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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.905 of 2005.

Allahabad, this the 21st day of Oct, 2005.

Hon'ble Mr. K.B.S. Rajan, Member-J

Pramod Kumar Tripathi,
Aged about 44 years,
S/o Shri K.N. Tripathi,
Instructor (Diesel/Electrical),
Supervisor Training Centre,
N.E. Railway,
District - Gorakhpur.

....Applicant.

(By Advocate : Shri R.C. Singh)

Versus

1. Union of India,
Through General Manager,
N.E. Railway,
District - Gorakhpur.
2. General Manager (Personnel),
North Eastern Railway,
District- Gorakhpur.

...Respondents.

(By Advocate : Shri Anil Kumar)

O R D E R

Does a government servant acquire any vested right by way of "legitimate expectation" or "promissory estoppel" in the action of the Government, is the question to be considered in this OA. The applicant never questions the enormous powers of the Government and the limited scope of judicial interference in matters of transfer; but what he assails is that when the Government has provided for a normal tenure of 3 to 8 years for a particular post and when this particular post has been decided to continue upto 2010 and on the basis

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of the above, when he has moved in a particular direction in connection with the education of his son and a college going daughter, his transfer, all of a sudden, is illegal and unjust and hence this O.A.

2. The factual matrix of the case is that in 2001 the applicant was selected to the post of instructor in the pay scale of Rs. 6500-10500/-. In 27.4.2004 the Railway Board issued an order providing the guidelines regarding the promotion and posting of the instructors. The applicant was promoted in the next higher grade i.e. Instructor grade Rs. 7450-11500/-. By order dated 7.12.2004 the Chief Office Superintendent issued order making recommendations to allow the both promotees namely Pramod Kumar Tripathi applicant and one Sri H.S. Yadav to complete their tenure in the training Institute. Vide order dated 14.12.2004, the Chief Motive Power Engineer agreed with the report of the Principal and approved the same. By order dated 29.12.04, the General Manager (Personnel) issued order whereby the post of instructor grade Rs. 7500-11500/- was transferred from Gonda to Gorakhpur and the post of Instructor Grade Rs. 6500-10500/- was transferred from Gorakhpur to Gonda and applicant was allowed to continue on the post of instructor grade Rs. 7500-11500 for 10 years that still 3.2.2010. Vide order dated 7.1.2005, the Principal of the Training Institute issued consequential

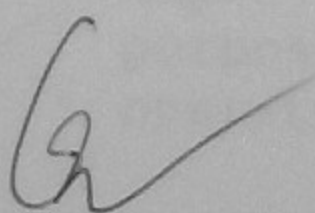
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order which provides that applicant shall work on the post of Instructor Grade Rs. 7500-11500 till 3.2.2010. The applicant got admitted his son Himanshu Tripathi in Class 12 Section B in G.N. National Public School. The applicant's daughter Km. Nupur Tripathi admitted in Saraswati Vidya Mandir Mahila Mahavidyalaya, Agra Nagar, Nath, Gorakhpur in B.Sc. on 22.7.2002. But vide order dated 20.7.2005, the General Manager (P) issued order transferring 6 persons from one place to another place. The applicant whose name finds place at Sl. No. 6 has been transferred from instructor grade Rs. 7450-11500/- Training Institute, Gorakhpur to Senior Section Engineer, Diesel Shed, Gonda

3. The grounds include the following:

"5(a) Because, the order dated 20.07.2005 transferring the applicant from Instructor Grade 7450-11500 to Senior Section Engineer, Gonda apart from being illegal, arbitrary is in the teeth of order dated 29.12.2004. The impugned order dated 20.07.2005 amounts to review the order dated 29.12.2004.

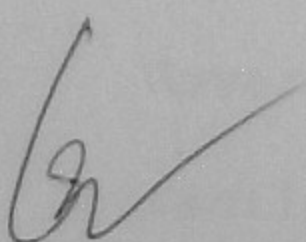
(c) Because, the transfer in the mid of academic session is also not permissible. The applicant's son is studying in class 12 in G.N. National Public School and that his daughter Km. Nupur Tripathi has been admitted in B.Sc. part I in Saraswati Vidya Mandir Mahila Maha Vidyalaya. It is submitted that admission in the intermediate college and degree



college are made only after entrance test held in the June. The applicant's children will not get admission in the mid of academic session at Gonda.

- (f) Because, the attention of the Hon'ble Court is drawn to the letter dated 29.12.2004 whereby the post of Senior Section Engineer (Diesel/Electric) Pay scale Rs.7450-11500/- was transferred from Lucknow Division to Gorakhpur Division and applicant was to work there till 03.02.2010. The post of the Senior Section Engineer has not been re-transferred from Gorakhpur Division to Lucknow Division. Without recalling or modifying the order dated 29.12.2004 the applicant could not have been transferred or posted at Gonda.

4. The retort of the respondent is limited to the following extent.

- (a) Applicant has no locus standi to file the present O.A. against the impugned transfer order, as he has not availed the statutory alternative remedy as provided in Section 20 of Administrative Tribunal Act, 1985.
- (b) As per Railway Board Instructions the post of STC(System Training School)/Gorakhpur are of Ex-cadre post and same are filled up by open selection with the condition that after being selected as instructor in scale Rs.6500-10500, they are posted against the ex-cadre post for a period of minimum three years which can be extended up to eight years, it means that tenure of posting are based on the requirement/convenience of administration as per their administrative need, not on the convenience of the employee. Wherever the services of the employees are very much required for the purpose of safety, security, production and operation, they can be transferred/posted.
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- (c)the work of traction and maintenance is badly affected/suffering due to scarcity of supervisor/SSE, as such due to exigency of service in the interest of administration applicant has been transferred back to his parent department.
- (d)that applicant's original lien is in Lucknow Division in Diesel Shed Gonda on the post of Sectional Engineer.after posting of applicant as instructor (6500-10500) in the year 2001, applicant has been again promoted as Senior Sectional Engineer (SSE)/DE(7450-11500) in his original cadre/lien of Lucknow Division.
- (e)the post of SSE 7450-11500 originally belongs to Diesel shed Gonda against which applicant was promoted, due to administrative need same was temporarily transferred to STS/GKP where the applicant was working against the ex-cadre post till his retention, as soon as applicant has been transferred to his original cadre the post of SSE has also returned back to their parent department.

5. Arguments were heard and documents perused. The post of Sr. Instructor, held by the applicant is an ex-cadre post and the post where he has been transferred is the cadre post. The government has full power and authority to effect any modification or change in respect of the ex cadre post and just because the said ex cadre post has been decided to be kept in tact till 2010, it cannot give an assurance to the applicant that he would be retained there. True, there is a general expectation that a person posted at a particular place should be retained for a reasonable period, say 3 to 5 years. That would ensure some continuity in the department in respect of the functions to be performed by the Government servant. Simultaneously, it would facilitate the individual to have his domestic

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planning properly made. The applicant has therefore, reasonably expected that since the post of Sr. instructor at the institute is likely to be till 2010, he would not be immediately disturbed and though not for the entire completion of the above period, at least for a couple of years or little more he would be allowed to continue in the same post - a reasonable expectation and as such, he has admitted his son in 12th Standard and his daughter in B.Sc., part I in Gorakhpur. This is the main plank of attack by the applicant that once he has moved in a particular direction on the decision of the Govt. to keep the post he is holding till 2010 the Govt. is precluded from effecting the transfer.

6. Per contra, the respondents contend that first of all, the post held by the applicant is an ex cadre post for him and his lien is only in the Loco Shed at Gonda where he has been promoted and posted as Senior Section Engineer in the grade of Rs. 7,450/- 11,500/-. And there are two vacancies in the said grade where posting of the applicant has become absolutely necessary from the functional point of view.

7. Now, which of the two has greater legal value, the contention of the applicant or that of the respondent? Sure enough, the Apex court has clearly held that in matters of transfer, it is the prerogative of the employer to post a particular

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person in a particular place and all that is to be seen is that the transfer should not be frequent, nor should it be accentuated by malafide or with a view to accommodating any other particular person and such a transfer should not be violative of any professed norms. When the transfer order is scanned through the above legal provision, it is clear that the respondent's power to transfer cannot be faulted with. But while exercising this power how far they have acted in the interest of the organization, keeping, at the same, in view the convenience of the applicant (within the framework of the rules and regulations) has to be analyzed.

8. True, the respondents have clearly stated that it is necessary to post the applicant against one of the two vacant posts of Senior Section Engineer out of a total of eight. That is their prerogative, subject of course, to one rider. It is to be seen whether such a decision was taken immediately after the vacancy arose at Gonda or the vacancies are there for quite some time and it is now that the respondents have decided and secondly what kind of a recommendation had been made by the head of the training institute in respect of retention of the applicant in the post of senior instructor. From the tabular column as given in para 4 of the counter though manifestly the date of vacancy in the post of Sr. Section Engineer has not been mentioned, the fact that a number of vacancies in various grades

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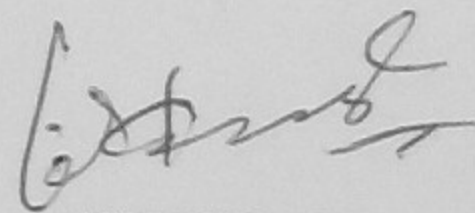
have been existing, it is more probable that such vacancies exist for quite some time. If so, the immediate transfer contending that the vacancies are in the post of Sr. Section Engineer is, it is doubted, the real reason. As such, the applicant has a better case to justify his retention on account of education of the ward.

9. If the applicant has thus established that the transfer is not keeping in view the interest of the organization and that the same unduly hampers his domestic arrangements, the next question is as to what extent he could remain in the same station. The applicant has been in Gorakhpur since 2001 and thus, he has already spent about five years. His son is studying in the 12th standard and daughter in B.Sc., first year. Normally, the education of children is taken into account while considering rotational transfer etc., only with reference to 12th Standard and in so far as college education is concerned, irrespective of gender, since hostel facilities are available, admission of the ward in college is not taken as the main ground for retention at a particular place. Thus, the applicant can legitimately claim his retention up to the end of the current academic session of his son and in so far as the education of his daughter is concerned, which is likely to last for three full years, it would be causing a lot of inconvenience to the administration if none is posted to Gonda as

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Senior Section Engineer for such a long time. Hence, ends of justice would be met to permit the applicant to stay at Gorakhpur till the completion of the academic session of the applicant's son i.e. till about April, 2006 and not any further.

10. The application is partly allowed. The impugned transfer order is directed to be kept in abeyance till about April, 2006, i.e. till the completion of the education of his son who is at the twelfth standard. The applicant shall produce necessary certificate from the educational institution to authenticate the duration of the current academic session and when it concludes, so that soon after the expiry of the same, the authorities would revive the order of transfer of the applicant. It is, however, open to the authorities to consider retention of the applicant in the same place i.e. Gorakhpur, for a further period, in case the administrative exigencies so warrant. No cost.



MEMBER-J

RKM/