

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No. 1032/97
Transfer Application no.

Date of Decision 7th July '99

D. K. Dubey

Applicant(s)

Counsel for the Applicant

Sh S-K Om

Counsel for the
Applicant(s)

V E R S U S

Union of India & ors

Respondent(s)

Sh D-C Saxena

Counsel for the
Respondent(s)

C O R A M

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

Hon'ble Mr. _____

1.

1. Whether Reporters of local papers may be allowed to see the judgment ? yes

2.

To be referred to the Reporters or not ? yes

3.

Whether their Lordship wish to see the fair copy of the judgment ? No

6.

Whether to be circulated to all Benches ? No

S.L. Jain
(SIGNATURE)

PIYUSH/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

(22)

Original Application No. 1032 of 1997

Allahabad this the 7th day of July 1999

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

Dinesh Kumar Dubey, Son of Shri S.N. Dubey, resident
of 562/E Bichhiya Railway Colony, Gorakhpur.

Applicant

By Advocate Shiri S.K. Om

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. Controller of stores, North Eastern Railway, Gorakhpur.

Respondents

By Advocate Shri D.C. Saxena

ORDER

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for a direction/order/writ in the nature of certiorari quashing the order dated ~~03.9.97~~ ^{05.9.97} issued by the respondents and ~~annexure~~ ^{annexure} A-1 alongwith cost.

*Corrected
Saxena
24.9.99*

S.L. Jain

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2. The applicant was posted as Senior Clerk under Deputy Controller of Stores (Construction) (B.G.) Gorakhpur, is working under respondent no.3 and is posted in the office of Manager, Printing and Stationery, is transferred from Gorakhpur to Izzat Nagar division and posted in the Office of District Controller of Stores vide order dated ~~03.9.97~~ ^{25.9.97} annexure A-1.

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Sameer
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3. The applicant has challenged the said transfer order on the ground that he is a Class III employee, cannot be transferred inter divisionally. Moreover, he was transferred from Eastern Railway to North Eastern Railway, Gorakhpur on his request by accepting the bottom seniority, District Controller of Stores is entirely a separate unit having their separate seniority list, hence he could not be transferred to a different unit, as he will lose his seniority in as much as in the transferee unit he would be placed at the bottom which is in contravention of circulars dated 30.9.85, 31.3.1971 and 07.6.88, 08.4.95, the wife of the applicant is severe heart patient and under treatment of competent Doctor at Gorakhpur since 29.8.97 and advised complete bed rest, he is the only male member in the family, her daughter is studying in Class VI in Gorakhpur and during the mid of academic session, admission in all schools are closed, transfer at such moment is in contravention of circular dated 01.10.1971, 08.4.1991, the transfer order is punitive and has been passed on the basis of complaint dated 30.6.97, made by

SA-DR

Senior Superintendent of Police, Gorakhpur without application of mind and is colourable exercise of power on administrative ground. Hence this O.A. for the above said reliefs.

4. The respondents have resisted the claim, admitting the fact of the complaint dated 30.6.97 made by Senior Superintendent of Police, Gorakhpur alleged in Supplementary C.A. that after receipt of the said complaint, the matter was got examined with the Chief Security Commissioner(RPF), North Eastern Railway, Gorakhpur and orders are passed after careful consideration and application of mind by the competent authority after more than 2 months from the date of receipt of the complaint from Senior Superintendent of Police, Gorakhpur. It is further alleged that there is no loss of seniority in the event of his transfer to Izzat Nagar and he will continue to get the same benefits which he could have got prior to transfer, he would not be placed at bottom in the seniority unit of Izzat Nagar and he could get the seniority as per date of entry to the grade, the ailment cannot be pleaded as a defence, the directions are merely guidelines even in respect of academic session and cannot be taken as a defence.

5. In the rejoinder-affidavit, the facts alleged in counter-affidavit and supplementary counter-affidavit, are denied and facts stated in the O.A. are reiterated.

6. Annexure A-2 mentioned as under;

" शाहीपण लया देखते वृमन्चारी अपने घूमे सेताकाल में उल देखते अर्थ वा सोचने में निकल कितावाका जहाँ इसको उभर निकली फ उमे लाना कितावा है "

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7. The above fact makes it clear that it is the general rule that a railway employee shall serve through out his service in the same railway or in the same railway organisation and there can be an exception to the same but exceptions are to be claimed and established by the respondents which they failed to establish.

8. Regarding ailment of the wife of the applicant, it is suffice to say that there is no allegation from the side of the applicant that no medical facility is available at Izat Nagar. This can be a ground for sympathy but not a ground for cancellation of transfer. The applicant has to manage his own affairs, ^{as no where it is stated that such facility is not available} further more the plea is half hearted, ^{there is} and such a plea cannot be entertained.

9. Regarding transfer in mid academic session, it is to be mentioned that it is to be avoided vide annexure A-4 but in administrative exigency, which cannot be aduced as a defence.

10. As it is admitted position that the respondents received a complaint from S.S.P. Gorakhpur in respect of the applicant, the respondents claimed that even after receipt of the same, the matter was got examined by the Chief Security Commissioner(RPF), N.E. Railway, Gorakhpur, the respondents failed to place the said file before the Bench. Nowhere it is alleged that the applicant was heard in defence or the matter was got examined in presence of the applicant.

J.G.M.

11. The applicant's counsel relied on 'A.T.R. 1986 C.A.T.304 K.K. Jindal Vs. General Manager, Northern Railway & Ors.', decided by C.A.T., Delhi Bench on 25th March, 1986, which lays down that conclusions reached without any inquiry is violative of Article 311(2) of the Constitution of India and provisions governing disciplinary proceedings. Such a conclusion cannot be reached behind the back of the applicant and amounts to constitute a colourable exercise of power. The said authority is based on the landmark judgment of the Apex Court of the land reported in A.I.R. 1975 Supreme Court Page 529 Municipality of ~~Bhivandi~~ ^h ~~and~~ Nizampur Vs. M/s Kailash ~~h~~ ^h Mining Works, Management of Syndicate Men vs. The Workmen A.I.R. 1966 S.C. 1283 is being followed. The same view has adopted in O.A. 957 of 1997, decided on 08th May of 1998 by this Bench (by Hon'ble Mr. D.S. Baweja).

12. The learned counsel for the respondents relied on 1996 AWC Ravindra Prasad Shukla Vs. State of U.P. and Others, which lays down that if an official is involved in controversy, serious financial irregularities alleged against him, transfer not unjust, unfair or illegal. The facts of the said case are not brought on record and only headnote is placed. Further more, in view of the judgments referred above, this authority does not help the respondents.

13. In the result, the respondents order regarding transfer of the applicant is colourable exercise of power, hence the impugned transfer order dated ~~03.9.97~~ ^{* 05.9.97} deserves to be quashed and is quashed accordingly. The O.A. is allowed. No order as to costs.

Member (J)

/M.M./

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