

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALIAHABAD.

Allahabad this the 18th day of September 1996.

Original application No. 606 of 1996.

Hon'ble Mr. D.S. Baweja, AM

R.S. Verma, aged about 54 years,
S/O. Late Sri R.D. Verma, Working
as ACM, Central Railway, Jhansi.

..... Applicant.

C/A Sri M.P. Gupta

Versus

1. The Union of India through the General Manager, Central Railway, Mumbai Shivaji Terminus.
2. The Chief Personnel Officer, Shivaji Terminus, Mumbai (Central Railway).
3. The Divisional Railway Manager, Central Railway, Jhansi (U.P.)

..... Respondents.

C/R Sri G.P. Agarwal

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed being aggrieved by the impugned order dated 30.4.96 transferring the applicant from Jhansi to Sholapur with a prayer to quash the same and continue the applicant at Jhansi.

2. The applicant has set out his case as under:-
The applicant joined North Eastern Railway on 20.10.1967.
Subsequently the applicant was promoted in Group B service
The applicant made representation to the Railway Board

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for transfer to Central Railway on the consideration of looking after his widowed old mother at Jhansi. This was accepted and ~~he~~ was ordered to be transferred to Central Railway vide Railway Board's letter dated 26.11.1990. The applicant on transfer joined Central Commercial Railway in Feb'1991 at Bombay as Assistant/Manager (Claims) with bottom seniority. Immediately the applicant made representation to the Chief Commercial Manager requesting for transfer to Jhansi. The request of the applicant was considered and he was transferred to Jhansi Division. He joined at Jhansi as Assistant Commercial Manager (Claims) in March 1993. One Sh. V.K. Shukla who was working as Assistant Commercial Manager at Jhansi for more than five years was transferred to Sholapur Division vide order dated 15.3.96. Sh. Shukla did not carry out the transfer and this order was modified posting him at Jhansi in place of Sh. Y.K. Singh who was on sick leave. However the ~~Divisional~~ Railway Manager did not allow him to join in the place of Sh. Y.K. Singh. The order was again ~~modified~~ ^{modified} transferring Sh. Y.K. Singh to Sholapur and posting Sh. Shukla at Jhansi. Divisional Railway Manager again did not relieve Sh. Y.K. Singh and also did not allow Sh. Shukla to join at Jhansi. This order was also modified and instead of Sh. Y.K. Singh, the applicant was transferred by the impugned order dated 30.4.96 to Sholapur and Sh. Shukla posted back at Jhansi in his place. Being aggrieved by this transfer, the applicant has filed the present application on 27.5.96.

3. The applicant has assailed the tranfer order on the ground that the applicant has been transferred

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merely to accommodate Mr. V.K. Shukla and the transfer of the applicant is not in the administration's interest. The transfer was in the interest of Sh. Shukla and reasons for retaining Sh. Shukla have not been disclosed. Therefore the action of the respondents in transferring the applicant is arbitrary, discriminatory, malafide and colourable exercise of power. The applicant has cited the following judgements in the support of his contentions:-

- i. Abdul Muttalib Vs. State of Bihar 1986 LAB I.C. 635 (Patna High Court)
- ii. D.R. Sehgal Vs. Chief Post Master General (1991) 15 ATC 36 (Ahmedabad Bench)
- iii. G.C. Kaushal I.P.S. Vs. U.O.I. (1998) 8 ATC 1993 (Chandigarh Bench)

4. The respondents in the counter reply have opposed the application stating that the allegations made by the applicant are without basis. Transfer is an exigency of the service and the transfer has been done in the interest of Administration and this action is not discriminatory, arbitrary and malafide. The applicant being gazetted officer has to serve anywhere within the jurisdiction of Central Railway and the competent authority is the best judge for posting as per Administrative requirement. Sh. Shukla has not spent five years at Jhansi in the same post of Assistant Commercial Manager but on different posts. The allegation that Sh. Shukla has managed to get his transfer order cancelled is unfound as Sh. Shukla has no power to decide and the transfer has been ordered by the competent authority on due consideration of the matter in the interest of the Administration. No malafide has been alleged against the

competent authority ordering the transfer. The applicant has approached the Tribunal without availing the departmental remedy and thus the application is premature and not maintainable as per the provisions of Section 20 of the Administrative Tribunals Act 1985. In view of these facts, the application deserves to be rejected. The respondents have sought the support of their contentions through the judgement "B. Varadha Rao Vs. State of Karnataka and Oths" (1986) 4 Supreme Court cases 131.

5. Vide order dated 3.6.96, it was directed that the operation of the transfer order shall remain stayed till the next date. This stay was extended further and remained operative during the pendency of the application till the date of judgement.

6. Heard the learned counsel for the parties. I have given careful thought to the pleadings and arguments made during the hearing and the material placed on the record.

7. The law relating to the transfer has been clearly laid down by Hon'ble Supreme Court in several judgements. In this connection we refer to the judgement in "B. Vardha Rao Vs. State of Karnataka & Oths." (Supra) cited by the respondent, wherein it is held that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another place is an ordinary incident of service. No government

post unless his servant can claim to remain in a particular appointment itself is to a specified non transferable post. Therefore a transfer order ~~per se~~ made in the exigencies of service does not result in alteration of any of the conditions of service express or implied to the disadvantage of the concerned government servant. However a transfer order which is malafide and not made in public interest but made for collateral purpose with oblique motives and in courable exercise of power is vitiated by abuse of power and is open to challenge before court being wholly illegal and void.

8. We will examine the transfer order to find out whether the same is vitiated by any of the grounds detailed above. The main contention of the applicant is that he has been transferred merely to accommodate Sh. V.K. Shukla and the transfer is not in the administrative interest and is therefore arbitrary, discriminatory and malafide. The respondents on the other hand have contested these contentions stating that the transfer has been done in the interest of the administration and on no other consideration as alleged by the applicant. These rival contentions need to be viewed in the light of the frequent changes in the transfer orders. Sh. V.K. Shukla was first transferred to Sholapur vide order dated 15.3.96 (Annexure-VII). However Sh. Shukla did not carry out the order and the transfer order was modified and he was posted back at Jhansi in place of Sh. Y.K. Singh who was on sick leave. However Divisional Railway Manager did not allow him to join in place of Sh. Y.K. Singh. This order was revised

transferring Sh. Y.K. Singh to Sholapur. Divisional Railway Manager did not allow this order also to be implemented and Sh. Y.K. Singh ^{was} ~~as~~ not relieved. Again the order was revised and order dated 30.4.96 at Annemure-A-1 was issued whereby the applicant ^{has been} ~~was~~ transferred to Sholapur and Sh. V.K. Shukla ^{was} posted back at Jhansi. Sh. Y.K. Singh ^{has been} ~~was~~ also retained at Jhansi. These factual details submitted by the applicant have not been denied by the respondents. The repeated revision of orders as detailed above clearly demonstrates that these were issued to retain Sh. Shukla at Jhansi after having issued the transfer order to Sholapur. The transfer order dated 15.3.96 transferring Sh. Shukla to Sholapur was obviously on administrative interest in the absence of anything having been specifically mentioned in the order. If it is so, then a question arises ^{as to} ~~that~~ what were the considerations which prompted revision of orders subsequently to retain Sh. Shukla at Jhansi and ~~which~~ culminating in the transfer of the applicant. Were these revision of the orders in the administrative reasons? Considering the facts and circumstances the answer is ⁱⁿ negative. The first transfer of Sh. Shukla was done in the interest of administration perhaps on the consideration of the long ^{er} stay at Jhansi as could be understood from the pleadings of the applicant. If the transfer was done in the administrative interest then what prompted to reconsider the same and post him back by transferring first one office and then another i.e. applicant. Sh. V.K. Singh was administratively supported by the Divisional Railway Manager and he ^{also} escaped the transfer. No reasons for revision of the orders have been disclosed either in the transfer order or in the counter affidavit. During the hearing, on a pointed query to the learned counsel for the

respondents, he could not throw any light on this aspect.

9. It is accepted that the government is best judge to decide how to distribute and utilise the services of its employees. However this power must be exercised honestly, bonafide and reasonably. It should be exercised in the public or administrative interest. It is the basic principle of rule of law and good administration that even the administrative actions should be just and fair. Having first transferred Sh. Shukla in the interest of the administration and then repeatedly revising the orders to accommodate him at Jhansi at the cost of another officers and that too for undisclosed reasons cannot be termed as a transfer for the professed purpose such as in normal course or in public or administrative interest or exigency of service. Such a transfer order is certainly malafide with colourable exercise of power. It cannot be said that the order transferring the applicant was made in the exigencies of service or in the administrative interest. In view of these facts, the impugned transfer order calls for judicial interference and deserves to be quashed. We observe that Sh. V.K. Shukla has not been impleaded as a party. The learned counsel for the applicant explained that Sh. Shukla was retained first by transfer order of Sh. Y.K. Singh to Sholapur. Subsequently this order was revised retaining Sh. Y.K. Singh at Jhansi and transferring the applicant. In view of this position Sh. Shukla has not been impleaded as party. The applicant's main

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prayer is to retain him at Jhansi and the administration may decide who has to be transfer between Sh. Y.K. Singh and Sh. V.K. Shukla. In view of this position we refrain from passing any order without hearing the affected party/ parties. The impugned order dated 30.4.96 is to the extent that the applicant will be not transferred to Shokapur and retained at Jhansi. We will leave it to the administration to decide as to how to retain the applicant at Jhansi. This will however not preclude the administration to transfer the applicant in future.

10. In the light of the above discussions, the application is allowed quashing the impugned order of transfer dated 30.4.96 with the observations as detailed in para 9 above. Stay order vide order dated 8.8.96 is vacated. No order as L 656

Arvind
Member - A

Arvind.