

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

O.A.No./T.A.No.1041/97

Date of decision 4/9/98

Narsingh Applicant(s)

C/A S/ Sri Anand Kumar, C.P. Gupta COUNSEL for the  
Applicant(s)

Versus

Union of India and Others Respondent(s)

Sri A.K. Gaur Counsel for the  
Respondent(s)

C O R A M

Hon'ble Mr. S.K. Agrawal, V.G./Member(J)  
Hon'ble Mr. \_\_\_\_\_ Member ( )

1. whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporters or not ? yes
3. whether their Lordship wish to see the fair copy of the judgment ? yes
4. whether to be circulated to all Benches ? No

  
( SIGNATURE )

MANISH/

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1041 of 1997

Allahabad this the 4th day of Sept 1998

Hon'ble Mr. S. K. Agrawal, Member ( J )

Narsingh S/o Shri Surat working as Section Engineer (Elec)/Power House, Eastern Railway, Chopan, resident of Railway Quarter No. 322-A, Driver Colony, Chopan.

Applicant

By Advocates Sri Anand Kumar/C.P. Gupta

Versus

1. Union of India through General Manager, Eastern Railway, Calcutta.
2. Sr. Divl. Personnel Officer, Eastern Railway, Dhanbad.
3. Sr. Divl. Electrical Engineer(G)/E.Rly., Dhanbad.
4. Sr. Section Engineer/Elect/E.Rly., Chopan.

Respondents

By Advocate Sri A.K. Gaur

O R D E R

By Hon'ble Mr. S.K. Agrawal, MEMBER(J)

In this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the prayer of the applicant is to quash the impugned order of transfer dated 21.8.97.

2. The facts of the case as stated by the applicant are that the applicant was initially appointed as Electrical

Chargeman 'B' at Dhanbad division of Eastern Railway on 25.4.80. Thereafter, he was promoted on the basis of Electrical Chargeman 'A' and thereafter on the post of Electrical Foreman 'A' or Section Engineer on 28/4/97. It is submitted that the applicant was transferred on 22.8.88 at Gujhandi station from Dhanbad and thereafter 21.4.92, he was transferred from Gujhandi station to Chopan (U.P.), and by this impugned order of transfer, the applicant was transferred to Barkakana from Chopan. It is stated by the applicant that the impugned order of transfer has caused so much inconvenience because the education of the children of the applicant will be effected. It is also submitted that the impugned order of transfer is issued with malafide intention and colourable exercise of powers of the respondents as it appears that in the impugned order of transfer itself, the applicant is asked to vacate the quarter prior to his joining at the next station. It is also stated that impugned order of transfer has been issued in the mid academic session, therefore, liable to be quashed.

3. The counter-affidavit has been filed by the respondents. In the counter, the allegations made by the applicant, are totally denied and stated that the impugned order of transfer has been passed for the exigencies of service as it was felt necessary to bring higher standard to ensure the train lighting service as well as to minimise train lighting problems and Sri Narsingh-the applicant was having a better train lighting backgrounds following his previous posting at Dhanbad, Train Lighting Depot. Therefore, the applicant was transferred from Chopan to Barkakana in the exigency of railway services and to ensure proper supervision and planning of train lighting arrangement

specially in Barkakana area. It is also stated that the applicant was asked to vacate the railway quarter with a view to make room for other railway employee to be posted vide the applicant and to avoid unauthorised occupation and retention of the same. It is also stated in the counter, that transfer to Barkakana will not cause so much inconvenience as children of the applicant can be conveniently admitted to Central School at Barkakana at any time. Therefore, on the basis of the counter-affidavit filed by the respondents, the respondents requested to dismiss this O.A. with cost.

4. The rejoinder has also been filed. In the rejoinder, again, the ground of malafide, colourable exercise of powers and ground of mid session transfer has been reiterated.

5. Heard, the learned lawyers for the applicant and learned lawyer for the respondents and perused the written submissions made by the learned counsel for the applicant as well as the learned counsel for the respondents.

6. Learned lawyer for the applicant has submitted that the transfer of the applicant is a mid session transfer which has effected the education of his children, therefore, it should be quashed. In support of his contention, he has referred the case "Director of School Education, Madras and Others Vs. O. Karuppa Thevan and Others (1996) 1 U.P.L.B.E.C. 347".

7. On the other hand learned counsel for the respondents while objecting above submissions, argued

that there are proper school facilities(Central School) available at the place of transfer of the applicant and by maintaining the order of status-quo by this Tribunal, this ground does not survive at present.

8. I gave thoughtful consideration to the rival contention of both the parties and perused the whole record.

9. In 'Director of School Education's case, the Hon'ble Supreme Court was of the view that "the fact that the children of the employee are studying should be given weightage particularly when exigencies of service are not there." In the instant case, the respondents have categorically stated and explained in detail in the counter, that the impugned order of transfer was issued in exigencies of service. Moreover, the applicant failed to establish the fact that how the impugned order of transfer has effected the education of the children. In view of this, there is no basis to interfere in the impugned order of transfer.

10. Learned counsel for the applicant further submits that the respondents have transferred the applicant with malafides and in support of his contention, he has referred the case 'Shri Arvind Dattatraya Dhande Vs. The State of Maharashtra & Ors.J.T. 1997(6) S.C. 229'. On the other hand, learned lawyer for the respondents while objecting the above arguments has submitted that the transfer of the applicant was made in administrative exigencies. The counter-reply filed by the respondents makes it abundantly clear that the applicant was transferred not with malafides but in the interest of administration. There is no direct allegation of malafides against any of the respondents but, on the basis of the facts and circumstances of this case,



even malafides cannot be inferred.

11. In 'Express Newspapers (P) Ltd. Vs. Union of India (1986) 1 S.C.C. 133', the Hon'ble Supreme Court has observed that where malafides are alleged, it is necessary that the person against whom such allegations are made, should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain un rebutted and the court would in such a case be constrained to accept the allegations so remaining un rebutted and unanswered on the test of probability.

12. In 'Sankaranarayanan Vs. State of Karnataka (1993) 1 S.C.C. 54', the Hon'ble Supreme Court observed that it may not always be possible to demonstrate in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of malafides from the facts pleaded and established. Such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuations, surmises and conjectures.

13. In the case of 'Shilpi Bose Vs. State of Bihar & Ors. S.C.C. 1992(L&S) 127', their Lordships of Hon'ble Supreme Court held that 'the order of transfer can be interfered only on the ground of malafides and violation of the statutory rules.

14. In 'N.K. Singh Vs. Union of India 1994 S.C.C. (L&S) 1130', their Lordships of the Hon'ble Supreme Court observed that in case of personal difficulties relating to transfer, the difficulties should be more appropriately considered by the departmental authorities rather than the Tribunal because the departmental authorities are expected


to have more immediate knowledge about the applicant.

15. As applicant failed to establish malafides against the respondents by direct evidence and even no inference can be drawn on the basis of the facts and circumstances of this case, therefore, on this ground there is no basis to interfere with the impugned order of transfer.

16. Learned counsel for the applicant during the course of his arguments has also submitted that order for eviction of the quarter allotted to him should be stayed. In view of the discussions made above, I do not feel it proper and in the interest of justice to restrain the respondents ordering <sup>eviction</sup> of the quarter occupied by the applicant. The quarter facilities are available to an employee who is posted at a particular place. As soon as he has transferred, he must vacate the quarter allotted to him so as to give a chance to the other employee who are in queue. ----- Therefore, equity does not demand that the order of respondents regarding eviction of a quarter allotted to the applicant, should be stayed.

17. In view of the above, the applicant failed to make out a case for interference by this Tribunal.

18. Therefore, this O.A. is dismissed with no order as to costs.

  
Member ( J )

/M.M./