

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1080 of 1996

Allahabad this the 16th day of Jan 1997

Hon'ble Dr. R.K. Saxena, Member 'Jud.'

Parvati Devi W/o Late Shri Badri Prasad R/o 517-G,
Jamuniya Bagh Railway Colony, Northern Railway, Kanpur.

Applicant.

Shri B.N. Misra, Advocate for the applicant.

Versus

1. Union of India through its Secretary, Ministry of Railway, New Delhi.
2. Divisional Railway Manager, Allahabad.
3. Chief Instructor Electricity Training Centre, Northern Railway, Kanpur.
4. Divisional Personnel Officer, Northern Railway, Allahabad.

Respondents.

By Advocate Sri A.K. Gaur.

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

The applicant has filed this O.A, seeking the relief that the transfer order dated 12.8.1996 and the information of which was given on 24.8.96, be quashed.

2. The brief facts of the case are that the applicant was appointed on compassionate ground as Group 'D' employee in the office of Divisional Medical Officer, Tundla. She had represented for her transfer on the ground that her daughters were living at Kanpur. Besides, her blind mother was ^{also} living with her. She was, however, transferred from Tundla to Kanpur vide order dated 14.9.88. She was posted in the office of Principal Electricity Training Centre Northern Railway Fazalganj at Kanpur.

3. It is stated that she was again transferred from Kanpur to Mugalsarai vide order dated 12.8.96(ann.-1). The respondents acted in such a haste that the applicant was relieved on 24.8.96 through annexure-3. Not only this, Mugalsarai office was also informed through letter annexure-4 on the same date. It is averred that this transfer is illegal because Group 'D' employees cannot be transferred from one place to another, but in violation of the said rule this transfer has been made. It is further contended that the representation which was made by her, was kept pending and no decision was taken. According to the applicant, the complaint was made against Chief Instructor, Electricity Training Centre for demanding Rs.15,000-00 for her appointment on compassionate ground. The inquiry against the Chief Instructor was going on and ⁱⁿ another order to deter the applicant, the transfer is claimed to have been made. Feeling aggrieved by the impugned order, the O.A. with the aforesaid relief has been filed.

4. The respondents have contested the case and it is averred that the applicant was transferred on administrative ground and she was relieved on 24.8.96. Because the applicant had refused to accept the transfer order, all the papers were sent to the Mugalsarai office. It is also contended that the posting at a place of choice, cannot be sought by the applicant as of right. It is denied that the order of transfer is based on malafides or is punitive in law. It is also averred that the representation of the applicant was decided.

5. The applicant filed rejoinder, in which all those facts and points which were mentioned in the O.A., were re-affirmed. It is emphasise^d that the applicant belongs

to Group 'D' employee and, therefore, she was not liable to be transferred from one place to another.

6. I have heard the learned counsel for the parties and have perused the record.

7. There is no dispute that the applicant was appointed on compassionate ground because her husband had died. It is also averred by the applicant in the O.A. and rejoinder that she is supporting her blind mother and three daughters of whom Km. Aruna and Km. Shakuntha are of 18 and 16 years of age respectively. The applicant has produced annexure H.A-1 along with rejoinder to show that the complaint of demand of Rs. 15,000-00 for getting her appointed, was made by the applicant and the said inquiry was going on. The Inquiry Officer - Shri S.N. Shukla had written a letter on 07.9.1996 to appear before him along with the evidence in support of the complaint. The case of the applicant is also that she had represented to the respondents for cancellation of her transfer but the representation remained pending. It has been averred on behalf of the respondents that the representation of the applicant was decided but it has not been mentioned as to what was the result of the decision and what was the date of the decision. Even the copy of the decision has not been brought on record. It is, therefore, indicated that the representation was either not decided at all, or if it was decided, the result was not communicated to the applicant.

8. The question arises whether the transfer is justified or not. The fact that the applicant is supporting her blind mother because no other child is there to support the old mother. She is also having three

daughters, of them two are quite adult. The learned counsel for the applicant argues that because of these problems, the applicant had sought transfer from Tundla to Kanpur. Since Tundla was the place of first posting she could not deny the same but as soon as she joined there, she had made efforts and was subsequently transferred to Kanpur. The learned counsel for the respondents, no doubt, argues and legally it may sound well that an employee cannot seek posting of his or her choice. Despite this fact, the other points cannot be ignored. One can imagine the pitiable condition of the employee when he or she is to support blind mother and ^{three} ~~two~~ young daughters ^{who} are dependent on her. In these days, it is not possible to trace out a residence easily and that too on reasonable rent. The applicant who is a widow and nobody else is there to look after her old mother and ² ~~three~~ young daughters, it is really a matter of concern to the applicant. This is factual aspect but at the same time, it cannot be ignored. I do not know as to what order was passed in the disposal of representation even ^{if} ~~it~~ it was decided at all. The controlling authority should have taken this aspect into consideration. Had it been a case of father of those girls, the position may have been different but when the applicant is a widow, it should have been considered before ordering her transfer or before disposing of her representation.

9. Now I come to the legal aspect. The applicant has asserted that she had made a complaint against the Chief Instructor of Electricity Training Centre because he had demanded Rs. 15,000-00 for her appointment. The inquiry is going on and Inquiry Officer had asked the applicant to produce the evidence. The date fixed was

09.9.96. It may be kept in mind that order of transfer was made on 12.8.96. The respondents particularly respondent no.3 did not seek any opportunity to file any supplementary counter-reply and to controvert this allegation. It means ^{that} there may be some grain of truth in this complaint. Anyway, it is evident that if transfer order is looked through this angle, the malafide on the part of the respondents in general and respondent no.3 in particular is self evident. Here again, it may be looked into if Class IV employee can be transferred. Their Lordships of Hon'ble Supreme Court in the case 'State of Madhya Pradesh Vs. Shankar Lal and others 1980(1) S.L.R. 461' held that the power of transfer in the case of employees getting small emoluments should be sparingly exercised under some compelling exigencies of a particular situation and not as a matter of routine. It was further observed that ^{if it} were to be liberally exercised, it would create tremendous problems and difficulties for the employees getting small salaries. Thus, I also feel that the impugned order of transfer of the applicant suffers from malafides and cannot be allowed to sustain in the eye of law on the grounds as are mentioned above. Besides, the applicant deserves a sympathetic consideration because of the support which is being rendered by her to her blind mother and ² ~~three~~ young daughters. Even on humanitarian ground, the controlling authority ought to have cancelled the order.

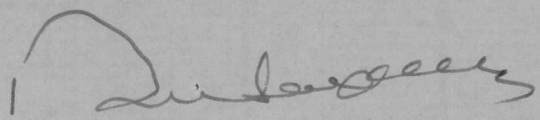
10. In view of the facts and circumstances as

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discussed above, the O.A. succeeds. The transfer order dated 12.8.1996 is quashed. No order as to costs.


(Dr. R.K. Saxena)
Member Judicial

/M.M./