

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1363 of 1997

Allahabad this the 9th day of April 1999

Hon'ble Mr. S.L.Jain, Member (J)

Umesh Chandra Srivastava, aged about 34 years
S/o Shri T.N. Srivastava, presently posted as
Senior Typist, In the office of Chief Claims
Manager, N.E. Railway, Gorakhpur.

Applicant

By Advocate Shri Sudhir Agrawal
Shri S.K. Mishra

Versus

1. Union of India through the Secretary, Ministry
of Railways, Rail Bhawan, New Delhi.
2. The General Manager/General Manager(P),
N.E. Railway, Gorakhpur.

By Advocate Shri A.K. Gaur

O R D E R

By Hon'ble Mr. S.L. Jain, J.M.

This is an application under Section 19
of the Administrative Tribunals Act, 1985 to set
aside the order dated 08/10, December, 1997 (ann.
A-1) and for a mandamus restraining the respondents
from interfering with the function of the applicant
as Senior Typist in the office of Chief Claims
Manager, North East Railway, Gorakhpur alongwith
cost of the O.A.

2. The applicant who was initially recruited through the Railway Recruitment Board, Muzaffarpur for the post of Junior Typist, was appointed on 29.10.1987 posted at Gorakhpur, promoted to the post of Senior Typist on 10.7.1991, on 19.9.97, the respondent no.2 locally transferred the applicant from the Office of Chief Claims Manager Headquarter to the Chief Bridge Workshop, Gorakhpur Cantt., from where he is transferred vide order dated 08/10-December, 1997 from the Office of the Chief Claims Manager, Gorakhpur to the Office of Senior Divisional Personnel Officer, Samastipur vide annexure A-1.

3. The applicant has challenged the transfer order on the ground that Samastipur division was earlier within the jurisdiction of N.E. Railway and was under the administrative control of the General Manager, N.E.-Railway, Gorakhpur. The Government of India created certain new zones vide notification dated 30.4.1997 and amongst six zones created, one was created at Hazipur namely East Central Railway Headquarter at Hazipur, Samastipur and Sonepur. Divisions were taken away from the jurisdiction of N.E. Railway and have been placed in the jurisdiction of East Central Zone Headquarter at Hazipur. The staff working at Sonepur and Samastipur division, have been transferred to the said new zones, which has already started its functioning long back. The respondent no.2 has no jurisdiction to transfer the applicant in another zone which is under separate General Manager. The applicant's wife Smt. Nutan Srivastava is also employed as Senior Clerk in the Office of Chief Personnel Officer, N.E. Railway, Headquarter at Gorakhpur. The applicant has two sons aged of five and

three years respectively. The impugned order of transfer results in the change of cadre of the applicant from the Headquarter to Divisional level affecting his seniority etc. In as much as a Senior Typist has seniority at Headquarter is different than the Divisional level seniority. It is learnt that there is no post available in Samastipur against which he has been transferred. The transfer order is illegal as passed without jurisdiction not by a competent authority, against the instruction issued by Railway Board regarding keeping of the husband and wife whose children are less than 10 years at one station, seniority is effected and a person can be transferred only against the post available. Hence, this O.A. for the aforesaid reliefs.

4. The respondents contested the claim and stated that the applicant has been transferred on administrative ground, his transfer is not at all punitive or in violation of any statutory rules. He has been transferred not to S.E. Railways but under the control of North Eastern Railway. The transfer order has been passed in administrative capacity. He will get all benefits like seniority and promotion etc. It is incorrect that he has been transferred to S.E. Railway. He has been transferred to S.P.G. transferred/under the control of N.E. Railway. The S.E. Railway, /Hazipur has not started functioning in full fledged basis. The Board vide circular dated 20.8.97 has notified that the staff who has been transferred to the newly created zonal Railways shall maintain their seniority, lien in their parent railway for the purpose of promotion till the new

zonal railway starts fulfilled functioning. All establishment work are being dealt with under the control of Gorakhpur Headquarter, North Eastern Railway. The applicant's request dated 10.12.1997 which was received after being forwarded by the controlling officer on 12.12.1997 to retain at Gorakhpur, could not be considered due to stay order dated 16.12.1997 received on 17.12.1997. Hence, prayed for dismissal of the O.A. alongwith cost.

5. On perusal of annexure A-1, the place of working of the applicant is mentioned as 'prama.ka.dhi.', Samastipur. This Tribunal in O.A.No. 957 of 1997 Subhash Kumar Dubey Vs. Union of India and Others has on 08th May, 1998 an occasion to decide the question of transferring an employee from Gorakhpur to Samastipur and came to conclusion that until and unless the employee submits an option, he cannot be transferred to Samastipur division.

6. As stated above, the transfer by incompetent authority is bad and nonest in view of 'J.T.1994(1) S.C. 530 Dr. Ramesh Chandra Tyagi Vs. Union of India and Others .

7. The applicant's counsel relied on '1995 (3) HVD Vol.III, 107 Deepa Vashishtha Vs. State of U.P. & Others' and argued that in the garb of public interest or administrative exigencies, it is not at the whims of the authority to disturb the family by transferring one of the husband and wife to a different place since the guidelines arepg.5/-

Sd/-

not in imperative form or they have no force of law- if the administrative exigencies or public interest so requires, certainly husband and wife may be transferred to a different place but only in exceptional cases i.e. rarest of rare cases, for which no illustration can be given. On perusal of the same authority, I find that '1991 A.I.R. S.C. 532 (Mrs. Shilpi Bose Vs. State of Bihar) 1993 (3) J.T. S.C. 678 (Union of India Vs. S.L. Abbas) and 1994 (2) Supp. S.C.C. 666 (Director of School Education, Madras Vs. O. Karuppa Thevan! and Home Secretary, U.T. Chandigarh Vs. Adarshjit Singh Grewal & Others (Judgment Today 1993 (4) S.C. -387)', were considered.

8. The applicant has filed alongwith his D.A. annexure A-10 circular issued by the Railway Board dated 05.11.1997 relating to posting of husband and wife at the same place. On perusal of the same, I find that railway employees being husband and wife when they belong to same seniority unit, may be posted at the same station/ place ensuring that one of them does not work as subordinate to the other, and incase when they belong to different seniority unit, efforts may be made to post both the railway servants at the station where posts at appropriate level exist in the respective seniority ~~units~~ units failing which request for change of the category may be considered sympathetically.

9. The circular issued by the Board has a force of law but it is not imperative in nature. In the present case, the applicant and his wife both are railway employees, they were working together at Gorakhpur and on perusal of annexure A-1, I do not find any administrative exigencies or public interest for the transfer of the applicant.

Put /

10. Even an appeal against the judgment of Allahabad High Court is said to be pending, order of High Court still to be treated as a binding precedent 1984(2) S.L. R. 731 Roshan Jagdish Lal Duggal Vs. Punjab State Electricity Board, Patiala.

11. The fact that whether the applicant is transferred against an available post or not is disputed by the respondents. The respondents has not alleged specifically that the applicant has been transferred against a post available. Hence on this count also, the impugned order is bad.

12. It is true that the seniority of the employees shall be maintained alongwith lien in their present railway for the purpose of promotion till the new zonal railway starts full fledged functioning. Hence on this count, the applicant cannot have any grievance in respect of the transfer. On the aforesaid reasonings, I find that the applicant has been transferred to another division without there being an option in this respect. Hence, order dated 08/10 -12-97 is liable to be quashed in view of the judgment of this Bench in O.A. 957/97 Subhash Kumar Dubey Vs. Union of India and Others, transfer order being passed by incompetent authority, hence bad and nonest, in view of 1994(1) 530 Dr.R.C. Tyagi Vs. Union of India and Others and the applicant is transferred without there being a post, transfer order is bad in view of O.A.No.389 of 1997 Dr.S.N. Sachan Vs. Union of India and Others and O.A.No.878/97 Dr.R.M.Tripathi Vs. Union of India and Others.

13. In the result, the present impugned transfer order is based on extreneous consideration and is liable to be set aside. Hence O.A. is allowed and transfer order dated 08/10, December, 1997 (ann. A-1) is quashed. Parties shall bear their own costs.

Sd/-
Member (J)

/M.M./