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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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O.A. NO. 2343/1991

DATE OF DECISION 13.11.91

SHRI S.N. SINGH

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM

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

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

FOR THE APPLICANT

...SHRI G.D. BHANDARI

FOR THE RESPONDENTS

...SHRI B.K. AGGARWAL

1. Whether Reporters of local papers may be allowed to see the Judgement? *je*

2. To be referred to the Reporter or not? *Y*

J U D G E M E N T

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

The applicant, A.S.M. working as Commercial Instructor, Zonal Training School, Northern Railway, Chandausi at the relevant time, filed the application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dt. 5.10.1991 (Annexure A-1) which is as follows :-

Northern Railway

Zonal Trg.School,  
Chandausi.

NOTICE

Shri S.N. Singh, Comm.Instructor, Zonal Trg.  
School, N.Railway, Chandausi is hereby spared on

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05/10/1991 forenoon on repatriation to report to Divl. Railway Manager, Northern Railway, Jodhpur for further orders.

His pay @ Rs.1560/- (Rate of Pay) upto 02/10/91 has already been charged by this office and onward be charged by DRM/Jodhpur.

He is allowed usual joining time.

This has the approval of General Manager, Northern Railway, Hd.Qrs. Office, Baroda House, New Delhi.

Sd/-  
(M.M. SINGHVI)  
Principal

Notice No: 21/Cokkl/Part.VII dated : 05/10/1991

Copy forwarded for inf. & N/Action to :-

1. S.P.I.(Union)N.Rly.Hd.Qrs./New Delhi.
2. CSS, SPD(T&C)/Hd.Qrs.Office,/New Delhi.
3. DRM & Sr.DAO/Jodhpur-The earlier spare orders dated :19/3/91 of the above named were pending as per HQrs.Order. He has now been spared with the approval of General Manager, N.Rly., New Delhi.
4. Sr.DAO/Moradabad.
5. Divl.Secretary, Northern Rly.Men's Union/Moradabad.
6. Chief Comml.Instructor, ZTS-CH for needful.
7. Bill Clerk, ZTS-CH.
8. Shri S.N.Singh, Comml.Instructor.(IN OFFICE.)  
Second Class Pass No:182575 dt :05/10/91 issued in favour of Sh.S.N.Singh, Comml.Instructor.Ex.CH-JU is attached herewith.

DA/DNE Duty Pass No :182575 dt.:05/10/1991(TRANSFER)

2. The applicant has claimed the following reliefs :-

To set aside and quash the impugned transfer orders dated 5.10.91 (A-1) being mala fide, arbitrary and badly vitiated and direct/command the respondents to allow the applicant to continue to discharge the duties of a Commercial Instructor in the interest of justice.

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3. The applicant has also claimed the following interim relief :-

In view of the facts and circumstances of the case, the enormity of the grievance and the hardships caused to the applicant by repeated transfer orders issued by the two competent authorities and the irreparable loss which will be resulting to the applicant and to his school going children also which is not possible to be compensated in terms of money, it is respectfully prayed that this Hon'ble Tribunal be kindly pleased to restrain the respondents from implementing the transfer orders of the applicant till the decision of this case or at least till the end of the school session or till the expiry of one year as stipulated in Railway Board's orders (4-8) in the interest of justice.

4. In para-7 of the Original Application, the applicant has stated as follows :-

"MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT"

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them."

5. The grievance of the applicant is that though he earlier joined in Jodhour Division as ASM in January, 1979, but on his request, he was transferred by the General Manager from Jodhour Division to the Zonal Training School, Chandausi as a Commercial Instructor in the existing grade and pay on ad-hoc basis. The applicant has been working since 8.9.1980 in the said institution. According to applicant, the Chief

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Safety Superintendent on behalf of General Manager (P) is the competent authority to effect transfer/promotion/posting/repatriation. It is also stated by the applicant that he was holding the post of Assistant Secretary, Northern Railway Men's Union (NRMU). The policy regarding the transfer of the staff has been very well laid down in various circulars issued by the Railway Board which makes it clear that mid school session transfers should be kept down to the minimum required in the interest of administration. Regarding transfers of office holders of the recognised unions, the Railway Ministry has also laid down very clearly that when it is proposed to transfer an office bearer of a recognised state union, sufficient notice of proposal for the transfer should be given to the union concerned. It is stated by the applicant that the Principal of the Zonal Training School, Chandausi has been harbouring illwill and animosity due to the trade union activities of the applicant, who has been in the front lines for espousing the grievances and cause of the Railway workers. Earlier also in November, 1987, the applicant was arbitrarily transferred, but the said order of transfer was quashed by the Central Administrative Tribunal. It is further stated that once again vide orders dt. 19.3.1991, the applicant was transferred by misusing the administrative powers, though respondent No.2 is not the competent authority nor the cadre controlling authority of

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the applicant as he himself is functioning on an ex-cadre post. Against this order of 19.3.1991, the General Secretary, NRMU took up the matter and the matter was kept pending. The respondents contested this application and raised a preliminary objection, wherein it is stated that the applicant has concealed the fact of his filing an earlier application No. 387/90 (L) before the Circuit Bench, Lucknow against the impugned order dt. 20.4.1990 which is also against the order of repatriation of the applicant to Jodhpur Division to which the applicant belongs. Respondents have filed a photostat copy of the Original Application in which respondents Nos. 2 and 3 are the same as in the present application. The impugned order shown in that case is dt. 20.4.1990 and the grievance of the applicant is repatriating the applicant to the parent division from Zonal Training School, Northern Railway, Chandausi. The relief claimed in the application filed before the Circuit Bench, Lucknow is that the order dt. 20.4.1990 be quashed and direct the respondents to confirm the applicant against the post of Commercial Instructor in Zonal Training School, Chandausi and to give him seniority w.e.f. the date of his first joining the said post with all other consequential and incidental benefits as if the applicant belongs to the cadre of Commercial Instructor. In that application filed in Lucknow, Circuit Bench, the applicant has also claimed the interim relief that the respondents may be directed not to revert the applicant to his parent department pending a decision of the application. The

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applicant in para-23 of this application has clearly stated that a fresh bid has been made vide order dt. 19.3.1991 (Annexure A-12) to transfer the applicant. This order dt. 19.3.1991 is on the subject of repatriation of Sh.S.N.Singh Commercial Instructor, Zonal Training School, Chandausi to his parent division, i.e., Jodhpur Division. This letter is in continuation of the office letter dt. 20.4.1990 which has been challenged by the applicant in the DA 337/90 before the Circuit Bench, Lucknow. This letter dt. 20.4.1990 has been issued under the authority of the Railway Board's letter dt. 20.3.1989. The letter imputed in this application dt. 3/5.10.1991 is only sparing the applicant from the forenoon of 5.10.1991 on repatriation to report to Divisional Railway Manager, Northern Railway, Jodhpur. The copy of this imputed letter dt. 5.10.1991 has been forwarded to DRM and Senior DAO of the Jodhpur in which it is written that "the earlier spared orders dt. 19.3.1991 of the above named were pending as per Head Quarter's orders. He has now been spared with the approval of the General Manager, Northern Railway, New Delhi." The order dt. 19.3.1991 referred to by the applicant in para-23 of the application clearly mentions about the order dt. 20.4.1990. Thus there is a cause of action which has arisen from the order dt. 20.4.1990 which has been challenged by the applicant before the Circuit Bench, Central Administrative Tribunal, Lucknow. The order

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dt. 20.4.1990 clearly mentions that under Railway Board's direction, the applicant, Shri Singh and five others are to be repatriated to their parent division soon. "Those who want to be spared early due to scholastic session or otherwise should apply immediately." This is at p-26 of the paper book. Thus the preliminary objection of the respondents is that the present application is not maintainable as the earlier application filed with No.387/90 before the Circuit Bench, Lucknow in November, 1990 covers the same subject matter of the grievances of the applicant.

6. We have heard the learned counsel at length. Confining to the preliminary objection, it is evident from the record that the applicant has approached the Circuit Bench, Lucknow sometimes in November, 1990 for getting the orders of repatriation dt. 20.4.1990 cancelled. This letter dt. 20.4.1990 is regarding repatriation of the applicant to his parent division, i.e., Jodhpur Division where the applicant was appointed in 1979 as ASM. After filing this Original Application before the Circuit Bench, Lucknow, the matter of the applicant was taken up by the General Secretary, NRMU and finally the Railway Head Qrs., Baroda House by the letter dt. 3.10.1991 (Annexure R-4, p-46 of the paper book) upheld the repatriation order. It is in

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pursuance of this order of the Railway Head Quarters that the impugned order dt. 5.10.1991 was issued. Thus the cause of action that has arisen to the applicant by the order dt. 20.4.1990 and by subsequent orders of 19.3.1991 mentioned in para-23 of the application and by the impugned order is <sup>basically</sup> the same. Thus the applicant has deliberately concealed the fact from being mentioned in para-7 of the Original Application quoted above. The applicant, therefore, has not come with clean hands. The applicant should have disclosed this fact that his repatriation to the Jodhpur Division has been challenged by way of an application before Circuit Bench, Lucknow and that Original Application has also been admitted as is evident by Annexure-1 to the counter by the order of the Bench dt. 4.3.1991 which reads as follows :-

"Heard the learned counsel for the applicant.

Admit.

Issue notice to respondents to file a counter affidavit within four weeks to which the applicant may file rejoinder within two weeks thereafter. List before D.R.(3) on 22.4.1991 for completion of pleadings and thereafter to fix for final hearing.

As regards interim relief, the same is rejected at this stage."

7. The second point that comes is whether the present application is maintainable in view of the earlier application filed No.337/90 before Circuit Bench, Lucknow. The learned counsel has relied on the authority of AIR 1974 SC 1320 Division

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Bench that this present application is not barred by principles of res judicata in as much as the applicant has challenged there the order of repatriation dt. 20.4.1990 while in the present application, the applicant has challenged the order of being spared by the impugned order dt. 5.10.1991. The applicant has himself contended in the application as well as the learned counsel for the applicant has filed certain papers to show that the applicant has not been relieved and the impugned order dt. 5.10.1991 has not been carried out while it is evident from the record that order of 5.10.1991 is based on the earlier orders of 20.4.1990 as well as 19.3.1991. Thus two proceedings cannot be drawn by the applicant at two different places and the applicant was within his right to seek amendment of the Original Application filed before the Circuit Bench, Lucknow to bring about the same application in line with the changed circumstances, as the applicant has been spared only in pursuance of the letter dt. 20.4.1990 challenged before the Circuit Bench, Lucknow. The applicant, therefore, cannot draw two parallel proceedings at two different places, one in the Circuit Bench at Lucknow and the other at the Principal Bench, Delhi. The present application, therefore, is not maintainable as already the applicant has filed an application almost for the same relief before the Circuit Bench, Lucknow and the interim relief claimed in this application is almost the same as has been rejected by the Circuit Bench, Lucknow by the order dt. 4.3.1991.

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8. The learned counsel for the applicant also vehemently argued that the counter filed by the respondents cannot be read as such because the verification clause of the said counter is defective. We have considered that aspect also, but that defect is only of formal nature. Shri S.C.Sharma, Vice-Principal, Northern Railway has verified the contents of the reply on the basis of his knowledge and belief and upon legal advice. The knowledge may have been drawn by the verifier, Shri Sharma from the records. That to our mind is not fatal defect. Though learned counsel has referred to a judgement on the Review Application in Union of India Vs. R.K. Kapoor decided on 3.11.1989 by the Principal Bench holding the defective verifications as fatal. However, no copy of that order has been filed. The language of the verification used in the counter is clear and unambiguous and the knowledge which has been referred to by the verifier can very well be attributed to a knowledge drawn from the records. In any case, the verifier has verified the contents of para-1 of the preliminary objection upon information received and believed to be correct. It is only para-1 of the counter regarding the preliminary objection which is being considered regarding maintainability of the present application.

9. Though we have also heard the learned counsel on merit, but we refrain to enter into the merits of the case for the

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simple reason that the matter is pending before another Bench of the Central Administrative Tribunal at Lucknow and the matter involved in that earlier instituted application No.387/90 is almost the same as in the present application No.2343/91 of the Principal Bench. We cannot usurp the jurisdiction of Circuit Bench, Lucknow and any discussion by us may prejudice the respective stand of the parties in that case. The applicant has concealed all these facts and he has not come with clean hands.

10. In view of the above discussion, we find that the present application is not maintainable and is dismissed not on merits, but on the preliminary objection raised by the learned counsel for the respondents leaving the parties to bear their own costs. A copy of this judgement will be sent by Registry to the Additional Registrar, Circuit Bench, Lucknow alongwith the copy of the present Original Application to place on record on the file of CA 387/90(L)- S.N. Singh Vs. JBI and Another.

*Jommap*

(J.P. SHARMA) 13.11.91  
MEMBER (J)

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(D.K. CHAKRAVARTY)  
MEMBER (A) 13/11/91