

Reserved.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

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Original Application No. 214 of 1998

this the 22nd day of May '2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Vinod Kumar Gupta, S/o Late Sri Keshav Prasad Gupta,
R/o Jateypur North Near Kali Mandir, Gorakhpur.

Applicant.

By Advocate : Sri S.K. Om.

Versus.

Union of India through the General Manager, N.E. Railway,
Gorakhpur.

2. Chief Personnel Officer, N.E. Railway, Gorakhpur.
3. Chief Commercial Manager, N.E. Railway, Gorakhpur.
4. Senior Divisional Commercial Manager, N.E. Railway,
Lucknow.

Respondents.

By Advocate: Sri V.K. Goel.

O R D E R

The applicant while working as Senior Ticket Collector at Gorakhpur Railway station, North Eastern Railway, was transferred from Gorakhpur to Izzat Nagar vide impugned order dated 18.2.1998. The applicant, by means of this O.A., has challenged the validity of his transfer order.

2. According to the applicant, an F.I.R. was lodged by one Sri Sunil Kumar Rao against the applicant with the allegation that the applicant was demanding a sum of Rs. 70/- as ^{illegal} gratification for providing berth.

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to the complainant on 19.11.1997. A Criminal case under section 7/13(i)(d) of Prevention of Corruption Act, 1988 was registered against him and the applicant was placed under suspension w.e.f. 17.12.1997. Subsequently, however, the suspension order was withdrawn on 21.1.1998, but the applicant was transferred by the impugned order as Senior Ticket Collector, Izzat Nagar.

3. The case of the applicant is that the impugned transfer order is arbitrary and illegal because the impugned order, in question, is inter-divisional transfer, which could be made only after the approval of the General Manager, North Eastern Railway (respondent no.1). Secondly, the order is punitive in nature and has been passed in colourable exercise of power in order to punish the applicant on the basis of false FIR lodged against him and lastly the impugned xxx transfer order would cause great hardship to the applicant because his wife is bed ridden and has been advised to complete bed rest for a period of six months.

4. I have heard the learned counsel for the parties at length and perused the pleadings on record.

5. It is needless to emphasise that the transfer is an incident of service and cannot be challenged on the ground that a Govt. servant would suffer hardship and inconvenience on account of family problems or on account of education of the children. It can, however, be challenged on the ground that if the same is passed in xxxx ^{is} contravention of any rule or malafide. The applicant has not alleged any malafide in the present case. The learned counsel for the applicant has, however, brought to my notice the order dated 12.8.1997 issued by the Chief Commercial Manager (C.C.M. in short), a copy of which has been annexed as Annexure-6 to the O.A., in which it is provided

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that incase of transfer from one division to another division, normally no commercial staff should be transferred from one division to another division. However, in exceptional cases this may be done with the personal approval of the General Manager or Additional General Manager. This order is stated to have been issued on the directions of the General Manager. The learned counsel for the respondents has, however, filed a copy of the order dated 2.1.1998 (Annexure R-2 to the Counter Reply), in which the aforesaid order dated 12.8.1997, which has been described merely as a note, has been cancelled. It is further clarified that in case of inter-divisional railway transfer of staff at their own request, the prior approval of the General Manager is required. In the case of administrative transfer the extant powers as prescribed in SOPEST will hold good and C.C.M. has got absolute powers to transfer Group 'C' and 'D' staff from one division of N.E. Railway to other division on administrative grounds.

6. The learned counsel for the applicant has not brought to my notice any instructions issued by the Railway Board or Rule framed under the Article 309 of the Constitution of India in which the prior approval of the General Manager is required in the case of inter-divisional transfer of commercial staff. As regards the note dated 12.8.1997 that appears to be a mere administrative instructions, which was lateron cancelled. It is, however, admitted by the applicant vide para 3 of the Supplementary Affidavit that the competent authority to approve the transfer of the applicant is Chief Commercial Manager, but the impugned order was not issued after his approval. The impugned order having been issued by the Chief Personnel Officer, therefore, the same is not valid. It is clear from the perusal of the impugned order that the same has been issued

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with the approval of the competent authority (Chief Commercial Manager in the case of the applicant). There is no material on record to show that the impugned order was issued without the approval of the competent authority. I have also an occasion to peruse the relevant file and I am satisfied that the order has been passed after due approval, therefore, there is no illegality or irregularity in the impugned order.

7. As regards the allegation that the impugned order has been passed to punish the applicant for his alleged involvement in criminal case and the order cannot be said to have been passed in the public interest, It is an admitted case that a criminal case has been instituted against the applicant on the basis of an FIR for his alleged demanding illegal gratification and the said case is still pending before the Criminal Court. If there are specific allegation of serious nature namely demanding of illegal gratification and a criminal case is instituted against an employee, the administration cannot be ^{compelled} ~~forced~~ to remain helpless or mute under such circumstances by not transferring such employee on administrative grounds. The allegation of malafide or ^{not} the impugned order having been passed in public interest have no force under the facts and circumstances of the case. Consequently I do not find any merit in the O.A. and the same is liable to be dismissed and is dismissed. The Parties shall bear their own costs.

Rajendra

MEMBER (J)

GIRISH/-