

Reserved.

Before the Central Administrative Tribunal,
Adal. Bench, Allahabad.

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Dated : Allahabad this the 23rd December, 1996.

CORAM: HON'BLE DR. R.K.Saxena, JM.

O.A. NO: 914 of 1996.

Vijai Kumar Saxena, Head Clerk,
in the office of Assistant Engineer,
N.E.Railway, Mathura Cantt. ... Applicant.

C/A. Sri P.K.Kashyap.

Vs.

1. Union of India through General Manager,
N.E.Railway, Gorakhpur.
2. Divisional Railway Manager(P),
N.E.Railway, Izzatnagar.
3. Sri R.K.Prasar Senior Divisional
(P) officer, N.E.Railway, Izzatnagar.
4. Sri Ram Kishore, Adhoc Junior Clerk Surplus
staff of A.E.N. KashGanj, Etah, now working
under Senior D.P.O., Izzatnagar.

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Respondents.

C/R Sri V.K. Goel.

ORDER:

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

The applicant has approached the Tribunal under -

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- Section 19 of the Administrative Tribunals Act, 1985 with a prayer that the transfer order dated 5.8.96 aneque-1, be quashed.

2. The brief facts of the case are that the applicant is working as head clerk under the control of Assistant Engineer, N.E.Railway, Mathura Cantt. He was transferred vide order dated 5.8.1996 from Mathura Cantt. to Izzatnagar on the same post. The contention of the applicant for challenging the impugned order of transfer is that his wife is a teacher at Mathura and her daughter Km. Vidhu Saxena, is also prosecuting her studies in M.A.; and because of this transfer in the middle of the Session, the disturbance^{may be} in the studies of her daughter caused. Besides this, it has been pleaded that the Railway Board has issued circular in respect of employees and their wives that if she is employed, she should be posted at one and the same place. The ground of attack of transfer, is also that the respondents wanted to accommodate the respondent No.4, in his place. Feeling aggrieved by the said order of transfer, this O.A. has been filed. The O.A. was taken up for admission on 28.9.1996 and the respondents were directed to maintain status-quo.

3. The respondents have contested the case by filing a Counter-affidavit of Sri N.N.Pathak, A.P.O., N.E.Railway, Izzatnagar. It has been contended that the Railway Board has directed vide its letter dated 27.9.89 that employees who are working on sensitive posts should not be allowed to continue on such posts after more than 4 years at a stretch. It is further

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contended that the Board had identified those sensitive posts as of Billing-clerks, staff dealing with statements, Advance, cadre selection staff, or the staff dealing with recruitment/promotion/Transfer as the sensitive posts. It is furthered that the applicant is working under the personnel department at the office of the Assistant Engineer, Mathura Cantt., and is responsible to work as a cadre, Section staff recruiting of Class-IV employees. The fact that the daughter of the applicant was reading has also ~~not~~ been denied by saying that she was appearing as a private candidate/student from R.C.A. Girls Degree College, Mathura. It is also denied that the applicant was transferred in order to accommodate respondent No. 4.

4. The applicant has filed rejoinder affidavit reiterating the facts which were mentioned in the O.A.

5. Notice ^{was filed} issued to the respondent No 4, also but no Counter-repy has been filed on his behalf.

6. I have heard the learned Counsel for the parties and have perused the record. There is no dispute that the applicant is working on the post of Head-clerk in the office of the Assistant Engineer, Mathura Cantt., since 1990. Previously, he was posted at Izatnagar and he had approached this Tribunal through O.A. No: 382/90 'Vijai Kumar Saxena; VS. Union Of India and Others'. In that case the respondents were directed to transfer him to Mathura. Anyway, the transfer is an incidence of service. So, one cannot be expected to continue at one place for ~~such~~ much time as he wishes. In this case, the applicant is challenging the order of

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transfer on the ground that his wife was teaching at Mathura. It appears from the annexure-2 that she was teaching in a school of Basic Shiksha Parishad. That School does not appear in any way connected with the respondents. It is, therefore, clear that the wife of the applicant ~~was~~ ^{shall} continuing to serve in that school forever. Had she been a teacher under the respondents, the circular of the Railway Board would have been of ^{some} ~~the~~ significance. If the wife of the applicant has to serve at Mathura forever, he ~~can~~ ^{cannot} be allowed to continue at Mathura forever. Thus, this carries no weight. Transfer order has also been challenged on the plea that his daughter is prosecuting her studies at Mathura. This fact has been controverted by the the respondents by saying that the daughter of the applicant was appearing in M.A., Examination privately. Thus, this plea is also of no substance.

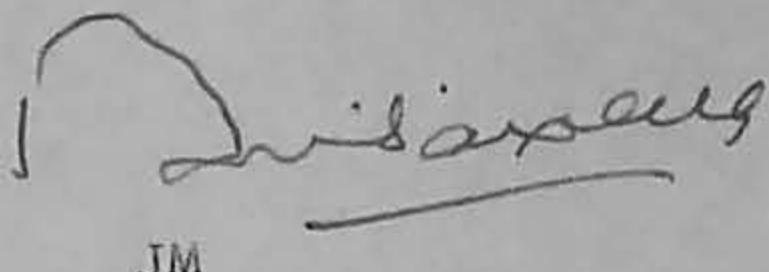
7. The third ground taken is that the transfer was initiated in order to accommodate the respondent No 4, which ^{ml} has been strongly opposed by the respondents. Since the applicant has been transferred, one or the other person would be substituted. Moreover, I do not find any material to indicate that the transfer was made in order to accommodate respondent No 4. Thus, this ground loses its force.

8. I have already mentioned that the transfer is an incidence of service. It can be challenged only when it is established that it was done by way of

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punishment, or based on malafides, or against any rules of service. None of these grounds ~~has~~ been taken or established from the pleadings of the parties particularly, by the applicant. Thus, I see no merits in the case.

On the consideration of the factual and legal position I come to the conclusion that the OA deserves dismissal. No order as to the costs. The interim order which was passed on 29.8.96, stands vacated.


JM

RC/