

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 12th day of May 1997.

Original Application no. 423 of 1996.

Hon'ble Mr. S. Dayal, Administrative Member.

Hari Prasad, S/o Sri D.R. Prasad, R/o 696-A, Loco Colony, Allahabad. Presently: Working as Senior Compilation Clerk/Family Welfare Centre Northern Railway Hospital, Allahabad.

... Applicant

C/A Sri S.C. Budhwar
Sri A.K. Sinha.

Versus

1. Union of India
Through :
General Manager (P), Northern Railway
Baroda House, New Delhi.
2. Chief Medical Director
Northern Railway, Baroda House,
New Delhi.
3. Chief Medical Superintendent
Northern Railway,
Allahabad.
4. Division Railway Manager,
Northern Railway, Allahabad.
5. Bimal Chandra
District Extension Educator
Loco Hospital, Kanpur.

... Respondents

C/R Sri Avinesh Tripathi
Sri B.B. Paul.

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O R D E R

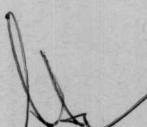
Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks the following reliefs through this application:-

- i. An order or direction to set aside notice dated 03.04.96 promoting the applicant and three other Senior Compilation Clerks in the scale of Rs. 1400-2300 to the post of Extension Educator in the scale of Rs. 1600-2600 at various places.
- ii. An order or directions to the respondents not to transfer the post of Extension Educator Allahabad to New Delhi.
- iii. An order or direction to post the applicant as Extension Educator at Allahabad.
- iv. An order or direction to the respondents to pay penal interest on the arrears of salary, and
- v. Award cost of the application.

3. The applicant has alleged that the post of ^{Extension} District ~~Education~~ Educator which has been sanctioned by the Railway Board at its headquarter office at Delhi has been transferred to Kanpur and one post of Extension Educator has been transferred from Allahabad to New Delhi. This has been done not in the interest of family welfare work but to help Sri Bimal Chandra who has been posted at Kanpur. The post of Extension Educator at New Delhi, would be utili-

sed after its incumbent Sri Ramji Lal retires on 30.4.96

^{Sri} to ~~the~~ post one Rajjan, who is selected at one place below the applicant in the panel, at Allahabad. The applicant has mentioned that the revised set up of family welfare orginasition of Northern Railway has post of District Extension Educator at its headquarter in New Delhi and seven posts of Extension Educators at the family welfare cnetres at Allahabad, Bikaner, Delhi, Kisanganj, Ferozepur, Jodhpur, Lucknow and Moradabad. The applicant claims that he was deprived of posting at Allahabad in January, 1996, when the incumbent was transferred to Lucknow and the applicant was not given a chance to officiate on ad-hoc basis. Now he is being posted outside Allahabad when his children are receiving education at Allahabad and his family would be put to inconvenience if he leaves Allahabad.

4. The arguements of Sri S.C. Budhwar for the applicant and Sri B.B. Paul for the respondents have been heard and the pleadings on record have taken into consideration. The learned counsel for the applicant contended during the arguements that the Chief Medical Officer had no authority to transfer the posts of District Extension Educator and Extension Educator to places other than those for which they were created. He also contended that transfer in order to accomodate can not be considered to be in public interest and can not be sustained. The learned counsel for the respondents on the other hand has maintained that the respondents have full authority to determine the post and place where an official to be promoted can be best utilised and the posting of the applicant had been done correctly. As regards the functioning of the Respondent no. 5 at Kanpur

was concerned, it has been mentioned that the post of District Extension Educator was operative at Kanpur since 18.04.90 and Respondent no. 8 was working on this post since that date and that he was given "Performance" (proforma ?) fixation of pay with effect from 01.04.88. It is mentioned in the counter reply that all the officials on the panel were transferred from their earlier station on promotion as Extension Educator barring Sri Ramji Lal because Shri Ramjilal was due to retire on 30.04.96.

5. The law on transfer has been laid down by the Apex Court in a number of recent judgments and is now well settled. The applicant can not claim a posting at Allahabad as of right on any ground mentioned in the application. The question of ad hoc posting is no longer under consideration as regular promotions have been ordered. In any case even if he had been posted on ad-hoc basis in January 1996, he could not have claimed posting after regular promotion at Allahabad as of right. The fact that he was the senior of the two officials posted at Allahabad who have been promoted as Extension Educator does not entitle him to a posting at Allahabad. The fact that some other District Extension Educator/Extension Education have been given posting of their choice also does not confer any right to him to be posted at Allahabad. The transfer order dated 3rd April can not be considered to be a mid academic session transfer and in any case posting or promotion does not attract any bar even if it results in mid academic session transfer. Transfer is an incident of service and judicial review would be warranted only if transfer is statutorily prohibited or malicious. There is no bar of statute in this case. The question of

malice has been alleged and is examined in the ensuing paragraphs.

6. The pleadings in this case give an impression that the respondents were arbitrary in not considering the representation of the applicant. The averments of the respondents is that the post of the District Extension educator is operative at Kanpur since 18.04.90 shows only that the post has been continued at Kanpur since that date. The respondents have annexed order of the Railway Board dated 25.11.94 which abolished the entire Family Welfare Orginasion at Kanpur Family Welfare Centre. There is nothing in the pleadings to show how and by whose orders the post of District Extension Educator was continued at Kanpur after 25.11.94. Besides it is clear that Sri Bimal Chandra was transferred to the Zonal Headquarter at Baroda House, New Delhi vide order dated 3.8.95 but was allowed to continue dated 3.4.96 at Kanpur and was transferred by impugned order to Allahabad. The post of Extension Educator, Allahabad was transferred by the impugned order to the Zonal Headquarter Office at New Delhi in order to promote Sri Ramjilal locally as he was to retire in the same month as mentioned by the respondents in the counter reply. This shows that the Railway Administration is willing to oblige some officials to the extent of transferring the posts to accommodate the employees while others are not even given a reply in case they make a representation. The post of Extension Educator was transferred from Allahabad to Delhi only to give promotion to the Ramjilal for a period of twenty seven days and should have been available in Allahabad in May. Yet we are told in the counter reply that because Sri Bimal Chandra joined his duties

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in Allahabad no other post of Extension Educator was vacant. This can not be accepted at its face value as Sri Bimal Chandra joined on the higher post of Distt. Extension Educator which was earlier located at Kanpur and shifted from Kanpur to Allahabad. There is a manifest arbitrariness in the treatment given by the respondents to the applicant in the light of the above facts.

7. Normally the transfer of posts from one place to another would have been accepted as done in public interest. But in the facts and circumstances of the case, such a conclusion can not be drawn. The applicant has questioned the authority of the respondents to transfer the posts in order to give benefit to individuals in paragraph 4.13, 4.15, and 4.16 of the OA. The respondents in their counter reply have not given/specific reply to this averment but have stated that the respondents had full authority to transfer the applicant to Ferozapur. The applicant has alleged in para 18 that his representations dated 25.1.96, 27.2.96 and 13.3.96 have not been considered at all by the respondents. The respondents have chosen to keep silent about this in their counter reply. The applicant has alleged in paras 4.11 and 4.12 of his OA that Sri Rajjan has not been posted in the first order although vacancies were available so that he could be locally accommodated at Allahabad after the impugned transfer order was implemented. Although the respondents have denied this but they have not come with any explanation as to why Sri Rajjan was not promoted along with others. The applicant in paragraph 4.19 of the application has stated that the post of Extension Educator at Allahabad was lying vacant. The respondents in paragraph

12 of the counter reply have stated that the post was not vacant because Shri Bimal Chandra had joined duties at Allahabad and no other post was available in Allahabad Division because Kanpur centre had been closed down. This reply is not consistent with the facts as Sri Bimal Chandra is stated to have joined on the higher post of District Extension Educator and the post of Extension Educator was transferred to Delhi to give promotion in New Delhi itself to Sri Ramji lal who was to retire on 30.4.96. Therefore, this post should have been available slightly later in the month of May at Allahabad. In any case it can not be said that a conscious decision had been taken by authorities having jurisdiction to permanently exchange a higher level post existing at Zonal headquarter with a lower level post existing at divisional level. Therefore, the expectation of the applicant that the post would be available in Allahabad in May 1996.

8. Taking into account the fact that the allegation transfer of post that of Extension Educator was without jurisdiction has not been specifically denied by the respondents as also non inclusion of Sri Rajjan in the list of promotion made inspite of availability of posts and the non consideration of the representation of the applicant, the transfer of the applicant on promotion without consideration of and reply to his representations appears to be motivated. This is stark contrast to the action of the Railway Administration to post some officials of family planning organisation of Northern Railway at places of their choice. The Railway Administration as an enlightened employer should have considered the representation of the applicant and taken a view about

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posting of the applicant after giving a reply to him.

9. In view of the findings arrived at in the last paragraph the transfer of the applicant made under impugned order dated ~~3.4.97~~ 3344966 is set aside. The applicant may send his representation to the Chairman, Railway Board, within thirty days of pronouncement of this judgment and the Chairman, Railway Board, shall consider and give a reply within two months of receipt of such a representation before asking the applicant to proceed to his place of posting on promotion.

10. There shall be no order as to costs.

Member-A

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