

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH.
NEW DELHI.

Date of Decision: 27.05.1992

OA 733/92

HEMANT JOYAL

... APPLICANT.

VS.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

For the Applicant

... SHRI P.L. MIMROTH

For the Respondent

... SHRI H.K. GANGWANI

1. Whether Reporters of local papers may be allowed to see the judgement ? *yes*
2. To be referred to the Reporters or not? *yes*

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

The applicant is working as PTI in the teaching staff of Oak Grove Boys School, Jharipani, Dehradun (UP), and has assailed his transfer order dated 7.2.92 passed by the General Manager (P), Northern Railway, Baroda House, New Delhi transferring him to Northern Railway High School Bareilly and one Shri C.N. Nautiyal in his place transferred to Jharipani in the said School.

The prayer of the applicant is that the said transfer order be quashed and he be allowed to

serve as PTI in the Oak Grove School, Jharipani.

The facts of the case are that the applicant applied on the basis of advertisement annexed to the counter as R-1 for the post of PTI Teacher in Oak Grove School, Jharipani and he was selected by the order dated 6.7.89 and joined the post on 31.7.89 in the said school. The appointment letter issued to the applicant is annexed to the application (Annexure A-4) and is reproduced below:-

"Shri Hemant Juyal, BA B.Ed s/o Shri C.P. Juyal having been declared fit by ADM, Northern Railway, Delhi and having reported for duty as appointed as a PTI in grade Rs.1400-2600 with effect from 31.7.89(FN) in terms of G.M.(P), N.R., Baroda House, New Delhi letter No.220-E/1317-III(E VI) dated 20.7.89 on the starting salary of Rs.1400.00 p.m.

In addition to pay and allowances Shri Hemant Juyal will be invited to take free lunch in the school mess with the children and given a rent free partially furnished accommodation for self only during the school session as per school rules in force from time to time.

Probation: One year extendable to two years."

The condition of the appointment goes to show that the applicant during his posting in the said institution shall be provided sharing at the cost of the institution, mid day meal with the children and also with boarding facilities. Further it is also stated that children of such a person can also be given education at concessional rates along

with the other wards of the institution. The applicant has assailed the transfer on the ground that it is malafide; that it has been effected to accommodate Shri C.N. Nautiyal who was recently transferred (December, 1991) from Tundla to Bareilly to Jharipani; that the said transfer order is malafide to reduce the emoluments and perks payable to the applicant while working in the institution during his posting which he will not be drawing by joining the post in the institution where he has been transferred i.e. Railway School, Bareilly. It is also stated that as per Govt. instructions that if the wife is also in a Central or State Govt. service, then both may remain as far as possible at the same place of posting.

The respondents, however, opposed this application on the ground that the posting in the institution has all India liability as was clearly laid down in para-14 of the advertisement issued for calling the applications for appointment to the said post. It is further stated that Shri Nautiyal was transferred from Bareilly to Jharipani at his own request. It is further maintained in the counter that if the applicant desires that his wife being in a Public Sector Undertaking i.e. LIC may also get herself transferred to the same place i.e.

Bareilly where the applicant has been transferred by the impugned order.

The learned counsel for the respondents also referred to the counter drawing attention to para 4.8 that the applicant was under suspension also and that since the applicant's wife is posted at Dehradun he is sometimes habitually late comer or absentee from the institution.

The applicant has filed the rejoinder replying the contentions stated in the counter parawise and denying the contents of para 4.6 & 4.7 of the counter.

I have heard the learned counsel for both the parties at length.

After various judgements which have come on the matter of transfer i.e. U.O.I. Vs. H.N. Kritania, 1989(3) SCC 445; Gujarat Electricity Board Vs. Atma Ram Sungomal Poshani, 1989(2) SCC 60; Kamlesh Trivedi Vs. UOI 1989(1) SLJ 641. The scope of this Tribunal to interfere is limited only the following cases:

i) When the transfer is malafide i.e. it is not in the exigencies of service or on

administrative grounds giving very much as a punitive transfer with pre-notions to shift such person to accommodate another person (E.P. Royappa Vs. State of T.N., AIR 1974 SC 555.

- ii) When the transfer is effected to reduce the pay, perks and emoluments by transferring a person from one place to another where if such incumbent joins his pay pocket will be somewhat reduced.
- iii) Where the rank and status of the person is effected.
- iv) When it is in the breach of rules or established guidelines being observed as convention and precedent earlier.

While the judgement was being dictated the learned counsel for the respondents again pressed to bring to the notice the contentions raised in para 4.5,6 & 7 of the counter. However, the learned counsel could not answer the querry as to why Shri C.N. Nautiyal who was lately transferred from Tundla to Bareilly in December, 1991 was again picked up at his own request, for transfer to Jharipani uprooting the applicant from Jharipani where in Dehradun his wife is already posted in PSU. The learned counsel wanted some

time, but the request should have come earlier if he was not prepared on that account.

It cannot be disputed that when a person joins all India service of the nature as the Railways then he must be knowing the fact that he has to move from place to place when he has to be transferred in the interest of administration and in the exigencies of the service. Though the learned counsel for the applicant has referred to the averment made in para 4.5 of the application that in the history of this school i.e. Oak Grove School, Jharipani since last 104 years no teacher has been transferred to other institution run by the Railways in other parts of the country. The respondents in reply in their counter have not specifically denied this fact. If the applicant is the first person to break that convention, then there should be some reason behind it. The learned counsel for the respondents refers to para 4.5 of the counter that the applicant was not efficient in discharging of his duties neglecting the same either by coming late or absenting himself. But no such documentary evidence is annexed to the counter. Even once the applicant was suspended, but that suspension has also been revoked. If the applicant is delinquent and not performing his duties, the long hands of administration can

correct him under Disciplinary & Appeals Rules, 1968 which cover the Railway employees. But that cannot give a right to the respondents to pick and choose one person at his own request from Bareilly and post in place of the applicant to his disadvantage. The transfer in such event may also be, if not accurately, to some extent to be called a punitive one.

The respondents have totally ignored that the earlier Principal on the retention of the applicant has written to the Headquarter that the transfer of the applicant be cancelled and a photo copy of the same is annexed as Annexure-8 to the rejoinder. The respondents or their counsel could not make reply to this recommendation of the Principal to the Chief Personnel Officer, Baroda House. If the applicant was not doing his work properly, then the Principal of the institution will not have recommended the stay or cancellation of the transfer of the applicant.

The case of the respondents hinges mainly on the fact that the transfer has been effected because the applicant belongs to a transferable post with all India transferable liability. The nominal tenure which a person has to complete in institution has not been mentioned

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either by the applicant or by the respondents. But the fact remains which the applicant has clearly averred that since the history of this school, no transfer has been effected to any other institution of the teachers and who once joined the institution, retired from the same on superannuation.

Giving a careful consideration to all these aspects, it is not necessary to deal with the matter any further. It is evident from the record that the transfer of the applicant has been effected by the respondents only to accommodate Shri C.N. Nautiyal from Bareilly and that too, at his own request. The transfer of the applicant, therefore, to join at Bareilly in the place of Shri Nautiyal in the Northern Railway Boys High School cannot be said to be in the interest of administration or in the exigencies of the service. On a careful scrutiny of the above facts, it is found that the transfer is malafide and liable to be interfered with.

In view of the above discussion the application is allowed and the order of transfer of the applicant dated 7.2.92 from Oak Grove School, Jharipani to Bareilly Boys School is quashed and the respondents are directed to continue the posting of the applicant in the same institution.

It is also not evident whether the applicant has been relieved or not. The matter is in controversy, however, this issue is left open.

The respondents to comply with this order within a period of one month from the date of receipt a copy of this order. In the circumstances, the parties shall bear their own costs.

J. P. Sharma,
27.5.92

(J.P. SHARMA)

MEMBER (J)