

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 568 OF 2004

ALLAHABAD, THIS THE 26<sup>th</sup> DAY OF MAY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Anand Mohan Dubey (Ticket No.8689)  
a/a/ 49 years son of Shri Upendra Nath Dubey  
Posted as Fitter Grade-II in Production Control  
Organisation, N.E. Railway, Mechanical Workshop,  
Gorakhpur.

.....Applicant

(By Advocate : Shri S.K. Pandey)

V E R S U S

1. Union of India through the General Manager,  
N.E. Railway, Gorakhpur.
2. The Chief Workshop Manager/Chief Workshop  
Manager (P) Mechanical Workshop, N.E. Railway,  
Gorakhpur.

.....Respondents

(By Advocate : Shri K.P. Singh)

O R D E R

By this O.A. applicant has challenged the order dated 30.04.2004 whereby he has been posted to Carriage Component Shop from C.T.S. in P.C.O. on promotion as Fitting Grade-II (Pg.25). He has further challenged the speaking order dated 13.04.2004 passed by competent authority pursuant to directions given by this Tribunal in O.A. No.1228/2002 order dated 04.02.2004(Pg.28). In the said order competent authority has recorded that vide order dated 03.10.2002 applicant was

posted to shop floor from the production control organisation on his promotion as Fitter Gr.II and after completion of tenure in PCO. However, applicant challenged the said order in Tribunal by filing O.A. No.1228/02, which was disposed off on 04.02.2004 by directing respondent No.2 to decide the representation and till such time not to give effect to the order dated 03.10.2002. Tribunal had given liberty to the applicant to make representation within 2 weeks by giving all his grievance and difficulties to the competent authority so that they may take into consideration <sup>the same</sup> before passing the final order (Pg.95). But inspite of it, applicant did not file any representation. However, on the basis of records available before him, it was recorded that while working as skilled Gr.III applicant opted for being posted in PCO, accordingly, he was posted in PCO vide office order dated 08.03.1996 in same grade and designation on ad-hoc basis (Pg.32). Thereafter, applicant was promoted as Fitter Gr.II in the scale of Rs.4000-6000/- vide office order dated 30.04.2002. Accordingly, he was re-patriated to the Shop Floor vide office order dated 03.10.2002 as he had already completed his tenure in PCO. As far as judgment dated 07.03.1995 delivered by Hon'ble Supreme Court in the case of Shri Sheo Ratan Soni is concerned he has explained that petitioner therein, who were working in PCO in supervisory capacity and to be upgraded as Chargeman 'B' as per recommendation of Miabhoi Commission Reports yet they were transferred to shop floors while their claim for upgradation to the post of Chargeman was under process. They challenged the orders before Tribunal wherein Stay was granted and petitioner continued to work in PCO. It was, therefore, in this background that since petitioner therein had already been working in PCO for over two decades and their cases were due for upgradation that orders were passed by Hon'ble

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2. Hon'ble Supreme Court held that in the peculiar facts and circumstances of the case that the orders passed against the petitioner therein should not <sup>be</sup> given effect to. He has further explained that in the judgment itself, Hon'ble Supreme Court had clarified that they are deciding the matter without going into the merits of the case of the controversy. He has, thus, explained that by no stretch of imagination applicant can claim the benefit of the said judgment as the facts <sup>in</sup> that their case <sup>are</sup> absolutely different. He has further explained that as per Railway Boards letter dated 13.09.1984 all the posts in PCO are ex-cadre with 5 years tenure, which is extandable up to 6 years (maximum) under special circumstances. He was posted in PCO at his own request in the same grade. However, while working in PCO, he is entitled for special pay of 15% whereas in the shop floor he will become entitled to actually incentive bonus, which generally comes out to be much more than ~~with~~ the special pay of 15% on an average, therefore, financially no loss would be caused to the applicant. He has further submitted that applicant has not shown any grave injury or inconvenience as directed by Tribunal in the order, which may be caused to him, in case he is sent back to his parent organisation. Therefore, in these circumstances, competent authority has held that there is no merit in the representation of the applicant, therefore, his claim for retention in PCO after completion of his tenure is not acceded to.

3. Applicant has now challenged this order on the ground that respondent No.2 has neither considered the case of applicant nor has given any information regarding submitting any representation nor has considered injury of the applicant as he is suffering from spondalites, therefore, this order is bad in law and is liable to be quashed and set aside. He has further

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submitted that applicant is being penalised for having courage to approach this court against the order of transfer passed against him. He has further submitted that changing of cadre and reversion of the applicant to shop floor after more than 8 years is absolutely illegal, arbitrary and violative of Article 14 & 16 of the constitution. This would also change status and since no opportunity of hearing was given to him <sup>passing R</sup> nor any show cause notice was issued prior to the ~~posting~~ of the impugned order, therefore, it is violative of principles of natural justice. He has also submitted that some other similarly situated persons are working in PCO since long <sup>yet</sup> and before applicant's joining PCO but <sup>they have not be en</sup> ~~disbursed R~~ <sup>has R</sup> absorbed while applicant ~~has~~ alone been picked up. Therefore, this order is liable to be quashed being discriminatory.

4. Counsel for the applicant has placed reliance on the judgment given by Hon'ble Supreme Court in the Case of Shiv Ratan Soni & Ors. Versus Union of India & Ors. (Pg.60) and Raj Kishore Singh & Another judgment given by Hon'ble High Court in the case of Thakur Prasad Vs. Union of India & another (Pg.66).

5. Counsel for the respondents on the other hand has opposed this O.A. and has submitted that posting in PCO is a tenure posting for 5 years, which can at best be extended for 6 years as all the posts in PCO are ex-cadre post. Since applicant had already completed his tenure at PCO and he had been promoted while he was working in PCO, he has rightly been transferred from PCO to his parent organisation and no injustice has been done to the applicant in as much as even the Tribunal had given him liberty to file his representation to spell out his grievance and difficulties faced by him by the order of transfer, but inspite of opportunity having been given to him he did not avail the same. Therefore, now it is not open to him

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to make grievance ~~out~~ the passing of the order ~~of~~ competent by authority.

6. Counsel for the respondents has also placed reliance on the orders passed by Division Bench of this Tribunal in the case of Pramod Kumar Gupta Vs. Union of India & Ors decided on 11.03.2004 in O.A. No.225/04 wherein almost similar circumstances another employee had challenged his transfer from PCO to respective Shop Floor but after considering and recording their reasons, Division Bench was pleased to dismiss the O.A. in limine O.A. being devoid of merit.

7. I have heard counsel for the parties and perused the pleadings available on record.

8. Perusal of the order dated 04.02.2004 passed in first O.A. filed by the applicant shows that liberty was given to the applicant to make a representation within 2 weeks before respondent No.2 Chief Workshop Manager/Chief Workshop (P) Mechanical Workshop, N.E. Railway, Gorakhpur placing all the facts showing that if the applicant is transferred, how he will suffer irreparable loss or injury. The representation, if so filed, was directed to be considered and decided by respondent No.2 within a period of 3 months from the date of receipt of a copy of representation and till the representation was to be decided, the impugned order dated 03.10.2002 was not to be given effect to (Pg.98).

9. Perusal of the above para shows that applicant was given full opportunity to place his grievance before respondent No.2 so that he could apply his mind and pass appropriate orders thereon in accordance with law. This order was passed on 04.02.2004 and representation was to be given within 2 weeks.



Meaning thereby that applicant ought to have been given the representation by 20<sup>th</sup> Feb. 2004 admittedly no such representation was given by the applicant. He has, on the contrary, tried to make allegation against respondent No.2 that he did not call upon the applicant to give his representation. To say the least, it is most undesirable that an employee should have such an attitude that on one hand he does not avail the opportunity of filing the representation inspite of opportunities having been given by the court, yet expecting the competent authority to come to him and to ask for his representation, such an attitude has to be condemned and cannot be appreciated in any circumstances. Once opportunity was given to the applicant, it was his duty to place the grievance before the competent authority by way of a representation. If he did not do so, he has only to blame himself and has no <sup>justification &</sup> ~~checks~~ to blame the authorities for his own not doing. Therefore, the allegation made by the applicant that the representation has been decided ex-parte without giving any opportunity of being heard or calling upon him to give representation etc. are rejected.

10. Applicant has stated in Para-30 of the O.A. that some other similarly situated persons have been retained in PCO while applicant has been transferred out. Once again the averments made is absolutely vague in as much as neither he has stated, ~~that~~ what was the post held by those persons whose names have been given in para-30 nor it has been stated when <sup>they were B</sup> ~~elsewhere~~ posted in PCO and <sup>under B</sup> what conditions. Therefore, the contention of the discrimination has to be rejected as it is absolutely vague. On the contrary, if we look at the order dated 09.03.1996 by which applicant was posted in PCO shows clearly that applicant was posted there on ad-hoc or temporary



which B basis would not give him any legal right to remain in PCO for all times to come. More so, when he had been promoted in Fitter Gr.II on 30.07.2002(Pg.34) and had already completed his tenure of 5 years in PCO. In these circumstances, if he was transferred and posted to his parent organisation in the Shop floor, no illegality can be found in the said order. However, by virtue of Stay granted by this Tribunal, applicant has already taken the advantage of remaining in PCO for almost 2 years. Respondents have explained in the speaking order that no financial loss would be caused to the applicant as he is being posted ~~as~~ <sup>on</sup> promotion as Fitter Grade-II to the shop floor where he would be entitled to actual incentive bonus which would be almost more than 15% on an average, which applicant was getting in PCO as special pay.

11. As far as claiming the benefit of judgment given by Hon'ble Supreme Court, perusal of the Judgment, itself shows, that no question of law was decided by the Hon'ble Supreme Court in the case of Shiv Ratan Soni. On the contrary, order was passed keeping in view the facts and circumstances of the case namely the petitioners therein were due for upgradation as chargeman Group 'B', their cases were already under process. They already worked in PCO about 20 years and some of the petitioners had already retired in the meantime. Therefore, without going into the <sup>merit of the</sup> controversy, direction was given to the respondents to permit the petitioners there under to continue to work in the PCO. Perusal of the said judgment thus makes it clear that the said judgment cannot be taken as a precedent by all the persons who are transferred out from PCO. The facts in that case were clearly different from the facts placed by the applicant before us. Therefore, the applicant cannot claim the benefit of the said judgment.

12. Even otherwise applicant has a transferable post and it is settled law by now that transfer is an incidence of service. Hon'ble Supreme Court has repeatedly held that Tribunals should <sup>lightly</sup> not interfere in the matter of transfer ~~likely~~ and transfer should be interfered only if, either it is a result of malafides or transfer is shown to have been passed contrary to some statutory rules. In the instant case, applicant has not been able to show ~~any~~ any statutory rule, which is said to have been violated ~~by~~ <sup>the</sup> respondents nor he has alleged any malafides ~~against~~ by the respondents. Of course he has made a vague averment that he is being penalised for having approached the Tribunal earlier. This by no stretch of imagination can be said to be a valid ground for malafides. After all when applicant had approached this Tribunal earlier, this court had directed <sup>the</sup> respondent No.2 to pass a reasoned order on the representation to be submitted by the applicant, even though applicant did not file the representation as directed by this Tribunal yet respondent No.2 has passed a detailed order which according to me is absolutely valid and a reasoned order. I find no illegality in the orders passed by the respondents. The same view has been taken by the Division Bench of this Tribunal in the case of Pramod Kumar Gupta as well, as referred to above. Therefore, the present O.A. is totally devoid of merit, the same is accordingly dismissed at the admission stage itself. No order as to costs.



Member (J)

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