

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

OPEN COURT

ORIGINAL APPLICATION NO.1133 OF 2004.

ALLAHABAD THIS THE 18TH DAY OF JULY 2007.

Hon'ble Mr. P.K. Chatterji, Member-A

Dr. Gorakh Prasad s/o late Baruaray Prasad,
Pragati Vihar, West of Naveen Marg,
House New Dharampur, P.O. Geeta Vatika, Gorakhpur.

.....Applicant

(By Advocate: Sri Rajesh Tripathi)

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. Chief Medical Director, LNM Railway, Hospital, Gorakhpur.
4. Dr. Mina Sarin, Medical Director, Lalit Narain Mishra Hospital, North Eastern Railway, Gorakhpur.
5. Dr. S.K. Sinha, Sr. DMO/Path. LNM Rly. Hospital, Gorakhpur.

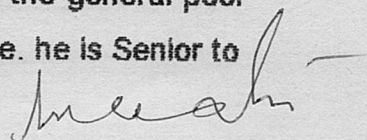
.....Respondents

(By Advocate: Sri K.P. Singh)

ORDER

Heard Sri Rajesh Tripathi, learned counsel for the applicant and Shri K.P Singh, learned counsel for the respondents.

2. The applicant is Medical Practitioner working with North Eastern Railway, Gorakhpur. His grievance is that vide order dated 22.8.2003 (page 22 of the O.A.), he was ordered to be posted at Gorakhpur in place of Dr. S.K. Sinha, JMO, IRMS, the order was not implemented in full. The transfer order was issued at the request of Dr. S.K. Sinha. However, thereafter he changed his mind and requested the Competent Authority for retaining him where he was. Applicant, however, was already relieved from his post, he joined at Gorakhpur for the new assignment on 15.9.2003. After the order in respect of Dr. Sinha is cancelled, he could not be accommodated in only place of Pathology at Gorakhpur, therefore, he was kept in the general pool of Doctors. He was an officer of S.A.G Grade and therefore, he is Senior to



Dr. Sinha. As Senior Doctor, he should have been posted as Pathologist. However, he was denied the opportunity.

3. The applicant has further stated that after the original order of transfer was modified at the request of Dr. S.K. Sinha, the entire order should have been cancelled. However, he was kept in dark and he could know about the modification of the order in favour of Dr. S.K. Sinha much later. He has further stated that the entire development took place with the complicity of respondents No. 4 and 5, N. E. Railway Hospital. Three persons respondents NO.4 and 5 and Dr. S.K. Sinha were acting in collusion to deprive the applicant of his legitimate claim for the post of Pathologist. Applicant is of the view that the decision of the respondents to retain Dr. S.K. Sinha for the post of Pathologist was irregular, wrong and was being done by the colourable exercise of power, out of a malafide intention against him.

4. The applicant has cited the relevant portion from the judgments from two cases as follows:-

- (a) **Wasi Akhtar Vs. State of U.P and Ors.** and others passed by Hon'ble Allahabad High Court in writ petition No.4224/01 in which it was directed that transfer made on request for personal reason was not open for cancellation by the Authority concerned unless there were very strong and exceptional reason for the same.
- (b) **B. Varadha Rao Vs. State of Karnataka and others, reported in (1986) 4 Supreme Court Cases 131.** In this case, Hon'ble Apex Court has upheld the petition against the order of transfer, which was proved to have been done under a colourable exercise of power to favour some person at the cost of the applicant. It was stated by the Apex Court in that case that the power of transfer must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power..

5. By making above submission, learned counsel for the applicant has prayed that the Tribunal be directed the respondents to post the applicant in

M. S. Rao

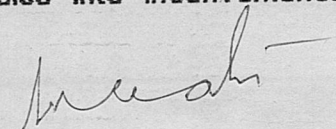
accordance with the original order of transfer on the post of Pathologist. He has also impugned the subsequent orders of his attachment to the Hospital at Gonda twice a week. He says that he has a right to work as Pathologist at Gorakhpur itself. The orders for two attachment at Gonda was a sop and was like an insult to him and could not be accepted by him. He has also prayed that orders of his attachment twice a week at Gonda be also cancelled.

6. Notices were served upon the respondents NO.4 and 5, however, no reply has been filed so far on their behalf.

7. The respondents have emphatically denied the allegation. They have not disputed the facts presented by the applicant in general. It has been admitted that order of transfer, which was initially issued by the respondents, had to be cancelled, as Dr. Sinha withdrew his request, which was considered. He has admitted that Railway Board admonished Dr. Sinha for changing his mind but finally decided to accede to his request in view of his efficient work as Pathologist.

8. The learned counsel for the respondents has also stated that though the applicant is senior to Dr. Sinha, the Authorities considered Dr. Sinha far more efficient as Pathologist than the applicant. The charge of Pathologist being heavy and responsible and the respondents in their discretion and judgment gave the charge of Pathologist to Dr. Sinha. It has also been stated by learned counsel for the respondents that there is no specific Rule to the effect that the post of Pathologist at Gorakhpur is reserved for the senior most Doctor amongst the Physicians. The specific question was put before the learned counsel for the applicant whether he could cite any Rules to this effect. However, there was no specific ruling available with him.

9. Learned counsel for the respondents has emphatically denied the charge that there was collusion among Dr. Sinha and respondents No.4 and 5. He has stated that Railway Board, who was fully competent to make transfer as well as to modify the transfer orders thought that Dr. Sinha request for retention at Gorakhpur could be accepted although they felt that such request on the part of Dr. Sinha created administrative inconvenience for which he was warned. But still it was felt that the request of Dr. Sinha could be acceded to without putting anybody else into inconvenience.



Railway Board did not exceed its power and interest of the applicant has not been trampled upon.

10. Learned counsel for the respondents by citing from well-known case *Union of India and Ors. Vs. S.L. Abbas reported in AIR 1993 Supreme Court Cases 2444*, has stated that the matter of transfer of employee is prerogative of employer and unless there is an explicit mala fide in the order, such order was not interfered with by the Tribunal and the Court. By citing from full Bench judgment of *Allahabad High Court reported in 1995 (2) UPLBEC 1128 in case of Director, Rajya Krishi Utpadan Mandi Parishad Lucknow Vs. Nathi Lal*, learned counsel said Hon'ble High Court has stated that there was no bar or restriction to the modification, revocation or cancellation of order of transfer even after it has been implemented.

11. Learned counsel for the respondents has also informed me that although now the applicant is challenging the order of his attachment at the Hospital in Gonda twice a week as Pathologist, it was issued after obtaining his verbal consent. Learned counsel for the applicant, however, denies the same and he says that there was written consent taken from him.

12. In my view that this matter is not in consonance as far as the decision of the O.A. on merits is concerned, therefore, I do not dilate upon this aspect.

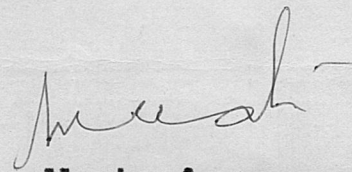
13. Having gone through the facts of the case and having seen different judgments cited by both the parties having bearing upon this fact, I have applied my mind to the same. The only grievance, which the applicant seems to be nurturing is that the initial order of transfer was for posting as Pathologist. After he joined at Gorakhpur, the scenario changed and he found that he was in general pool and he was feeling an insult being heaped upon him. By convention the post of Pathologist goes to the senior most Doctor. However, he could not specifically say whether before he joined at Gorakhpur, Dr. Sinha was the senior most Doctor at Gorakhpur and in that capacity he was holding the charge of Pathologist. He says that he is not too sure whether the post of Pathologist is for all time to be reserved for senior most doctor at the station. Learned counsel for the respondents has also thrown some light on the aspect by saying that there was no such rule and it is entirely the discretion of the authority. Respondents have assessed the

performance of both the Doctors and they were of the view that Dr.Sinha was more competent in the work of Pathologist. Moreover by denying the applicant the post of Pathologist, the respondents have not encroached upon his civil right of the applicant. No Constitutional provision conferring any right upon the applicant have been flouted in this case. As to the charge of collusion among some officers and colourable exercise of power, the learned counsel for the respondents has stated that this is only a figment of imagination in the mind of the applicant. He was getting same pay, which is due to him and he has not lost his seniority to ~~this~~ effect his future interest.

14. Learned counsel for the respondents has also argued that even transfer made on request can be changed and such order was not irrevocable. Even the order in the case of Wasi Akhtar (supra), it was stated by the Hon'ble Court that such order could not be changed unless there were very strong and exceptional reason. In other words, it was not an absolute order.

15. Learned counsel for the respondents has also shown by citing the full Bench judgments of Hon'ble High Court that it was prerogative of the respondents to make changes ⁱⁿ and the order of transfer as would be considered necessary in the interest of service. Keeping these arguments and consideration as stated above and also keeping in view the fact that four years have passed and all these 4 years, the applicant and other Doctors have been working in their respective ^{posts} parties, It would not ^{be} appropriate for the Tribunal to interfere into the matter at this juncture. From the point of view of the legal position and the relevant Rules of the department also, there does not seem to be any irregularity committed by the respondents.

16. For these reasons, I do not find any merit in the O.A. and it is dismissed with no order as to cost.


Member-A

Manish/-