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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI.

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Original Application No.66/88.

Date: 27--3--1989.

Shri Mohd. Sammi Khan .. Applicant.

Vs.

Union of India & Others. . Respondents.

PRESENT: Shri R.L.Sethi counsel for Applicant.
Shri Indrajit Sharma counsel for Respondents.

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

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This is an application under Section 19 of the Central Administrative Tribunals Act, 1985 filed by Shri Mohd. Sammi Khan, Electrical Chageman working in the Office of the Divisional Electrical Engineer (TRD), Northern Railway, Aligarh against the impugned orders dated 4-12-1987, 13-8-1986 and 24-9-1986 challenging the transfer orders from Aligarh to Kanpur on the ground that these orders are punitive in nature.

It has been stated by the applicant that he is a Bachelor looking after his sister and his aged mother, the former being a Research Scholar at the Aligarh University and the other undergoing medical treatment at Aligarh. He was twice promoted to the scale of Rs.550-750 in 1981 and 1985 and posted out of Aligarh, but he refused the promotion, and therefore he was debarred promotion for one year in 1985.

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The Applicant states that a number of bogus complaints have been filed against him which were proved wrong and a case under Sections 420, 468, 469 and 471 I.P.C. was registered against the culprits who are filing false complaints against him. His order of transfer dated 13.8.86 is punitive as the complaints have been proved to be wrong on the basis of which the transfer orders have been issued. On his representation his transfer had been stayed till 4--2--1988. A charge-sheet dated 30--7--1987 has been issued to him stating that he was using his influence and threatening the staff in improper manner resulting in harassment to them. It has been stated that although the transfer is ~~not~~^{As} shown to be in 'Public Interest', it is not so, and the Applicant cannot be transferred when his conduct is under investigation. Since the transfer is punitive and not in 'Public Interest' and has the effect of uprooting the applicant's family and would cause irreparable harm to him ^{as} who has already ^{As} undergone less of promotion and as persons with longer stay than him at Aligarh have not been transferred, The Applicant prays that the transfer orders should be quashed. He has enclosed a certificate from the Divisional Electrical Engineer dated 20-1-1987 to the effect that the applicant is a hardworking and honest person (Annexure A-4 to the applicant).

The respondents in their reply have stated that the applicant has been transferred in 'Public Interest'. A report has been published in the "RAJESH TIMES" of December, 1987 saying that even the order of the Minister transferring the applicant has been postponed due to the influence of the Applicant. It has been stated that the Applicant has three brothers at Aligarh and one of them is employed in the Railways.

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A Member of the Parliament had sent a letter along with a complaint made against the applicant by certain officials of the Northern Railway to the Minister of State for Railways about the conduct of the Applicant (Annexure R2 to the Application). On this complaint, the Applicant was transferréd from Aligarh to Kanpur. However, this order was stayed by the Railway Board on the representation of the Applicant. The respondents have filed copies of the communications addressed by the Minister of State for Railways to S/Shri S.P.Malviya , Hafiz Mohd. Siddique Members of Parliament and the communications addressed by the M.O.S.R. to Shri Zainul Basher and Dr.B.L.Shalesh, Members of Parliament regarding the implementation of the order of transfer of the applicant after the academic sessions. It was decided that the order of transfer of the applicant from Aligarh to Kanpur already issued should be implemented at the conclusion of the academic session. Fresh orders regarding the transfer of the applicant from Aligarh to Kanpur were issued by the D.P.O., Allahabad and the Applicant was spared with effect from 30-7-1987. The applicant was, however, retained at Aligarh for a further period of four months (Annexure R-13).

A preliminary enquiry was conducted against the applicant by the ^{Assistant} Divisional Engineer (Electrical) and/or charges/complaints levelled against him ~~was~~ were prima facie found to be correct. A major penalty charge-sheet was issued on 30--7..1987 against him but it ~~was~~ could not be served on him as the applicant intentionally avoided to receive it ~~he~~ having absented himself from duty from the date he was relieved from Aligarh.

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The General Manager, Northern Railways allowed the applicant to be on duty at Aligarh for a period of two months with effect from 4--12--1987 but before the expiry of this period, the applicant filed the present application before the Tribunal.

It has been stressed by the Respondents that the transfer of the applicant from Aligarh to Kanpur is in 'Public Interest' and may not be interfered with.

The learned counsel for the Applicant states that the transfer of the applicant is due to pressure of the out-side elements and without having recourse to the prescribed procedure and the norms, the applicant is being transferred as a punitive measure. The transfer order is not in 'Public Interest' but on the basis of a complaint which was never investigated. He states that the transfer is, because the applicant has filed a criminal case against some persons which is pending and is sub-judice. The transfer order is against the guide-lines and is against the norms and he has just been picked up, ^{and} when the Departmental Proceedings are going on, transfer should not be made so that the ^{transfer} proceedings are not hampered.

Shri Inderjit Sharma, learned counsel for the respondents has stated that the transfer is not on the basis of pick and choose. There was no doubt that ^{an} a complaint against the applicant ^{and} an enquiry was held. The Enquiry Officer states that three persons should be transferred from Aligarh and not the applicant alone. In the Enquiry Report nothing has been stated against

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the applicant but it has been suggested that three persons should be transferred on Administrative grounds. The Report of the Assistant Electrical Engineer was produced before the Tribunal. The Assistant Engineer has not alleged anything against the applicant but has recommended that three persons should be transferred in the interest of keeping general Administration at Aligarh clean.

Mr. R.L.Sethi, learned counsel for the Applicant pointed out that the Divisional Engineer had found the applicant to be a good and honest person and as such there was no substance in the report of the Assistant Engineer.

I have gone through the Enquiry Report and the allegations made against the Applicant. The report says that the staff at Aligarh feel that Shri Sammi Khan is a very influential person and has political backing, and that officers are unable to transfer him from Aligarh. The Assistant Engineer has expressed his opinion that "to establish a peaceful working atmosphere at Aligarh, three persons should be transferred from that place." These recommendations ^{have been} ~~are~~ accepted. I find that the matter has been examined ^{at} ~~by~~ the ^{level,} Highest Authority ~~and~~ and letters from the Members of the Parliament as well as News Paper reports have been considered. The Railway Minister himself has examined the case and come to the conclusion that it would be in "Public Interest" to transfer the Applicant. It is true that a person should not be transferred when allegations against him are pending enquiry. But at the same time, it must be accepted that the

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Railways are a Public Service Undertaking and it is in the larger interest of Administration that peaceful atmosphere should prevail. The applicant has no right to remain at Aligarh always. He has already been accommodated earlier by the Railway Administration. He is not being transferred to a very long distance. As he has other brothers who can look after his mother and sister, the plea of disruption of family life would not be tenable. The applicant has become a controversial person and if the Administration feels that it would be in public interest to move him out from Aligarh to maintain cordial atmosphere, the Court may not interfere in such a transfer.

In the circumstances, I see no reason why the Court should interfere with the orders of the Respondents.

The application is, therefore, rejected.
There will be no order as to costs.



(B.C.MATHUR)
Vice-Chairman.

27--3--1989.