

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

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Allahabad this the 8/4 day of May, 1998.

O.A. No. 957/97

HON. MR. D.S. BAWEJA, MEMBER(A)

Subhash Kumar Dubey son of Sri Raj Dev  
Dubey, working as Senior Clerk in the office of Controller  
of Stores, N.E. Railway, Gorakhpur.

Applicant.

Shri Sudhir Agrawal and Shri S.K. Om: counsel for applicant.

versus

1. Union of India, through the General Manager  
N.E. Railway, Gorakhpur.
2. Chief personnel Officer, N.E. Railway,  
Gorakhpur.
3. Chief Controller of Stores, N.E. Railway,  
Gorakhpur.

Respondents.

Shri Lalji Sinha and Shri Prashant Mathur counsel for respondent.

O R D E R (RESERVED)

HON. MR. D.S. BAWEJA, MEMBER(A)

This O.A. has been filed seeking a relief for  
quashing the order dated 3.9.97 by which the applicant has  
been transferred with direction to the respondents not to  
transfer the applicant from Gorakhpur to Samastipur.

2. The applicant, while working as Senior Clerk  
in the office of Chief Controller of Stores, N.E. Railway  
Gorakhpur has been transferred as per order dated 3.9.97.  
Being aggrieved, the present O.A. has been filed on 11.9.97  
challenging the transfer order on the following grounds:

- (a) The applicant has been transferred from N.E.  
Railway Gorakhpur to Samastipur which is now  
under the control of East Central Railway, a

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separate railway zone set up as per notification dated 29.4.97. The options were called and the applicant had not given any option for transfer to the new zone. The General Manager N.E. Railway is not competent to transfer to another zonal railway and therefore, the transfer order is illegal and without jurisdiction.

- (b) The applicant is an elected office bearer of the the recognized<sup>1</sup> union and in terms of the Railway Board's letter dated 8.4.91, no office bearer of the recognized union can be transferred without informing the Union concerned. In respect of the applicant, no such intimation was sent to the Union before passing the impugned transfer order.
- (d) The applicant is the Joint Secretary of the N.E. Railway Employees Union and as a representative of the Union, he has brought <sup>out</sup> several irregularities of the respondents which had<sup>ve</sup> been reported in the Newspaper. On account of this, the applicant has been transferred with malafide intention.
3. After the reasons for transfer having been disclosed by the respondents in the Supplementary counter affidavit, the applicant had filed an amendment application to bring on record the additional averments and the grounds to challenge the transfer order for the reasons disclosed by the respondents. This amendment application was allowed. The applicant has contended that, as disclosed by the respondents, the transfer of the applicant has been effected on a complaint made by local police officer and the competent authority has passed the order for transfer mechanically without application of his mind. In view of this, the transfer order is malafide in law.

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4. The respondents have contested the claim of the applicant by filing the counter affidavit. The respondents have also filed Supplementary Counter affidavit to controvert the submissions of the applicant in the Rejoinder. reply. The respondents have submitted that though the East Central Railway zone has been created but it has not started functioning independently and the concerned division where the applicant had been transferred is still under the control of N.E. Railway and therefore, the General Manager North Eastern Railway was competent to transfer the applicant to Samastipur. The respondents have further stated that <sup>as</sup> ~~per~~ the circular dated 30.4.97 cited by the applicant the new zonal railways have been only allowed to make emergency purchases of stores and the control of the Stores department had not been transferred to the new zonal railway. Further, in terms of circular dated 6.12.96, no options were called from the Stores Department for transfer to the <sup>new</sup> ~~zonal~~ railway. As regards the plea of protection against transfer being elected office bearer, the respondents have stated that the same is misconstrued. The respondents <sup>have</sup> ~~contended~~ that the office bearer can be transferred with the approval of the competent authority in the exigencies of service and prior approval of the Union is not necessary. The respondents however submit that the transfer order dated 3.9.97 was endorsed to the Union and the representation made by the Union against the same was considered by the competent authority and reply was sent to the Union. The respondents <sup>have</sup> ~~also~~ refuted the allegation of the applicant with regard to press cuttings brought on record by the applicant alleging irregularities by the higher authorities. The respondents submit that the transfer has been ordered by the competent authority in the administrative interest and there is no relation with the alleged irregularities

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stated to have been highlighted in the press. The respondents have disclosed that the transfer of the applicant has been ordered by the competent authority on a reference received from the Senior Superintendent of Police, Gorakhpur advising that the applicant is indulging in unlawful activities and has links with criminals <sup>and</sup> making request to transfer the applicant alongwith six others out of Gorakhpur. Keeping this submissions in view the respondents contend that there is no merit in the O.A. and the same deserves to be dismissed.

5. The applicant has filed Rejoinder affidavit as well as the Supplementary Rejoinder for the Supplementary Counter affidavit. The applicant has controverted the submissions of the respondents and reiterated the grounds taken in the O.A. The applicant submits that the respondents have disclosed that the applicant has been transferred on a reference from the State police, but the complaint made by the local police has been never communicated to the applicant. The applicant further contends that no verification of the <sup>facts from the</sup> applicant had been made as the applicant was not questioned about the same. The applicant submits that one police Inspector at Gorakhpur was against the applicant as he had filed several criminal cases against the police ~~Inspector~~ and it appears that he has managed his transfer out of Gorakhpur. The applicant therefore, contends that the transfer of the applicant had not been done in the interest of the administration, but the same had been done malafidely and on extraneous considerations, because the applicant is involved in the union activities.

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6. We have heard Shri Sudhir Agrawal and Shri. <sup>learned</sup> S.K. Om/<sup>learned</sup> counsel for the applicant, Shri Lalji Sinha and Shri Prashant Mathur/<sup>learned</sup> counsel for the respondents. We have carefully considered the material brought on record.

7. As per order dated 15.9.97 it was provided that status quo shall be maintained with regard to the <sup>stay</sup> transfer order. This interim/order was extended from time to time and continued till pronouncement of the order.

8. During the hearing the learned counsel for the applicant cited the following judgments in support of his contention:

- i) Dinesh Chandra Kansal vs. State of U.P. and others reported in 1991 (63) F.L.R. page 19
- ii) Mohammad Hanif vs. Union of India and others reported in (1989) 9 A.T.C., 78
- iii) State of U.P. and another vs. Sheshmani Tripathi reported in (1991) 2 U.P.L.B.E.C., 1303

9. Before going <sup>in</sup> to the merits of the issue involved, the various citation relied upon by the applicant shall be briefly reviewed and ratio of their application to the case of the applicant, shall be considered at the proper place when the various grounds raised by the applicant challenging the impugned transfer order are considered.

Dinesh Chandra Kansal Vs. State of U.P.: In this case the petitioner was ~~an~~ accused of having committed several irregularities in his official duties and on account of this, he was transferred. However, no inquiry was conducted with regard to the charges. The Hon'ble High-- Court has held that the transfer was by way of punishment and no opportunity had been given to the applicant of being heard before imposing this punishment. The Hon'ble --High Court, therefore, quashed the transfer order as not being sustainable as the same carried stigma and being violative of principles of natural justice. ....pg.6/-

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2. Mohd. Hanif Vs. U.O.I. & Others : In this case, the complaint was made against the applicant by the rival union to the higher authorities. The higher authority after making some inquiry, transferred the applicant without associating the petitioner with the inquiry. It was also noted that the complaint was received on 04.4.87 and on the same date, the controlling authority had made up the mind to transfer the applicant and recommended to the higher authority. The Hon'ble High Court with these facts has held that the transfer order was not passed on the administrative interest but unverified allegations by the rival union formed the basis for transfer. The transfer order was, therefore, set aside.

3. State of U.P. and another Vs. Shesh Mani Tripathi: In this case, the petitioner was merely transferred on the ground that a complaint had been made by the subordinate officer against whom the petitioner had taken action. The Hon'ble High Court held that in case the complaint was found to be correct, it was open to the Government to take action against the officer concerned but the same was not the valid basis for transfer. It was held that the transfer order was arbitrary and, therefore, the judgment of the learned single judge was upheld in the appeal.

10. The various grounds raised by the applicant in challenging the transfer order in the O.A., have been detailed in para-2 above. Subsequent to filing of the supplementary counter-affidavit by the respondents and disclosing the basis for transfer, the applicant through application on record amendment has brought the additional grounds for challenging the transfer order which have been detailed in para-3 above. During the hearing, the emphasis in challenging the transfer order was mainly on the grounds detailed in para-3 above.. However, before going into the main ground for challenge, I will consider the other grounds to identify whether any

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of these grounds vitiate the transfer order.

11. The first ground taken is that the applicant has been transferred from Gorakhpur to Samastipur which comes under the jurisdiction of new railway zone of East Central which has been set up by the notification dated 29.4.97. In view of this, the General Manager, N.E. Railway, Gorakhpur had no jurisdiction to transfer the applicant to another zone. The respondents have contested this claim, stating that though the new zone has been created but it had not started functioning and General Manager, North Eastern Railway, Gorakhpur continued to exercise control and, therefore, ~~is~~ competent to transfer the applicant. The respondents have also stated that in terms of the Railway Board's letter dated 06.12.96, that the staff of the Stores--- department was not included in the scheme of calling of the options for the new zone. It is also further stated that as per the Railway Board's circular dated 20.8.97, that even the staff which has been transferred to the new zones, their seniority for the purpose of promotion will remain with the parent railway till the new zones started functioning. The applicant, however, has contested the submission of the respondents, stating that the circular dated 06.12.96 has been superceded and modified by the circular dated 23.7.97 according to which the / Railway Board had directed that staff of the Stores department <sup>be also allowed to</sup> will exercise the option to join the new zone. After going through the various circulars cited by the either parties, I find that as per the Railway Board's circular dated 23.7.97, the staff of the Extra Divisional Units, which include Stores <sup>departments</sup> ~~depot~~, are also allowed to exercise option for being transferred to the respective

new zonal railways in partial modification of the earlier orders. In view of this circular, the contention of the respondents that Store Department was not covered by the options called for earlier, is not valid. The applicant has submitted that he has not exercised any option for transfer to the new zonal railway. The transfer of the applicant has been effected after the circular dated 23.7.97 was issued. Keeping in view the circular dated 23.7.97, the applicant could not have been transferred to another zonal railway if he had not opted for the same. The transfer of the applicant as ordered to the another railway zone, would imply that the applicant will have to exercise the option to come <sup>back</sup> up to the North Eastern Railway from Samastipur. Further, it is not clear whether the staff of the divisions covered by the new zonal railway are also allowed option for coming to the existing zone. The applicant has also taken a plea that General Manager, North Eastern Railway could not transfer the applicant to another zonal railway as the transfer to another Zonal Railway could be ordered only by the consent of the General Managers of the two zonal railways. On perusal of the various circulars on record with regard to setting up of the new zonal railways, I am unable to find any clear instructions with regard to the transfer of the control to the new Zonal Railway. It appears that seniority and promotion of the staff of the new railway zone will continue to be controlled by existing railway zones. If it is so, <sup>this</sup> may imply that the existing railway zone can transfer the employee to another zone. In any way, I am inclined to hold that transfer of the applicant when he had not exercised any option for transfer to Samastipur, is not sustainable.

12. The second ground for challenge is that the applicant is an elected office bearer of the recognised union and in terms of the Railway Board's circular dated 08.4.91, he could not be transferred. Copy of this circular has been brought on record by the applicant at A-5. The respondents have contested the claim of the applicant and have <sup>submitted</sup> ~~have~~ that General Manager was competent to pass the order of transfer of the applicant without prior consultation of the union in the exigency of service. On going through the circular dated 08.4.91, I find that these instructions are not statutory in nature and they are <sup>only</sup> ~~are~~ the guide lines. It is noted that the General Manager has been given power to transfer the office bearer of the union without consulting the union of the situation warrants. The respondents have disclosed the reasons based on which the transfer had to be ordered. Keeping the same in view, the General Manager <sup>could</sup> ~~can~~ order the transfer of the applicant without any prior consultation. In any case, the respondents have brought out that the Union was informed of the transfer of the applicant and their representation made against the same, had been considered by the competent authority and union was explained the position, necessitating the transfer of the applicant, as per letter dated 05/8-8-97. In view of these facts, <sup>do not</sup> ~~I find~~ this ground for challenge to have any force or substance.

13. The third ground for challenge is that the applicant being an office bearer of the recognised union, highlighted the irregularities committed by the higher authorities which annoyed the respondents and the applicant has been transferred with a view to curb the

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union activities. It is noted that the applicant has not made any allegation of malafide against a specific officer except making <sup>general</sup> statement. Neither any officer has been named <sup>and</sup> nor any has been made party by name as respondent against whom he <sup>has</sup> alleged malafide or colourable exercise of power in transferring him. In the absence of such an averment and non making of anyone respondents by name against whom the malafide is alleged, no notice of malafide can be taken which would warrant the vitiating of the transfer order. Even otherwise also, this ground of the applicant is not maintainable once the respondents have disclosed the reasons for transfer. In view of these observations, this ground is also devoid of merits.

14. Now coming to the core issue, as indicated earlier the respondents have disclosed the basis for transfer. The respondents have submitted that there was a reference from the Senior Superintendent of Police, Gorakhpur and based on that, the competent authority had order<sup>ed</sup> the transfer of the applicant. Since the respondents have not brought any documentary evidence in support of their contention, <sup>they</sup> were directed to produce the original file containing the letter of Senior Superintendent of Police, Gorakhpur and order passed by the competent authority. These records were made available during the hearing. It is noted that S.S.P., Gorakhpur had written a letter dated 30.6.97 to the General Manager, N.E. Railway, Gorakhpur indicating the names of the 7 ~~person~~ railway staff which included the applicant alleging that they are involved in undesirable activities and also having link with the criminals and, therefore, he requested that their

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transfer out of Gorakhpur, be considered. It is further noted that on the same letter, the General Manager has ordered the C.P.O. to co-ordinate and arrange transfer of the staff mentioned therein. Thereafter, the applicant who is one of the listed staff, has been transferred. From the letter dated 23.6.97, it is not clear whether any documentary evidence with regard to the activities of the listed staff were forwarded to the General Manager. No documentary evidence has been made available by the respondents also. During the hearing, the counsel for the respondents was asked to indicate whether any details of the activities were furnished by the S.S.P. Gorakhpur but he could not positively state so and only submitted that some details were sent to the Chief Security Commissioner. From the endorsement of the General Manager, it appears that when he has ordered the transfer of the staff mentioned in the list, which included the applicant, there <sup>have</sup> ~~was~~ details with regard to unlawful activities <sup>before him</sup> of the staff mentioned by the S.S.P. Gorakhpur. It is conceded that the transfer is an incident of service and the competent authority has the discretion as to where a particular employee will be posted. However, this power must be exercised honestly, bonafidely and reasonably. Such a power cannot be used as an alternative to disciplinary proceedings. In the present case, from the record what has been produced, it appears that the competent authority has not applied his independent mind on the facts and circumstances of the case. The competent authority should have called for the details with regard to the undesirable activities of the staff and made his own assessment to conclude whether the request made by the police authorities, could be accepted

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for transfer of the staff out of Gorakhpur. The allegations made by the S.S.P. Gorakhpur involve the law and order problem and the matter should have been dealt with by the Police Authorities, as per the law of the land and not by resorting to the weapon of transfer. Since the staff listed in the list including the applicant, were the railway employees, it does not mean that in <sup>applicant's</sup> ~~his~~ case <sup>or</sup> instead of taking the action as per the law incase he is involved in undesirable activities and having link with the criminal activities, a short cut method was to be adopted by getting <sup>him</sup> ~~them~~ transferred out of the Gorakhpur. In case of <sup>persons</sup> ~~other~~ than Government servants, the Police authorities could not adopted the course of transfer <sup>and requested</sup> ~~and~~ tackled the matter as per law. The transfer of the applicant from Gorakhpur infact established that the applicant was involved in undesirable activities and having links with the criminal. Such a finding could not have been arrived at against the applicant without taking the legal action as provided by the law. As indicated earlier, the competent authority, as born from record, did not apply his own mind and has simply carried out the request of the S.S.P. Gorakhpur. It is obvious that the General Manager has used his power for transfer without making satisfaction at his level that the transfer of the staff was warranted in the public interest based on the letter dated 23.6.97 from S.S.P. Gorakhpur. Keeping these facts in view, I have no hesitation to hold that the transfer of the applicant has been ordered through colourable exercise of power and therefore, deserves to be quashed.

15. In the result of the above, the O.A. is allowed, quashing the impugned transfer order dated 03.9.97. No order as to costs.

*[Signature]*  
Member (A)