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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A.No.2077/91

DATE OF DECISION:1-11-1991

Shri T.K.Matharani --- Applicant

Vs

Union of India and Ors. --- Respondents.

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HON'BLE SHRI D.K.CHAKRAVORTY, MEMBER (A)

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

SHRI S.K.BISARIA, COUNSEL

FOR THE RESPONDENTS

SHRI M.L.VERMA, COUNSEL

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J))

The applicant in this application under Sec.19 of the Administrative Tribunals, Act, 1985 assailed the order of transfer from the post of A.M.E., Agra Cantt to the post of Chief Wagon Supdt., Bhopal Division

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by the order dated 3-7-1991. The applicant had prayed for the cancellation of this order of reversion from the post of A.M.E. Mech. to the post of C.W.C. as well as the order of transfer from Agra Cantt to Bhopal Division dated 8-7-1991.

2. The applicant was appointed in the year 1953 as Apprentice Train Examiner and was subsequently posted as Sr. Train Examiner till 1967. In the year 1967 the applicant was promoted as Sr. Train Examiner and worked at Jhansi and Gwalior till 1979. In the year 1979 the applicant was promoted as Carriage Inspector at Agra Cantt and worked there in the same capacity till 1985. In the year 1986 the applicant was promoted as Carriage and Wagon Supdt. and continued to work at Agra Cantt in the same capacity till 1989. In July, 1988 the applicant was given ad hoc promotion as Assistant Mechanical Engineer but the applicant did not accept the same as he was ordered to be posted at Gwalior. However, subsequently in November, 1989 the applicant availed ^{of} the promotion to the post of Assistant Mechanical Engineer and joined at Gwalior as A.M.E. In September, 1990 the applicant was transferred to Agra Cantt and has been working in the same capacity since then. The case of the applicant is that he has only one son Mr. Sunil Matharani who is a serious mental case and has been under the treatment

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of ^a private medical practitioner at Agra. The applicant has requested the respondents that in case of transfer from Agra Cantt the applicant is willing to accept reversion as Carriage and Wagon Supdt. on account of the serious illness of his only son so he submitted his written request on 9th May, 1991. Subsequently on 30th June, 1991 the applicant sent a telegram requesting the respondents to treat his request of reversion as cancelled as the applicant is willing to work as A.M.E. at Agra. However, the applicant by the order dated 8-7-1991 has been transferred to Bhopal Division and that too on reversion as Carriage and Wagon Superintendent.

3. The notices were issued to the respondents and Shri M.L. Verma, learned counsel for the respondents did not choose to file any reply to the U.A. and argued the case on merits without filing any counter.

4. ^{have} U₂ heard the learned counsel at length and perused the records. The applicant has been holding the post of A.M.E. on officiating basis. He has not been regularly appointed as such. The Hon'ble Supreme Court in Nyder Singh versus Union of India reported in 1988 A .I.R. SC page 1979 held that "a person working in officiating capacity and not any substantive capacity on a higher post he may for valid reasons b. reverted to the substantive post which does not amount to reduction

in rank and the provisions of Art.311 of the Constitution of India are not attracted. The applicant has referred to para 4(a) to 4(1) as the grounds for his relief.

It is only said by the applicant that he has been continuously working from 1988 but he has not mentioned that he has been regularised on this post or that he has been reverted and the juniors to him in the service are still retained on the promotional post of A.M.I. (Mech.). Mere making an averment that the reversion order is arbitrary, illegal and against the regulations and instructions of the Railway Board will not make the impugned order honest.

The applicant has to show as to which rule is infringed. From the averments of the applicant himself it is clear that the applicant was given ad hoc promotion. The letter dated 9th May, 1991 sent to D.R.M., Jhansi (annexure -2) is the prayer of the applicant for reversion on the ground that he is unable to carry out his normal duties as AME/CDD C&W Agra Cantt. The letter is reproduced below:-

"It is humbly submitted that due to continuous sickness of my only son Sunil Mathrani whose treatment is going on at AGC for MDP treatment I am unable to carry out my normal duties as AME/CDD C&W AGC.

As such I request your honour to kindly revert me to Original post of CWS 'G' in Gr.Rs.2375-3500 (A.S.) with immediate effect and permit me to continue at AGC due to above reasons".

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5. The applicant has not taken any ground as to why he should continue on officiating basis on the post of A.M.E. (Mech.). He has not stated that there is still a post vacant at Agra nor he has stated that a junior to him is still working as A.M.E. In view of the above facts as rightly pointed by the learned counsel for the respondents Shri Verma, the reversion of the applicant cannot be said to be arbitrary or illegal.

6. The applicant has also claimed the relief of cancellation of his transfer from Agra to Bhopal Division on the ground of illness of his son. The applicant has not referred to any representation after the passing of the order dated 8-7-1991 to the authorities. No copy of his representation has been filed. There is only a letter dated 9-5-1991 (Annexure 2) requesting that he cannot work as A.M.E.(Mech.) and should be reverted to his original post of C.J.S. (G) with immediate effect. However, there is telegram dated 30th June, 1991 (Annexure 3) in which the applicant has requested that his request for unconditional refusal to work ^{as} Class II Coaching Depot Officer at Agra Cantt be treated as cancelled. Thus after this transfer order of 8-7-1991 there is no representation by the applicant. The only

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ground taken by the applicant is the illness of his son. The applicant has stated in the application that he has got only one son, but the learned counsel for the respondents has pointed out that one of the sons of the applicant is abroad. However, we do not want to enter into this controversy. In view of the decision in the case of Gujrat Electricity Board Vs. Atma Ram Sangomal Poshani, reported in 1989 (2) SCC 602 and UOI Vs. H.N. Kritania-1989 (3) SCC 445, the Hon'ble Supreme Court held that no Govt. servant appointed to a cadre of transferable posts can contend that he has a legal right for being posted at any particular place. However, he can submit representation to the authorities for their consideration and join at the new Station in compliance with the order of transfer. In this case the applicant has not preferred any representation whatsoever. The learned counsel has referred to Sh.Charan Singh Vs. J I and Jrs. reported in AIR 1988 (2) SC 543 but the facts of that case are totally different. In the reported case, the applicant challenged the order of reversion from Class III to Class IV post, while in the present case, it is an order of transfer.

7. The impugned order covers both reversion as well as transfer. It is not clear from the averment made in the application that the transfer is punitive in character. Further it is not averred that he has been transferred out of malice, or this transfer order is mala fide and motivated by other considerations. The transfer order is always in the public interest. The impugned order only mentioned the fact that on reversion the applicant is posted

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as officiating C.J.S. temporarily in Bhopal Division with immediate effect. When mala fide has not been alleged nor it is apparent from the face of the record, the order of transfer is according terms and condition of service and could not be interfered with.

3. In view of the above discussion, we find that the present application is devoid of merit and is dismissed leaving the parties to bear their own costs. However, it shall be open to the applicant to make a representation to the respondents and the respondents may consider the same.

3. No order as to costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J) 1/11/91

D. K. Chakraverty
(D.K. CHAKRAVERTY)
MEMBER (A) 1/11/91