

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 05th day of May 2005.

Original Application No. 303 of 2004.

Hon'ble Mr. S.C. Chaubey, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Farid Khan, S/o late Shri Sardar Khan,
R/o 296-B, New Model Railway Colony,
Izzatnagar,
BAREILLY.

...Applicant

By Adv : Sri A.R. Masoodi

V E R S U S

1. Union of India through Secretary,
Ministry of Railways (Railway Board),
NEW DELHI.
2. General Manager, North Eastern Railway,
GORAKHPUR.
3. Divisional Railway Manager,
North Eastern Railway, Izzatnagar,
BAREILLY.
4. Divisional Railway Manager (Karmik),
Izzatnagar,
BAREILLY.
5. Divisional Commercial Manager,
North Eastern Railway, Izzatnagar Division,
BAREILLY.

...Respondents.

By Adv : Sri K.P. Singh

O R D E R

By K.B.S. Rajan, J.M.

The lone question for consideration in this case is whether the impugned order dated 26th July, 2002, transferring the applicant from Izzat Nagar Division to Sonepur Division, (Intra Zonal Transfer) passed by Respondent No. 2 (GM N.E.R, Gorakhpur) was capable of implementation when subsequently the latter Division had fallen within

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another Zone. In other words, under the facts and circumstances of the case, whether the G.M., N.E.R., Gorakhpur could effect an inter Zonal Transfer?

2. Facts of the case: The applicant, working as a Ticket Collector in the N.E.R. Zone and posted at Izzat Nagar, Bareilly City was one of the many subjected to a rotational transfer and was transferred to Fatehgarh, vide order dated 18-06-2002 (Annexure I) and on certain domestic grounds, the applicant had made a representation requesting for the cancellation of his transfer order. While the said representation was pending, the applicant received another transfer order (Annexure III), in lieu of the earlier one, this time, transferring the applicant from Izzat Nagar Division to Sonepur Division on **administrative ground**. By that time, the applicant, stated to have fallen ill, was on medical leave since 18-06-2002.

3. The order of transfer from Izzat Nagar Division to Sonepur division was challenged by the applicant by means of OA No. 904/2002 in respect of which an interim order of "status quo" was passed by this Tribunal, vide order dated 18-11-2002. Annexure IV of the O.A. refers. While the aforesaid OA was pending, the applicant recovered from his illness and on the strength of fitness certificate issued by the Railway Medical authorities and he reported to Bareilly Division where he was entertained and his matter was referred to the D.R.M. (Commercial).

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However, as per the applicant, he was not given any specific assignment.

4. OA 904/2002 came up for final hearing and vide order dated 13.5.2003 the challenge of the applicant against the impugned order dated 26.7.2002 has been dismissed. In the comprehensive order the Tribunal had also analized the legality of the impugned order and the competence of the authority to transfer, of course, prior to such bifurcation of the zones.

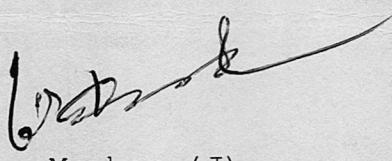
5. The respondents have contested the OA. According to them there is no illegality in the impugned order and since the impugned order was passed prior to the creation of a new zone and since the applicant stood relieve as on 26.7.2002 itself, the applicant cannot question the competence of the respondent No. 2 in passing the impugned order.

6. Arguments were heard and the documents were perused. The issue of res-judicata states on the face of the very case. While passing the order dated 7.8.2001, extracted in para 8 of the order dated 13.5.2003, the Railway Board would not have missed to take into account a situation as one obtaining today as in the case of the applicant. Yet there has been no mention that the order of transfer passed anterior to the creation of new zone cannot be implemented after the creation of such new zone.

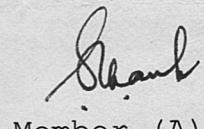
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7. The applicant has fairly conceded that he does not question the earlier order of the Tribunal whereby the impugned order dated 26.7.2002 has been held to be valid. The factum of Sonepur having shifted to a new zone was also taken into account in considering the legality of the transfer order. After the dismissal of the OA the interim order of status-quo also stood automatically vacated. It was, therefore, incumbent upon the applicant to comply with the order of transfer which he did not. The applicant has challenged the very same order dated 26.7.2002 in this OA on the ground that the said order has become incapable of implementation as, according to the applicant, respondent No. 2 has no authority to effect inter-zonal transfer. This is impermissible once the earlier OA has been decided against the applicant and the applicant is barred from raising the issue under the principle of res-judicata/constructive res-judicata. Again, had the applicant moved to Sonepur Zone immediately after the dismissal of the OA, perhaps it would have posed no problem at all.

8. Under the above facts and circumstances, the OA fails and is accordingly dismissed. No cost.



Member (J)



Member (A)

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