

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD, this the 2nd day of August, 2010

Present:

HON'BLE MR. D.C. LAKHA, MEMBER- A

ORIGINAL APPLICATION NO. 1539 OF 2004

Madan Lal Pathak, aged about 50 years, S/o Sri Sachida Nand Pathak, R/o House No.ET/75-A, Cantt Colony, Mathura.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Railway, New Delhi.
2. Divisional Railway Manager, North Eastern Railway, Gorakhpur.
3. Senior Divisional Engineer-Ist, Izzat Nagar, Bareilly.
4. Section Engineer (Railway) Mathura Cantt. Mathura.
5. Raj Pal Singh, Rail Path Paryaveshak, Mathura Cantt., Mathura.

.....Respondents.

Present for the Applicant:

Sri S.S. Sharma
Sri C.P. Srivastava
Sri Anubhava Chandra
Sri A.K. Shukla

Present for the Respondents:

Sri K.P. Singh

ORDER


(DELIVERED BY HON'BLE MR. D.C. LAKHA A.M.)

This OA has been preferred to seek the following reliefs:

- (i) ***To issue an order or direction quashing the impugned orders dated 17.6.2004 and 12.8.2004 passed by respondent No.4 and 3 respectively.***
- (ii) ***To issue any other order or direction of any other nature which the Hon'ble Court may deem fit and proper in the circumstances of the case.***
- (iii) ***To award the costs.***

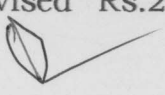


2. The brief facts of the case are that the applicant was initially recruited as Track Man and was posted at Kannauj. Subsequently, he was transferred from Kannauj to Mathura Cantt and has been working at Mathura Cantt w.e.f. March 2001. The applicant was further promoted to the Scale of Rs.2750-4400 vide order dated 20.10.2001 passed by Assistant Divisional Engineer. Vide order dated 25.6.2003, the applicant was allotted a type-II house No.ET/75-A by respondent No.4. A copy of the order dated 25.6.2003 is marked as Annexure-A-3. Due to allotment of the aforesaid quarter in favour of the applicant, the respondent No.5 became highly annoyed and disgruntled. Opposite Party No.5 has also closely associated with the office bearers, Northern Railway Mens Union. The authorities under the influence of Union has reverted the applicant in the scale of Rs.2610-3540 without any show cause notice or opportunity. Challenging the aforesaid order of reversion, the applicant filed OA No.1222/04 which was finally disposed of by the Tribunal vide order dated 25.10.2004, directing the competent authority to decide the representation of the applicant within three months from the date of production of a certified copy of this order. According to the applicant the respondent No.5 who is entitled for Type-II accommodation, he was allotted several other type-II accommodation but on every occasion he has refused to occupy the same and instead the applicant to allot the house in question (E/T-75A), which is already in the possession of the applicant. It will not be out of place the mention here that the influence exercised by the respondent No.5 through the Office Bearers and leaders of the Union helped him resulting in



cancellation of the allotment order made in favour of the applicant. The net result of the exercise/influence on Union Leader by the applicant was that the accommodation in question already allotted to the applicant, was cancelled by the impugned order dated 17.6.2004 (Annexure-A-1) and the same was allotted in favour of respondent No.5. It is alleged that the order dated 17.6.2004 is illegal, arbitrary and is violative of principle of natural justice and fair play. Notices were also issued to the applicant for vacating the accommodation in question, failing which necessary departmental proceedings were directed to be initiated against him. A true copy of the notice dated 27.7.2004 and 3.8.2004 are filed as Annexure-A-8 and A-9. It is further alleged by the applicant that in order to defeat his legitimate claim, the applicant was transferred from Mathura Cantt to Office of Assistant Divisional Engineer Fatehgarh. From perusal of the order, it is quite evident that the order was typed on 9.8.2004 and the same was signed on 12.8.2004. According to the applicant, the order dated 12.8.2004 was passed without any reason and justification. The order of transfer was malafide and with a view to harass the applicant.

3. By means of filing the counter affidavit the respondents have denied the claim of the applicant and submitted that the applicant was initially appointed as Time Scale Khalasi on 17.11.1983 in the office of Permanent Way Inspector/I/Kannauj, under Assistant Engineer/Fatehgarh and regularized as Gang Man (in the old pay scale of Rs.2610-3540/-) on 16.2.1985 and continued as Gang Man till 15.7.1989. It is also submitted on behalf of the respondents that on 11.7.1989 the applicant was promoted as Sr. Gang Man in the pay scale Rs.800-1150/revised Rs.2650-4000/- in the office of




Permanent Way Inspector/II/Kannauj under Assistant Divisional Engineer, Fatehgarh. In fact the applicant Sr. Gang Man, was transferred from the office of Permanent Way Inspector/II/Kannauj under Assistant Divisional Engineer, Fatehgarh to another unit i.e. Permanent Way Inspector/Mathura Cantt. under Assistant Divisional Engineer, Mathura Cantt. on his own request vide Divisional Rail Manager, Personnel, Izatnagar, Letter No.KA/283/Estate/Engg./8 dated 27/29.03.2001, in which it is clearly mentioned that "No transfer benefits will be given to the employee and on transfer, he will be given bottom seniority in the pay scale of Rs.2610-3540" as per the existing transfer rules of Indian Railways. According to the respondents the applicant had earlier refused to occupy the house Type-I, allotted to him. Subsequently, on 10.6.2003, he gave another application to his supervisor, Shri U.S. Sharma and his case was registered at Sl. No. 18 dated 10.6.2003 for Type-I Railway quarter allotment register of Section Engineer/P.Way/Mathura Cantt. It is also alleged by the respondents that the applicant wrongly allotted Type-II quarter in his favour based on his wrong promotion order by passing other senior candidate in connivance with Section Engineer Permanent Way of Mathura Cantt. and occupied the same quarter immediately after the same was vacated by Shri A.D. Agnihotri Senior Section Engineer/Works/Mathura Cantt. Immediately after allotment of the quarter in question in favour of the applicant the respondent No.5 raised objection and represent his grievance to the higher authorities namely Senior Divisional Engineer. Senior Divisional Engineer, Izzatnagar vide order dated 18.11.2003 cancelled the earlier order issued by Shri U.S. Sharma. Shri U.S. Sharma, Section Engineer,



Mathura Cantt. did not implement the order passed by Shri Mukesh Jain, Senior Divisional Engineer, Izzatnagar. In the mean time Shri Mukesh Jain was transferred, and no action was initiated by Shri U.S. Sharma in order to implement the order dated 18.11.2003. The applicant was issued show cause notices dated 27.7.2004 and 3.8.2004 for vacating the said Railway quarter in question, which he failed to do so. According to the respondents the order passed against the applicant was reasoned and as per existing rules keeping in view the principle of natural justice and fair play. The applicant has been given wrong promotion as Senior Gangman in scale of Rs.2750-4400 and on the basis of his wrong promotion order the applicant has allotted Type-II accommodation vide order dated 25.6.2003. According to the respondents the applicant had retained the railway quarter in question at Mathura Cantt. Unauthorisedly the applicant was already given show cause notice for vacating the quarter, in question, but he failed to do so.

4. The applicant has filed rejoinder reply and denied the allegation contained in the counter reply. In the rejoinder reply it is submitted by the applicant that on joining Mathura Cantt. he was correctly taken on duty in Grade Rs.2650-4000 and was assigned bottom seniority accordingly on the post of Senior Gangman in Grade Rs.2650-4000 i.e. same grade and posted on the post on which he was working at Kannauj as per rule correctly and thereafter vide order dated 26.10.2001 he was promoted as Senior Trackman in grade Rs.2750-4000 on the basis of his seniority as Senior Trackman in grade Rs.2650-4000. It is also submitted by the applicant that the respondents under the pressure of Union became adamant to get the said quarter, in question, vacated from the



applicant by any means. It is also submitted by the applicant that under the pressure of the Union, the respondents adopted a very illegal way of getting the quarter vacated from the applicant. Accordingly, the applicant was reverted vide order dated 26.10.2003 from grade Rs.2750-4000 to grade Rs.2610-3540. The real mootings behind this reversion order was to disentitle the applicant from allotment of Type-II quarter.

5. I have heard the parties' counsel at length, perused the record and case law cited on behalf of the applicant.


6. Learned counsel for the applicant has placed reliance on the decision reported in **1991 (18) ATC 361 - Ramphal Singh Vs. Union of India & ors.** in order to buttress the contention, the order of cancellation of allotment already made in the favour of the applicant is violative of Principle of natural justice and the cancellation has been done without affording opportunity of representation to the employee is invalid. Learned counsel for the applicant would further contend that the transfer of an employee to another station for the purpose of waiting Govt. accommodation vacated is punitive. In support of this contention reliance has been placed on the decision reported in **1996 ((33) ATC 56 - Brij Behari Singh and others Vs. Union of India & others.** Learned counsel for the applicant vehemently argued that Principle of natural justice has fully been followed, the applicant has already given show cause notice dated 27.7.2004 and 3.8.2004 to vacate the said Railway Quarter, in question, which the applicant failed to do so. The applicant has also failed to avail the chance to make a representation for redressal of his grievance. It is also alleged by the



respondents that the applicant did not prefer any representation in pursuance of the order of the Tribunal dated 25.10.2004 (Annexure-CA-6). As regard transfer of the order dated 12.8.2004 passed against the applicant, it is argued that the transfer is an incidence of service and an employee can be transferred from one place to another in Administrative exigencies. The transfer order can only be challenged on three grounds, firstly, if the transfer order is malafide, secondly, if there is violation of statutory rules and thirdly, if transfer order has been passed by an incompetent authority.

7. It is seen from the record that as far back as on 31.1.2005 the order of transfer as well as order of shifting of accommodation dated 12.8.2004 were stayed by this Tribunal. Interim order was directed to be continued from time to time. On 11.4.2008 at the request of learned counsel for the applicant time was granted to reconstruct the file. The officials concerned were also warned and were directed to give their explanation for the lapses done in the matter.

8. Having given my thoughtful consideration to the argument advanced by the parties counsel, I am of the view that this is a simple case of transfer and shifting of accommodation. Interim order has been continued due to non disposal of the case in time. The applicant has utterly failed to show any cogent ground for interference in the transfer order dated 12.8.2004. The case law cited by the applicant is not at all applicable to the present case. In the present case two show cause notices were already given to the applicant, whereas in Ramphal Singh's case (supra) no notice or opportunity was given to the applicant. The applicant has also failed to indicate any ground warranting interference in the transfer



matter. Learned counsel for the respondents has placed reliance on the decision of the Tribunal rendered in **2002 (2) ATJ 377 – B.K. Katkar and others Vs. Union of India & ors** and submitted that “it is well settled that an employee who is appointed on a transferable post is liable to be transferred from one place to another and he cannot raise a grievance against it. No one has any right to remain at one place where an employee is in a cadre which he joins with an open eye that he can be transferred.”

9. Having given my thoughtful consideration to the pleas advanced by the parties counsel, I am of the view that the applicant had retained the Railway Quarter, in question, at Mathura Cantt. unauthorisedly. Since the applicant was issued show cause notice to vacate the said railway quarter, in question, which he failed to do so, the competent authority has rightly issued order dated 17.6.2004 allotting a Type-I Railway Quarter to the applicant and canceling the allotment of Type-II accommodation. In my considered view there is no illegality in the impugned transfer order dated 12.8.2004. Accordingly, the OA is dismissed. Interim order earlier granted by the Tribunal is vacated. No order as to costs.


Member-A

RKM/