

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.1080/90

Date of decision: 8.11.90

Shri Sunil Kumar Lakra Applicant

vs.

Union of India & Anr. Respondents

For the applicant : Shri S.K. Sawhney, counsel.

For the respondents: Shri Shyam Moorjani, counsel.

CORAM:

Hon'ble Mr. T.S. Oberoi, Member(J)

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

JUDGEMENT

(delivered by Hon'ble Shri T.S. Oberoi, Member).

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, Shri Sunil Kumar Lakra, is aggrieved on account of his transfer from the Northern Railway, New Delhi, to the Eastern Railway, Diesel Shed, Andal, ordered vide Notice No. 727-E/4/591/P4 dated 28.5.1990. His transfer has necessitated his reversion from the grade of Rs.2000-3200 to the grade of 1600-2660. He has, therefore, prayed for quashing the impugned order dated 28.5.1990 and directing the respondents to continue him on the post held by him in the Delhi Division of the Northern Railway.

2. The facts leading to the filing of the present application may be briefly stated here. While working as Assistant Supdt., Diesel Shed, Tughlakabad, New Delhi, the applicant conjointly with Shri Ram Meena, Office Supdt. Gr. II, Diesel Shed, Andal, West Bengal, prayed for mutual transfer on 9.2.1989, as per their joint application (Annexure A-I), addressed to the General Managers of both the Eastern Railway and the Northern Railway. However, in March, 1989, the applicant was promoted against the shortfall vacancy of S.T. (Annexure A-3), to the post of Superintendent in the pay scale of Rs.2000-3200. He has also been allotted Railway quarter in Delhi. Consequent on his promotion and allotment of a Railway quarter, the applicant withdrew his consent for mutual transfer to Andal vide letter dated 6.4.1990. The respondents accepted the request of the applicant for withdrawal of his consent for mutual transfer vide letter dated 30.4.1990. However, later, vide letter dated 28.5.1990, the respondents revoked their decision of accepting the request of the applicant for withdrawal of his consent for mutual transfer and transferred him to Andal as Asstt. Supdt. in the pay scale of Rs.1660-2660. According to the applicant, transfer on request in the unequal grades is not permissible under the provisions contained in the Establishment Manual of the Railways. The applicant has assailed the impugned order on the grounds of being cryptic and against the principles of natural justice. According to him, the transfer order is mala fide and amounted to malice in law. He has stated that the impugned transfer order will distract him and his family members who have settled in Delhi on allotment of a quarter to him.

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3. The respondents have filed the counter affidavit in which the prayer of the applicant has been stoutly opposed. The first objection against the application, raised by the respondents, is on the ground of limitation and laches. It is also submitted on behalf of the respondents that the General Managers of both the Railways have approved the mutual transfer sought by the applicant and Shri Meena. In pursuance to the approval given by the competent authorities, Shri Meena was relieved from his original posting and he reported to the Delhi Division on 23.4.1990, though the applicant sought withdrawal of his request for mutual transfer on 6.4.1990. According to the respondents, since Shri Meena reported for duty vice the applicant, the withdrawal of consent for mutual transfer could not be accepted and was rightly turned down by the impugned order dated 28.5.1990 in supersession of letter dated 30.4.1990. The respondents have submitted that the transfer was effected on the basis of the request for such mutual transfer made both by the applicant and Shri Meena. Since Shri Meena did not withdraw the consent, the applicant has no justifiable ground for withdrawal. In pursuance of the impugned transfer orders, the applicant has already been spared. The respondents have refuted the charge of unfair labour practice having been adopted by them, as alleged by the applicant. The respondents have averred that since the applicant has not exhausted the departmental remedies, as enjoined by the Administrative Tribunals Act, the instant application is not maintainable.

4. In the rejoinder, the applicant has stated that he had given consent for mutual transfer while he was working in the same grade as Shri Meena. However, after his promotion, the said consent became invalid and redundant, as he was no longer borne on the cadre of Assistant Superintendent. In other words, the mutual transfers cannot be effected in unequal grades. The

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applicant has submitted that the authority which accepted the request for withdrawal of consent for mutual transfer was not within its powers to revoke its earlier decision. He was not afforded an opportunity before cancelling his request for withdrawal of the said consent, as required by the principles of natural justice, as per the judgement of the Hon'ble Supreme Court in Dr. Binapani's case reported in 1967 SLR Vol.1 P.465.

5. During arguments, the learned counsel for the applicant urged that the consent for mutual transfer became invalid after the applicant's promotion to the next grade. He contended that the request of the applicant for withdrawal of his consent for mutual transfer was accepted by the competent authority. It was improper to reverse the earlier decision. Relying on Rule 310 of the Railway Establishment Manual, the learned counsel stated that mutual transfer was not permissible among unequals. The learned counsel for the applicant highlighted the difficulties which the applicant would face on account of the education of his children, etc. in case the transfer order is given effect to.

6. Replying to the arguments of the learned counsel for the applicant, Shri Moorjani submitted on behalf of the respondents that the transfer order emanates from the consent given by the applicant for his mutual transfer with another employee of the Railways. In case the request of the applicant for withdrawal of his consent is acceded to at this stage, it would affect the interests of Shri Meena who is not a party in this O.A. and, as such, no orders can be passed at his back. Shri Moorjani denied violation of any Rules in issuing the transfer order impugned in this O.A. even after the applicant's promotion at his original place

of posting. Taking a sympathetic view of the joint request for mutual transfer of the applicant and Shri Meena, the General Managers of the Northern and Eastern Railways had approved the same. The learned counsel for the respondents argued that the applicant would have visualised the chances of his promotion and the consequences entailing in his request for mutual transfer.

7. We have given careful consideration to the pleadings and arguments advanced by both the parties and have also gone through the documents filed by them. It is clear from the request made by the applicant as well as another employee of the Railways (Shri Meena) that the transfer orders are a result of such request. The applicant wanted to be near to his home-town so as to enable him to maintain one establishment in order to save unnecessary expenditure and to look after his family. He ought to have taken into account the consequences of his request for mutual transfer. He would also be well aware of his promotion prospects in his service career. Allotment of Government accommodation is made for the welfare of Government employees. No employee can refuse to proceed on transfer on the ground of allotment of a quarter at a particular place. As a result of the consent of mutual transfer culminating into the issuance of the transfer order, Shri Meena has reported for duty in Delhi. When the request for mutual transfer was made jointly by the applicant and Shri Meena, the withdrawal of the consent should also be jointly made by them. If Shri Meena is not agreeable to go back to his previous place of posting, the applicant has only to blame himself. He was very late in withdrawing his consent as his promotion came about in the month of March, 1989, whereas he

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applied for cancellation of his mutual transfer in the month of April, 1990, i.e. after over a year. Had he applied immediately after his promotion, it would not have led to any problem, and even the other incumbent would not have been relieved from his earlier place. The citation referred to by the applicant also, to our mind, does not help him, as that was a case of change of date of birth, whereas the present one is a case of mutual transfer, and therefore, the applicant must have considered all pros and cons, as is also evident from para 2 to 4 of application (Annexure A-2), before applying for the same.

8. As a result of the aforesaid discussion, we are not inclined to interfere with the transfer order issued by the respondents. The application deserves to be rejected as the same is devoid of merit. We order accordingly. Costs on parties.

(Signature)
(P.C. JAIN)
MEMBER(A)

(Signature) 8.11.90
(T.S. OBEROI)
MEMBER(J)