

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 22 DAY OF 4 2010)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha, Member(A)

Original Application No.02 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

1. Krishna Mohan Pandey aged about 54 years, Son of Sri Bal Govind, at present posted as Diesel Fitter (Mech.) Grade-I, under the Sr. Section Engineer, Diesel Shed, North Central Railway, Allahabad.
2. Mewa Lal aged about 50 years Son of Sri Penchu Ram at present posted as Fitter (Mech.) Grade-I, under the Sr. Section Engineer, Diesel Shed, North Central Railway, Allahabad.
3. Ram Saran Yadav aged about 54 years son of Sri B. Yadav, at present posted as Fitter (Electric), Grade-II, under the Sr. Section Engineer Diesel Shed, North Central Railway, Allahabad.

..... Applicants

By Advocate : **Shri S. Dwivedi**

Versus

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. The General manager(P), North Central Railway, Allahabad.
3. The Divisional Railway Manager, North Central Allahabad Division, Allahabad.
4. The Sr. Divisional Mechanical Engineer (O&F), North Central Railway, Allahabad Division, Allahabad.
5. The Divisional Personnel Officer, North Central Railway, Allahabad Division, Allahabad.
6. The Railway Board through its Chairman Rail Bhawan, New Delhi.

..... Respondents

By Advocate : **Shri A. Tripathi**

Along With

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Original Application No.1489 of 1998

(U/S 19, Administrative Tribunal Act, 1985)

1. Krishna Mohan Pandey, Son of Sri Bal Govind, at present posted as Diesel Fitter (Mech.) Grade-II, under Sr. Section Engineer, Diesel Shed, North Central Railway, Allahabad.
2. Ram Saran Yadav son of Sri B. Yadav, r/o 181 BC, Balipur Railway Colony, Allahabad, at present posted as Fitter (Electric), Grade-II, under Sr. Section Engineer, Diesel Shed, Northern Railway, Allahabad.
3. Mewa Lal Son of Sri Panchu Ram at present posted as Fitter (Mech.) Grade-II, under Sr. Section Engineer, Diesel Shed, Northern Railway, Allahabad.

..... Applicants

By Advocate : Shri S. Dwivedi

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The General manager(P), Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Delhi Division, New Delhi.
4. The Divisional Railway Manager, Northern Railway, Allahabad Division, Allahabad.

..... Respondents

By Advocate :

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

Both Original Applications have been heard and are being decided by a common order as the facts of both O.As. are similar and identical. The Original Application No.02 of 2005 is treated as leading case.

2. Aggrieved by the order dated 22.12.2004 passed by the Sr. Divisional, Mechanical Engineer, North Central Railway Allahabad (Annexure No.1 of the O.A.) the applicants have approached this

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Tribunal by filing aforesaid O.A. We have noticed that the operation of the impugned transfer order was already stayed for a specific period of time vide order dated 07.01.2005 and same remain continued up to 17.10.2007 vide order dated 28.09.2007.

3. Brief facts of the case are that the applicant Nos. 1 & 2 are posted on the post of Diesel Fitter (Mech.) Grade-I and applicant No.3 is posted on the post of Fitter (Electric) Grade-II under the Sr. Section Engineer Diesel Shed, North Central Railway, Allahabad. The applicants were initially appointed at Diesel Shed in Delhi Division of Northern Railway and were posted at Shakurbasti vide order dated 06.11.1990. They were transferred on administrative ground to Allahabad Division of Northern Railway (Annexure A-2 of the O.A.). A perusal of the transferred order would clearly indicate that the applicants were transferred to Allahabad only for a period of one year. The applicants filed a representation dated 23.11.1991 to the Competent Authority when they came to know that even after the expiry of period of one year they are not being sent to their parent unit i.e. Delhi Division of Northern Railway. In spite of specific representation to the Deputy Chief Mechanical Engineer, Diesel, Northern Railway Diesel Shed, Shakurbasti no heed was paid to the grievance of the applicants. According to the applicants they were retained permanently in Allahabad Division of Northern Railway and the General Manager (Mech.) Head Quarter Office, Baroda House New Delhi, issued an order in this regard on 15.12.1992. But Divisional Mechanical Engineer (Operating), Northern Railway, Allahabad stated that this order of retention of the applicants was passed keeping in view

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the administrative exigencies with their seniority since a nucleus of trained and experienced Diesel Staff was necessary in Allahabad Division.

4. The Deputy Chief Mechanical Engineer (Diesel) Northern Railway, Diesel Shed, Shakurbasti, as per letter dated 15.12.1992 of the General Manager (Mech.) Head Quarter Office, Northern Railway, Baroda House, New Delhi, sent a letter dated 18.12.1992 to the General Foreman Diesel Northern Railway, Diesel Shed Shakurbasti mentioning therein about the permanent retention of the applicants in Allahabad Division of Northern Railway on administrative ground and the copy of said letter was also endorsed to all Officers, namely, General Manager (Mech.) and General manager (P), Northern Railway Head Quarter Office, Baroda House, New Delhi, Divisional Railway Manager, Northern Railway, Divisional Railway Manager (Operating), Northern Railway, Allahabad, Sr. Divisional Personnel Officer, Northern Railway, New Delhi etc. The Railway Administration after discussion with both the recognized Employees Union of Department of Railways in IREM Meeting on 31.07.1997 decided to retain the applicants permanently at Allahabad Division of Northern Railway. On 12.08.1997, an order of absorption of applicants was passed by the Competent Authority (Annexure A-8 of the O.A.). In the meanwhile, according to the applicants, under the pressure of employees union, the respondents convened a meeting on 30.09.1998 and decided to allow the applicants to work in Allahabad Division with lien at Shakurbasti Delhi Division of Northern Railway (Photocopy of minutes of meeting held on 30.09.1998 filed as Annexure No. 9 of the O.A). The applicants were allowed future

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promotion based on their seniority with Shakurbasti. Aggrieved, the applicants filed O.A. No.1489 of 1998 (Krishan Mohan Pandey and Others Vs. Union of India and Others). It is pertinent to mention here that during the pendency of the aforesaid O.A., the D.R.M. of the Railway has been divided in different Zones. Allahabad Division of Northern Railway came in the Northern Central Railway Zone and the Delhi Division of Northern Railway is continuing in Northern Railway Zone. According to the applicants after creation of the aforesaid zones, it is settled that transfer of an employee from one zone to another zone can be passed only by the railway Board and not by any other authority under the law.

5. The applicants are aggrieved because of the reason that in spite of the applicants' absorption in Allahabad Division, the Sr. Divisional Mechanical Engineer and Divisional Personnel Officer, North Central Railway, Allahabad, on 22.12.2004, passed an order of sending back the applicants to Shakurbasti, Delhi Division of Northern Railway, clearly observing that the applicant came on temporary transfer for the period of one year and as per order of competent authority they are being sent back to their parent unit Diesel Shed, Shakurbasti Delhi Division of Northern Railway. It is alleged that the order dated 22.12.2004 has been passed by the respondents under the pressure of employees union of North Central Railway. The lien of the applicants should have been maintained in Allahabad Division of Northern Railway, now North Central Railway and not in Delhi Division of Northern Railway.

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6. In the counter reply filed by the respondents it is submitted that the applicants were retained at Diesel Shed, Allahabad even after expiry of the period of one year due to exigencies of work and in the interest of train operation of the division. The applicant no.1 has been promoted as Fitter Grade-II vide order dated 28.05.1996 against the vacancy of Diesel Shed Shakurbasti, Delhi Division. The applicant no.3 has also moved an application dated 20.05.2004 to correct his seniority and for his promote in Delhi Division/Unit accordingly. The said application was duly forwarded to Delhi Division by Allahabad Division on 01.06.2004. It is, further stated by the respondents that on the decision of D.R.M. Allahabad with regard to the absorption of the applicants in Allahabad Division, the matter was further placed before General Manager(P) Northern Railway, New Delhi in the year 2008 and the decision was taken that they should be allowed to work at Allahabad Division with lien at Shakurbasti and their promotion would be based on the seniority with Shakurbasti, Delhi Division. This decision was taken by the competent authority i.e. General Manager, who is higher and competent authority than the D.R.M. The applicants were never absorbed in the Allahabad Division and as such the question for retention and absorbing them at Allahabad Division does not arise at all. It is urged that regarding zonal transfer the approval of concerning General Manager is required but in the present case, the applicants were sent to their parent cadre/Division and as such, there is no need of any approval of the concerned General Manager. The authority, who had passed the order, transferring the applicants from Allahabad to Diesel Shed Shakurbasti Delhi Division is wholly competent for passing

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the said order and the order passed by the authority is not at all illegal, arbitrary and without jurisdiction. The applicants were never absorbed in Allahabad Division, the matter was placed before General Manager (P) New Delhi in 1998 and a decision was taken by the competent authority that the applicants should be allowed to work at Allahabad Division with lien at Shakurbasti, Delhi Division. The order passed by the respondents, transferring the applicants from Allahabad Division to Shakurbasti Delhi Division is properly legal, valid and just. The applicants have totally failed to raise out any specific instance of mala fide, no tangible ground with regard to violation of statutory rules have been pleaded by the applicants.

7. The applicants have filed Rejoinder Reply, reiterating the same facts as enumerated in the Original Application.

8. We have heard Sri S. Dwivedi, learned counsel for the Applicant and Sri Avanish Tripathi, learned counsel for the respondents.

9. Learned counsel for the applicant vehemently argued that the applicants were duly absorbed in Allahabad Division and under the garb of the interim order, they have continuously worked for several years while maintaining their lien at Shakurbasti, in Delhi Division. The respondents have committed serious illegality. Learned counsel for the applicant would further contend that the order dated 22.12.2004 has not been passed by the competent authority and the same has been passed under the undue pressure of employees union of N.C. Railway. The

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applicants have already worked and absorbed in Allahabad Division for more than 15 years and have settled their life. It would be wholly unjust to transfer them back to Delhi Division. The action of the respondents is wholly arbitrary, discriminatory and is without jurisdiction.

10. Learned counsel for the respondents submitted that the lien of the applicants is being maintained at Shakurbasti New Delhi. There is no doubt that the applicants are working in Allahabad Division, but their lien is being maintained at Shakurbasti Delhi Division, their promotions and seniorities are being maintained at Delhi Division. The applicant no.3 has been promoted as Technician Division Grade-II Rs.4500-7000/-vide D.P.O. Delhi letter dated 04.07.2005 and 10.03.2005 under cadre restructuring w.e.f. 01.11.2003. It is also submitted that the decision of D.R.M. Allahabad regarding absorption of the applicants in Allahabad Division has already been overruled by the higher authority i.e. General Manager Delhi Division under Rules (Annexure CA-1 & CA-2). In the letter dated 04.07.2005, it is clearly mentioned that the lien of the applicants is being maintained in Delhi Division.

11. We have noticed that the applicants have rightly been transferred from Allahabad Division to Shakurbasti, New Delhi Division vide order dated 22.12.2004 in accordance with the Rule and no illegality has been committed in the same. Learned counsel for the respondents has placed reliance on the decision reported in 2004 Vol. II S.C. 2165, State of U.P and Ors. Vs. Gobardhan Lal and (2004) 4 Supreme Court

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Case 245, Union of India and Ors. Vs. Janardhan Debanath, in order to buttress the contention that transfer is prerogative of the employer and the transfer order is liable to be challenged only on three grounds, which are as follows:-

- (i) Transfer order is malafide.
- (ii) Transfer order has been passed in violation of statutory Rules.
- (iii) Transfer order has been passed by an incompetent Authority.

12. From entire record, we have noticed that none of the aforesaid grounds exists in the present case. The General Manager Northern Railway, New Delhi has already decided that the applicants should be allowed to work at Allahabad Division but their lien shall be maintained at Shakurbasti Delhi Division. It is also provided that all benefits like promotion, seniority shall be given to the applicants holding their lien at Shakurbasti, Delhi Division. Learned counsel for the respondents also placed reliance on the decision reported in 2006 (9) SCC 458 - **Purshottam Kumar Jha Vs. State of Jharkhand & Ors** , for sake of convenience Para-21 of the said judgment is being reproduced hereunder:-

"It is well settled that whenever allegations as mala fides have been leveled, sufficient particulars and cogent materials making out *prima facie* case must be set out in the pleadings. Vague allegations or bald assertion that the action taken was mala fide and malicious is not enough. In the absence of material particulars, the court is not expected to make "fishing" inquiry into the matter. It is equally well established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be "made than made out" and hence it is necessary for the courts to examine it with extreme care, caution

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and circumspection. It has been rightly described as "the last refuge of a losing litigant".

13. In view of the aforesaid observations and the decisions rendered by the Hon'ble Supreme Court on the subject, we are fully satisfied that the applicants have utterly failed to make out any case warranting interference. Accordingly, impugned order dated 07.01.2005 passed in O.A. 02 of 2005 is hereby vacated. The O.As. are accordingly dismissed. No costs.

Copy of this order be placed in O.A. No.1489 of 1998.


Member-A


Member-J

Sushil