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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 995 of 1997

Allahabad this the 9th day of March 1998

Hon'ble Mr. D.S. Baweja, Member (A)

R.R. Pippal, aged about 53 years, S/o Chirmauli Ram, Kadha Niwas, near Bus Stand Vrindaban Mathura. working as Station Manager in scale of Rs.2375-3500/- at Mathura.

Applicant

By Advocate Sri B. Tiwari

Versus

1. Union of India through the Secretary, Railway Board, Govt. Of India, New Delhi.
2. General Manager, N.E. Railway, Gorakhpur.
3. D.H.M. (P), Ijjat Nagar, Bareilly.

Respondents

By Advocate -----

O R D E R

By Hon'ble Mr. D.S. Baweja, Member (A)

This application has been filed with the prayer to quash the order of transfer dated 06.3.97 and also to direct the respondents to make payment of salary and other allowances to the applicant from March, 1997.

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2. The applicant while working as Station Manager in the grade of Rs.2375-3500/- at Mathura has been transferred as per the impugned order dated 06.3.97 to Vrindaban station after downgrading the post at Mathura for six months. At Mathura, after downgrading the post, one Sri M. Ram Meena has been posted on transfer on his own request. The applicant submits that he made a representation against this transfer to the concerned authorities endorsing a copy to the Railway Board. The Railway Board vide letter no. 3/4-7-97 directed the Chief Personnel Officer, N.E. Railway to order Gorakhpur cancel^{to} order the transfer of the applicant. Inspite of this, transfer order of the applicant has not been cancelled. The matter has been agitated through the present application filed on 23.9.97 seeking the relief as indicated above.

3. The applicant has challenged the impugned transfer order on the following grounds:

A. The transfer order has been passed by an incompetent authority. In the case of the applicant only General Manager could order the transfer.

B. The transfer is not in the administrative interest as is clear from the order dated 17/4/97 as per ~~xx~~ which one Sri M. Ram Meena has been posted at Mathur after downgrading the post on his own request. The applicant had been posted at Mathura only for a period of 8 months.

C. The applicant is a ~~schedule~~ ^{employee} caste and is entitled for protection against the transfer in terms of the rules laid down by the Railway Board.

D. The applicant is elected ^{an} office bearer of the recognised union and in view of the laid down instructions, he cannot be transferred.pg.3/-

E. The transfer of the applicant has been effected in the mid session causing serious problems to the education of the children of the applicant studying in the college.

F. The applicant has lodged a F.I.R. against certain staff and instead of transferring the staff who are mentioned by the applicant, the applicant has been transferred out.

G. The transfer order does not sustain in pursuance of the Railway Board's order dated 3/4-7-97.

4. The notices were issued to the respondents allowing time for filing objections against the interim order as well as for filing counter-reply. However, there was no response from the respondents and order dated 15.12.1997 was passed providing that in case counter-reply is not filed within the period allowed, the case will be heard and decided based on the pleadings on record. On 12.2.98, neither the counsel for the respondents was present nor any counter-reply had been filed. In view of the order dated 15.12.1997, I proceeded to hear the arguments of the counsel for the applicant on merits at the stage of admission.

5. The first ground of attack is that the order of transfer has been passed by an incompetent authority. The applicant submits that the General Manager is the competent authority to transfer the applicant relying on the para 226 and 227 of Indian Railway Establishment Code, Volume I. Referring to para 226, it is noted that it provides in case of Group 'C' and 'D' railway servants power of transfer may be exercised by the General Manager

or to whom the power may be redelegated. The applicant has not specifically stated that no delegation of power has been done and the entire power of transfer rests with the General Manager. From the pleadings of the earlier applicant it is noted that the applicant was transferred to Vrindaban and subsequently to Mathura Cantt. station as Station Superintendent. The applicant has not revealed as to who had passed the orders for these transfers. If no delegation of power for transfer has been done, then obviously the earlier orders of transfer must have been passed by the General Manager only. If this fact ~~had been~~ ^{would have been} revealed the contention of the applicant ~~was~~ established. In the absence of any specific averment with regard to competent authority for transfer, I am not able to appreciate any merit in the plea taken by the applicant.

6. The second ground for assailing the transfer order is that the applicant belongs to a S.C. category and, therefore, cannot be transferred. The applicant ^{on record} has not brought the relevant rules/governing the transfer of a S.C./S.T. staff. However, the applicant has brought on record the order dated 09.3.95 passed in C.A.200/95 of this Bench where stay has been granted against the transfer of S.C. employee. This order at annexure A-10, refers to the circular issued by the Railway Board. The matter of transfer of S.C./S.T. employee of railway in terms of the circular laid down by the Railway Board has been examined by the Full Bench, Hyderabad in the case of 'Ch. Roosevelt Vs. General Manager, South Central Railways, Secunderabad 1997(1) A.T.J. page 12'. The Full Bench has held that the instructions laid down by the Railway Board are administrative in nature and the

:: 5 ::

same cannot be enforced in a court. Further a member of S.C./S.T. community enjoys no special privilege in the matter of transfer. Keeping in view what is held by the Full Bench, this ground of the applicant does not survive.

7. The third contention of the applicant is that he is an elected office bearer of the recognised union and, therefore, cannot be transferred in terms of the Railway Board's circular dated 24.07.82(A-8). I have gone through the circular dated 24.07.82 which is reproduced from the Indian Railway Establishment Manual. After perusal of the same, it is noted that it lays down the procedure to be followed for transfer of the office bearer of the recognised trade union. The applicant has not brought on record any material to indicate that he is an elected office bearer at the time of transfer. The applicant has also not revealed if any representations had been made against the transfer the applicant being an office bearer of the recognised trade union in violation of the instructions laid down as per order dated 24.7.82. Incase the applicant has been transferred in violation of these instructions, central body of the trade union would have taken up the matter with the General Manager for non-compliance of the procedure laid down for transfer of the office bearer. In the absence of any such a material on record, I am not able to find any merit in the grounds taken by the applicant. In any case, I find that the instructions laid down as per the Railway Board's circular dated 24.7.82 are administrative instructions laying down the procedure to be followed for transfer but do not bar the transfer of the office bearer at all. They are not statutory in nature. The guide lines do not confirm any enforceable right against transfer upon the government servant as held by the Hon'ble Supreme Court in the judgment of U.O.D. & Ors. Vs. S.L. Abbas 1993(2) A.T.J.147¹

8. The 4th contention of the applicant is that the applicant has been transferred in the mid session causing disturbance to the education of his children in violation of the policy laid down by the Railway Board not to transfer the employee in the mid session. The applicant has not brought on record the copy of the policy instructions of the Railway Board as relied upon. Further the hardship caused to an employee on account of transfer cannot be ^aground of challenge and judicial interference with the transfer order. This is an issue to be considered by the competent authority to whom the employee should represent. In this connection, I refer -- to the judgment of the Hon'ble Supreme Court in Rajendra Roy Vs. Union of India and Others 1993(1) S.L.R. 126 wherein it is held as under

*In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department.

In view of what is detailed above, I do not consider that the transfer order can be struck down on this ground.

9. The next ground taken by the applicant is that the transfer order does not sustain in view of the order given by the railway Board in the letter dated 03/4-7-97 I have gone through this letter and find that this is a ~~dam~~ official -- letter wherein the observations made by the ~~Minister~~ have been conveyed to the Chief Personnel Officer requesting the Railway Board to examine the feasibility of cancelling the transfer order. It is also noted that there had been ^asubsequent letter from Railway Board at A-4 letter dated 24/24-7-97. The

Chief Personnel Officer has also replied to the Railway Board by the letter dated 28/29-7-97 at A-5. These documents are the correspondence between the Railway Board and North Eastern Railway and cannot be the basis for any judicial interference to quash the transfer order.

10. The last and the main ground for challenge is that the applicant has been transferred not in the administrative interest but with a view to accommodate Sri M. Ram Meena at Mathura. The only averment made to support this contention is that this intention of the administration is clear from the order dated 17/4/97 as per which Sri Meena has been posted at Mathura. No other ground has been laid by the applicant which could give indication of this fact as the basis of the transfer of the applicant. I have gone through this order dated 17.4.97 and find that this is the transfer order of Sri Meena posting him at Mathura which has been issued after a period of more than one month after the applicant was transferred out. The main issue is the transfer of the applicant. Once the applicant had been transferred, the post is required to be filled up and obviously incase there is any request for posting at Mathura, such a request is expected to be considered by the administration. In the absence of any material brought on record by the applicant, it is difficult to accept the contention of the applicant that he has been transferred to accommodate Sri Meena at Mathura. From the documents brought on record by the applicant, the reasons for transfer are quite apparent. The applicant has alleged that he has filed

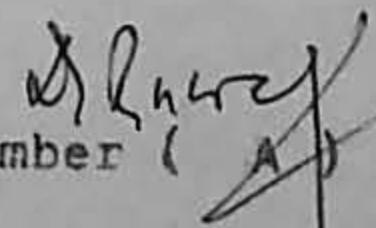
:: 8 ::

a F.I.R. against 5 persons and instead of transferring the persons named in the F.I.R., the applicant has been transferred. However, in the letter dated 28/29-7-97 at A-5, the reasons for transfer have been indicated by the Railway to the Railway Board. This letter brings out that there was some quarrel between a few employees which included the applicant and all of them had been transferred out of Mathura. This letter also details that all those who have been transferred, have since reported to the respective stations except the applicant. The applicant has admitted this fact with regard to the transfer of some employees from Mathura but has refuted the claim of the respondents stating that two of the employees who have been transferred, have not yet joined at the place of transfer. Whether some have yet joined or not, is immaterial but the fact remains that the applicant has been transferred alongwith other staff after some quarrel at the station. This is also established from the fact that the applicant has also lodged a F.I.R. which may be perhaps as a counter to the action taken by the other party. With this background which emerges from the documentary evidence brought on record by the applicant himself, the applicant's contention that he has been transferred to accommodate Sri Meena is not sustainable. The reasons for transfer are quite discernible. As indicated earlier the respondents have not contested the O.A. by filing the counter-affidavit. However, from the facts as detailed above, it comes out that the transfer of the applicant and others has been perhaps done in the interest of the administration on account of some quarrel so that the public interest does not suffer. The competent authority is the best judge for assessing this situation and coming to the conclusion.

with regard to the need of the transfers in the interest of the administration. Such a decision of the competent authority if challenged, may call for a judicial interference only, ^{if} it is established that the decision of the competent authority is actuated by malafide or colourable exercise of power. As indicated earlier that the allegation of showing favour to Sri Meena in posting at Mathura is very flimsy and not sustainable. No authority has been named as a respondent who alleged to have acted malafidely.

11. In the canteen of the judgments, the Hon'ble Supreme Court has laid down that the order of transfer is judicially reviewable except for proven arbitrariness/ malafide or has been passed in disregard of the statutory rules. The various grounds raised by the applicant in assailing the transfer order, have been examined above and findings have been recorded that there is no merit in any of the contentions. In view of this, no judicial interference is called for.

12. In the light of above, I am unable to find any merit in the application and same deserves to be dismissed and is accordingly dismissed. No order as to costs.


Member (A)

/M. M. /