husband and wife are working are as under: -

"While transferring employees from one station to another the fact that the employee's spouse is posted at a particular station may also be kept in view. Similarly requests for transfer to a station where an employee's spouse is working may be considered sympathetically as far as possible

having regard to the administrative convenience and the merits of each case."

In his appeal dated 15.9.1989, he has mentioned that his wife is "sickly and serving at Gangapur city in Govt. service". However, in his application under Section 25 of the Administrative Tribunals Act, he has stated that he is "residing with his wife and other family members at G-195, Railway Colony, Agra Cantt, Agra" and that his wife is working as Nurse in the Government service. It thus shows that the wife of the applicant is not working at Jhansi where he himself was posted. Further, in his appeal dated 15.9.1989, he, inter-alia, stated that "It would not have mattered much if I had been transferred in Northern Region of Central Railway i.e. between Jhansi to Delhi or even at Delhi or Northern Railway, so that I would have worked after my family." This also shows that the considerations to be given in cases where both husband and wife are working for posting to the same place, do not exist in this case.

7. The learned counsel for the applicant cited judgements in the cases of:

- (1) Debendra Nath Bag Vs. Union of India & Ors.  
- SLJ 1989 (3) (CAT) p. 302;
- (2) Srichand and Others Vs. Union of India & Ors.  
- A.T.R. 1989 (2) CAT p. 593; and
- (3) K.K. Jindal Vs. General Manager, Northern Railway, ATR 1986 (1) CAT p. 304.

On the other hand, the learned counsel for the respondents cited the judgements in the cases of:

- (1) Matheu Muthalali, S.I. Police, Calicut Vs. The Revenue Divisional Officer, Calicut & Others - S.L.J. 1973 - Kerala - p. 213;
- (2) R.K. Bhatnagar Vs. Union of India & Anr.  
- SLJ 1984 (1) - Rajasthan - p. 261;
- (3) D.H. Dave Vs. Union of India & Ors.  
- A.T.R. 1987 (1) CAT p. 47;
- (4) Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another - Full Bench Judgements (CAT) (1986-1989) p. 80;
- (5) Luthful Haque Vs. Union of India & Others  
- SLJ 1989 (3) (CAT) p. 381;
- (6) G.P. Hedao Vs. Union of India & Others  
- SLJ 1989 (3) (CAT) p. 512; and

(7) Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani - Judgement Today 1989 (3) S.C. 20.

8. In the case of D.H. Dave Vs. Union of India & Ors. (supra), it was held that Government policy to keep husband and wife together can be disregarded in administrative exigencies. In any case, in view of what has been stated in para 6 above, the applicant's contention on this point is devoid of merit.

9. In the case of R.K. Bhatnagar Vs. Union of India and Anr. (supra), the question of transfer from one Division to another and consequential effect, if any, on seniority and promotion came up for discussion. The relevant observations in the cases of Laxman Singh Vs. Union of India and Mohammed Latif Vs. State of Jammu and Kashmir were also cited. It will be useful to reproduce these here also. Relevant observations in Laxman Singh Vs. Union of India are as under: -

"The second contention urged by Shri Sharma was that seniority of T.T.E. in the Western Railway is maintained on divisional basis and that the transfer of the petitioners from Jaipur Division to other divisions would prejudicially affect their seniority as well as their future chances of promotion and that the impugned order are liable to be quashed for that reason. In my view the aforesaid contention of Shri Sharma cannot be accepted. In the first place there is nothing in the writ petitions to show that as a result of the transfer from Jaipur Division to other divisions the petitioners would be prejudicially affected in the matter of fixation of their seniority so as to affect their future chances of promotions. Moreover, seniority of the petitioner on transfer to the other divisions will be fixed on the basis of the length of service and the petitioners cannot make a grievance. It cannot be said that merely because there are separate seniority lists for T.T.E. for each division T.T.E. belonging to one division cannot be transferred to another division."

The observations in the case of Mohammad Latif (supra) were as under: -

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"A transfer from one department to another department is not open to challenge on the ground that the said transfer would affect the seniority in the other department and affect his chances of promotion because a mere chance of promotion is not a condition of service and if a person on being transferred goes down few steps as to loose promotion, it cannot be said that his conditions of service have been altered to his prejudice."

In the case of Luthful Haque (supra), transfer of the applicant who was a Class IV employee from one division to another was questioned and it was held that no rule was shown, according to which the applicant could not be transferred out of his division.

10. In view of the above pronouncements and what has been said in para 5 above, the contention of the applicant that he cannot be transferred from Jhansi Division to Bombay Division, both of which are under the same Railway, is not legally tenable.

11. In the case of Matheu Muthalali (supra), it was held that pending enquiry into the alleged misconduct of a civil servant, it may be necessary in certain circumstances to transfer the civil servant or to suspend him. It was also held that neither a transfer nor a suspension for such a purpose can be said to be a punishment enabling the Court to interfere on the ground that there has been any violation of the procedure prescribed by some administrative order in regard to such transfer or suspension. In the case of Srichand & Others Vs. Union of India & Others (supra), it was held that the petitioners who claimed protection against transfer on account of belonging to Schedule Caste or having a working spouse have not established that there is any absolute prohibition against their transfer. At best they are entitled to make representations to the competent authority. It was also held in that case that the Courts might not sit in judgment on the

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adequacy or otherwise of the respondent's assessment of the administrative exigency or public interest or define their nature as a sufficient justification for providing a basis for the transfer orders. The Courts, however, can legitimately ascertain the existence of the administrative exigency which has to be to that extent explained to establish whether the reason provided was bonafide or fictitious.

12. In the case of Kamlesh Trivedi (supra), the judgement in the case of K.K. Jindal v. General Manager, Northern Railway, which was cited by the learned counsel for the applicant in support of his case, also came up for discussion. It was held by the Full Bench that merely because transfer is ordered on complaints or after an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. It was further held that if the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. It was also held that the question of observing the principles of natural justice in a case of transfer does not arise where it is not based upon a finding on the allegation of misconduct or the like made against the employee.

13. In the case of Gujarat Electricity Board and Another (supra), the Supreme Court held that transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incidence of service. No Government servant has legal right for being posted at any particular place. Whenever a public servant is transferred, he must comply with the orders, but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, or modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the transfer order.

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14. It is not in dispute that the applicant is subject to transfer liability. From the above discussion, it will be seen that transfer from one division to another is not debarred under any rule or instruction. Further, the mere fact that disciplinary proceedings are pending against the applicant, is not a valid ground for challenging the transfer order. The instructions about transfer of Schedule Caste / Schedule Tribe employees and in cases where both husband and wife are working persons, are not mandatory and these are further subject to exigencies of service. Though the applicant has alleged that the transfer order has been passed with malafide intentions and ulterior motives, yet he has neither specified the Railway officers who are being accused of such intentions / motives, nor any such officer has been made a party by name. Further, particulars of any malafide have not been disclosed, nor any evidence in support of such an allegation has been furnished. The applicant has been in Jhansi from the date he joined Government service, i.e., January, 1983. For all these reasons, the application is devoid of merit and it is accordingly dismissed. Parties to bear their own costs.

(P.C. JAIN)  
12/3/1994  
MEMBER(A)