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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2384/1990. DATE OF DECISION: 4-1-1991.

Shri B.S. Sarin Applicant.

V/s.

The Divisional Railway
Manager, N.R., Bikaner
and Another Respondents.

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

Shri M.K. Chaudhary, Counsel for the Applicant.
None for the Respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGEMENT

The applicant, who was posted as PWI-SPL-DEE under Bikaner Division of the Northern Railway, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against order dated 18.7.1990, by which he has been transferred to Bikaner and has prayed that the aforesaid transfer order "be called back and the applicant be allowed to continue to work in Sarai Rohilla". In the alternative, he has prayed that "In case the Railway administration feels that for administrative reasons, the applicant has to be transferred from Delhi Sarai Rohilla, then in that eventuality, the applicant be transferred to some near station from where the applicant can manage daily up and down."

2. We directed issue of notice to the respondents on admission and interim relief vide our order dated 20.11.1990, returnable on 11.12.1990. Though respondent No.2 had been served, none appeared on his behalf on the fixed date. The case was directed to be listed on 2.1.1991 for awaiting intimation of service on respondent No.1. Even though, respondent No.1 was also served, none appeared for him or for respondent No.2. We

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accordingly heard the learned counsel for the applicant on merits of the case and have also perused the material on record. As the application relates to transfer, we consider that it can be disposed of at the admission stage itself.

3. The applicant has assailed the impugned order of transfer as arbitrary inasmuch as he was transferred from Gurgaon to Delhi Sarai Rohilla on 28.8.1989. It is further stated that his wife is also in Government employment and as per the policy of the Government, both the husband and the wife should, as far as possible, be kept at the same station. It is further contended that the impugned order has been passed without taking into account the age and family circumstances of the applicant and without caring for the mid-session of the children and the sickness of his wife. It is further stated that no show cause notice has been issued to the applicant before passing the transfer order. He had made a representation to the Divisional Railway Manager, Northern Railway as a mercy appeal, but no reply is said to have been received by him. Similarly, no reply is said to have been received to the letter dated 30.7.90 sent by his wife.

4. No malafide has been alleged by the applicant. His contention about the transfer order being arbitrary is also not supported by any document. No violation of any rule has been alleged or shown.

5. It was held by the Hon'ble Supreme Court in UNION OF INDIA Vs. H.N. KIRTANIA (Judgements Today 1989 (3) SC 131) that transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on grounds of malafides. Similarly, in the case of

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SUNGOMAL POSHANI (JUDGEMENTS TODAY 1989 (3) SC 20), the Hon'ble 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 or an employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in public administration. Whenever a public servant is transferred, he must comply with the order 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, 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 order of transfer."

6. The contention of the applicant that the transfer order cannot be sustained as no notice was issued to him before the order was passed, cannot be upheld. Order of transfer is not an order of punishment, nor it is a judicial or a quasi-judicial order determining the rights of the parties. As such, no notice was required to be issued to the applicant before passing his order of transfer. (YASHWANT N. GADHVI V. UNION OF INDIA & OTHERS - III (1990) Current Service Journal (C.S.J.) 355).

7. The applicant has also referred to the instructions of the Government in regard to the posting of the husband and the wife at the same station to the extent it is possible. These instructions are directory and not mandatory. Moreover, if these instructions were

to be construed to have a binding force, it may mean that in a large number of cases, the Government servants may not be posted / transferred to a place other than the place where his wife is employed. Such a proposition is difficult to be accepted in view of the wife being an incidence of service and more so where a Government servant has a liability as a part of his service conditions to be transferred from one place to another. The problems of sickness and education of children in a family of a Government servant are common to most of the Government servants and such problems cannot provide an immunity to a Government servant from his liability of being transferred from one place to another.

8. In view of the foregoing discussion, we see no merit in this case. The O.A. is accordingly dismissed at the admission stage itself.

J. P. Sharma
(J.P. SHARMA)
Member (J)

P. C. Jain
(P.C. JAIN)
Member (A)