

Central Administrative Tribunal

Principal Bench

OA No.2325/91

(23)

New Delhi, the 1<sup>st</sup> January, 1996.

Hon'ble Shri R.K. Ahooja, Member (A)

Shri S.P. Pippal,  
Booking Supervisor,  
Quarter No.143-B,  
Railway Colony  
Aligarh.

.. Applicant

(Through Sh.V.P.Sharma, Adv.)

versus

Union of India: Through:

1. General Manager,  
Northern Railway  
Baroda House,  
New Delhi.

2. The Divisional Railway  
Manager, NR, Allahabad.

3. The Station Supdt.  
NR, Railway Station  
Aligarh.

.. Respondents

(By Sh.H.K.Gangwani, counsel)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The petitioner in this case was working  
as Chief Booking Clerk at Aligarh Railway Station  
on 13.6.1986 when he was transferred in the  
same capacity to Naini by the respondent No.2.

The petitioner preferred an appeal against

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the said order on 5.7.1986 pleading that there was no tenable ground for transferring him and requesting that the same may be cancelled keeping in view his family circumstances. Since no reply was received, the petitioner carried out the transfer order and joined at Naini on 10.12.86. However, he kept on representing for reversion to Aligarh and ultimately he was posted back to Aligarh, by Order dt. 5.7.89, from Mirzapur where in the meanwhile he had been sent on promotion.

2. The petitioner who had been allotted quarter No.143-B while posted at Aligarh, did not vacate it on the ground that no accommodation was provided to the petitioner at his new places of posting. On return to Aligarh he applied for regularisation of his accommodation but the same was refused on the ground that in terms of the standing instructions in respect of occupation and vacation of railway quarters only staff re-posted at the same station would be restored the priority if the re-transfer takes place within a period of 12 months. The petitioner states that respondent No.3 issued a letter on 12.10.89 asking him to vacate the retention said quarter failing which the / will be considered as unauthorised and besides charging of penal rent

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disciplinary action would also be taken against him. The petitioner submits that a number of representations were made by him against this order but the respondents did not react favourably and started recovering double the normal rent at the rate of Rs.85/- per month and then decided to recover the rent of Rs.1003.40 from the pay of the petitioner.

3. The main ground taken by the applicant is that the order of transfer from Aligarh to Naini was in contravention of the standing instructions of the Railway Board. He submits that he had been representing against the transfer order and ultimately the authorities had conceded his demand and re-posted him to Aligarh. In view of this there was no question of vacating residential quarter allotted to him at Aligarh. The 1d. counsel for the applicant in this context drew attention to the Board's letter dt. 14.1.75 ( Annexure A ) wherein with reference to its earlier letter dated 19.11.70, it was stated that the scheduled castes and scheduled tribe employees should be confined to their native district or adjoining districts or places where the Administration can provide that quarters and these instructions should be followed to the maximum extent possible, subject to the

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exigency of service. It was further enjoined in that order that employees belonging to S/C and S/T should be transferred very rarely and for very strong reasons only. (Emphasis supplied)

4. The ld. counsel for the applicant argued that the applicant being an employee belonging to the scheduled castes category should have been transferred only for very strong reasons and no such reason was adduced by the competent authority while issuing the transfer order. Furthermore it was also apparent of the Railway Board(supra) from the said order/that even when such transfers were ordered in very rare circumstances, the same were to be subject to the availability of residential quarters at the place of new posting. Since the authorities did not provide any quarter to the applicant at Naini or Mirzapur where he was subsequently transferred, the only inference, in view of the ld. counsel would be that the accommodation allotted to him at Aligarh could be retained, by him. The ld. counsel pointed out that though it was not specifically alleged against him, the applicant had come to know that some false and mischievous complaints had been made against him and therefore he had

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requested in his representation that the same may be investigated through a proper enquiry; since this was not done it was clear that the transfer order had been issued on the basis of unsubstantiated allegation by interested parties and such orders were therefore unjustified and illegal. The authorities had ultimately set right the injustice and brought the applicant back to Aligarh which action automatically justified the retention of the accommodation by the applicant. The 1d. counsel further submitted that the applicant was a low paid employee belonging to the scheduled caste and the authorities were virtually threatening half to take away/of his salary by way of deductions on account of rent.

5. The respondents have controverted the claim of the applicant. The 1d. counsel for the respondents highlighted the facts that the Railway Board's letter mentioned above does not place a total prohibition on transfer of SC/ST employees which is permitted if required in the exigency of service. He pointed out that for this reason, the transfer order could not be deemed to be illegal when through the movement of the applicant it had already been made effective to the new place of posting. The second posting to Mirzapur

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was also on account of the promotion of the applicant. The ld. counsel submitted that re-transfer to Aligarh was after an interval of 3 to 4 years and was made due to the request of the applicant made on compassionate ground.

He drew attention <sup>to Letter</sup> Board, regarding allotment of accommodation(Annexure R-1) which prescribes that the priority for allotment could be retained at the same station only if re-transfer takes place within a period of 12 months.

6. I have considered the arguments of the learned counsel on both sides and have also gone through the records. While it is correct that the transfer of SC/ST employees is to be made outside the native districts or adjoining districts only in very rare cases, this does not involve a total ban and the authorities can effect such transfers if made in the exigencies of service. Whether such an exigency existed in the case of the applicant is a matter to be judged by the competent authority <sup>and</sup>, cannot be questioned unless it can be shown that the transfer was made on extraneous considerations or due to malafide.

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There is nothing in the application nor in the argument of the learned counsel for the applicant which would indicate malafide on the part of the competent authority. Therefore, the applicant cannot seek the relief on the basis that the transfer was ~~ipso facto~~ unjustified and illegal. However, the applicant is relatively on stronger ground when he pleads that no quarter was allotted to him either at Naini or at Mirzapur. The clear implication of the Railway Board instructions of 1975(Annexure A-1) is that SC/ST candidates should not be transferred where they cannot be provided residential accommodation. The applicant alleges that no quarter was allotted to him at Naini or Mirzapur. This is not denied by the respondents. It would have been a different matter if the respondents had shown that accommodation was offered to him but he had refused to accept the same. In the circumstances it would appear to be a natural corollary of the 1975 Railway Board's Order that the applicant could retain <sup>his</sup> ~~their~~ the accommodation at ~~their~~ original place of posting. In the present case, the applicant has come back to Aligarh though after an interval of three years. The record further shows that though he was transferred from Aligarh in

1986, the first attempt was made to get the house vacated from him . . . only in January, 1989 vide letter dated 24.1.89 (Annexure A-6). Thus the authorities were either ~~mindful~~ of the problems of the applicant or lax in ~~their duties that they~~ <sup>took</sup> ~~no~~ action for nearly three years against him. In the circumstances, their action to declare the occupation unauthorised and to charge the <sup>on or</sup> ~~being~~ penal rent from the applicant ~~posted back~~ to Aligarh, raises a presumption against their ~~bonafides~~.

7. In the above circumstances, I find that while the order of transfer of the applicant cannot be questioned, the retention of the quarter by the applicant in Aligarh is justified in the light of the above order of the Railway Board of 1975 regarding the terms under which such a transfer ~~was~~ to take effect. This being so, it was ~~in~~ wrong on the part of the respondents to ask the applicant to stand again in the queue on his reposting at Aligarh and to wait his turn for allotment of a quarter.

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If the authorities were in a position to offer alternative accommodation at his new place of posting then the retention of the quarter at Aligarh would have been unjustified. In that event they should have taken action promptly for vacation of the quarter at Aligarh instead of waiting till the time, the applicant was re-posted back. The applicant states that the respondents have been charging double the normal rent i.e. Rs. 85/- per month. The respondents are directed not to charge the rent from the applicant higher than this for the period he was posted outside Aligarh and they should regularise the accommodation in favour of the applicant from the date he rejoined back at Aligarh. Since the applicant is stated to be due for superannuation within a period of six months, the respondents will issue necessary orders within a period of three months from the date of receipt of this order.

The D.A. is allowed as above. There will be no order as to costs.

*Recd by*  
*( R.K. Ahuja )*  
*Member (A)*

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