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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NUMBER 956 OF 2005 581
ALLAHABAD THIS THE ____ DAY OF 23.11.05, 2005

HON'BLE S.C. CHAUBE, MEMBER (A)

Arvind Kumar Hayaran,
S/o Sri N.L. Hayaran,
R/o 143, Gudri Bazar, Jhansi,Applicant

(BY THE ADVOCATE: Sri G.P. Agarwal)

V E R S U S

1. Union of India through the General Manager,
North Central Railway, Allahabad .
2. Divisional Railway Manager,
North Central Railway, Jhansi.
3. Sri Anil Kumar Dadaraya, Sr. D.E.N.,
(Co-ordination), N.C.R., Allahabad.

..... Respondents

(By Advocate: Shri A.K. Gaur)

ORDER

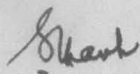
The applicant through this Original Application has sought direction for cancellation of the order dated 15.6.2005 for his transfer from the office of Assistant Divisional Engineer, Jhansi (Line) to the Office of Assistant Divisional Engineer, Chitrakut Dham Karvi and quashing the order dated 12.7.2005 of D.R.M, North Central Railway, Jhansi whereby the appeal preferred by the applicant for his retention at Jhansi has been rejected.

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2. Brief facts, according to the applicant, are that he has been posted as Head Clerk in Grade Rs.5000-8000 (RSRP) in the Office of Assistant Divisional Engineer (Line), Jhansi since 14.2.2005. The parent Unit of the applicant is Divisional Railway Manager (Works), Jhansi. The applicant requested the respondents for repatriation to his parent unit and the same request has been registered on 10.4.2003. It is still pending.

3. According to the applicant, 24 Clerical staff of the Jhansi Division were transferred from different Stations vide order dated 9.5.2005. Out of 24 Clerical Staffs, the posting orders of six of them as mentioned in para 4.3 of the O.A. were either cancelled or modified or were allowed to remain at that very station where they were posted. Similarly as mentioned in para 4.4, 12 persons continued to be posted at Jhansi for more than 12 years and they have not been transferred. The applicant requested the respondents that on account of the family circumstances such as old mother of 75 years being heart patient and being under regular treatment of Heart specialist at Jhansi, two daughters being students of B.Com and two minor children studying at Kendriya Vidhyala, Jhansi, his transfer order should either be cancelled or may be modified by transferring him either to Lalitpur or Gwalior or near-about Jhansi where medical facility and educational facility are available. However, representation of the applicant was not considered. Thereafter, the applicant filed original application No.719/05 in Central Administrative Tribunal who directed Divisional Railway Manager, Jhansi to decide the



representation of the applicant within a month. The D.R.M, Jhansi has, however, rejected the representation of the applicant vide order dated 22.7.2005. It has been contended by the applicant that his transfer is more of a punishment imposed upon him, as there are no viable facilities for treatment of Heart disease at Chitrakut nor any Degree Colleges having Commerce as subject for the education of his daughters. According to the applicant, Asstt. Divisional Engineer, (Line) Jhansi has been established for the last two and half years. This fact is contrary to the facts mentioned in appellate order dated 22.7.2005 of D.R.M, Jhansi. Similarly, there is no Kendriya Vidhalaya at Chitrakut where his son could study.

4. The applicant has made allegation of malafide on the part of respondent No.3 who has transferred the applicant under the influence of one Sri M.C. Goswami as Sri Goswami had earlier worked under respondent NO.3.

5. It has been contended by the applicant that the transfer order is contrary to the transfer policy; that the respondents have made only a vague assertion about the medical facilities at Chitrakut; that the transfer order of a number of Clerical Staff of Jhansi have either cancelled or modified but the case of the applicant has not been considered which is totally arbitrary and discriminatory; that the request of the applicant and his willingness to join at Lalitpur has not been dealt with in the appellate order dated 22.7.2005 of D.R.M Jhansi; that the transfer order is liable to be quashed being bad in law etc.

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6. The respondents, on the other hand, have contended that transfer is an incidence of service and employee has no right to be posted at the particular station forever. As a matter of fact, he is liable to be transferred from one place to another in the interest of the administrative exigencies. Referring to the transfer orders of 24 employees, the respondents have stated that 18 cases have already been implemented. As regards the transfer of the applicant, it is stated that the order has been issued on the administrative need as there is no sufficient staff available under A.D.E.N, Chitrakut. In paras 10 & 11 of the C.A, reasons for modification effected from the transfer orders have been explained by the respondents. The respondents have stated that the applicant has not joined at Chitrakut although he has requested transfer to Lalitpur or Gwalior. His request for transfer to Gwalior or Lalitpur, according to the respondents, will be considered on its turn subject to administrative need as per extant Rules. The representation of the applicant has been rightly disposed of by the respondent NO.2 who has passed a reasoned and speaking order dated 22.7.2005.

7. According to the respondents, the transfer orders were issued in partially without any inference and as per administrative requirement. After formation of North Central Railway jurisdiction of Division has been changed and A.D.E.N S, Jhansi has been nominated as A.D.E.N (Line) Jhansi. The applicant has been working since 1998 under A.D.E.N S, Jhansi. Further, the mother of the applicant has never taken the treatment from Railway

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Hospital; that the respondent NO. 2 has passed a reasoned and speaking order dated 22.7.2005, and the same has been communicated to the applicant on 28.7.2005. As regards the case of Sri P.K. Tripathi, his wife has been working in Jhansi Workshop. Sri Tripathi has been transferred to Jhansi as per Rule from Mahoba to Jhansi as he has already stayed at Mahoba for more than 9 years. The requirement of staff for Assistant Divisional Engineer, Chitrakut, according to the respondents is very pressing for smooth working. As a matter of the fact, the working of the office is suffering badly. As regards the allegations of bias against respondent NO.3, the respondents have stated that Administration cannot work on any influence of subordinate. On the other hand, the applicant was transferred from D.R.M. (W) to A.D.E.N Jhansi/A.D.E.N/9 Jhansi since 1998. There was no malafide intention of respondent NO.3 in transferring the applicant from Jhansi to Chitrakut. According to the respondents, when the speaking order of respondent NO.2 was served on the applicant during the duty hours, he refused to accept the same in the presence of A.D.E.N (Line) Jhansi and other staff. Thereafter, the applicant reported sick after 17.30 hours on 28.7.2005. The relationship, according to the respondents, between sickness of the applicant and the speaking order passed by respondent NO.2, for obvious reasons, is not understandable and finally the transfer order has been passed as per transfer policy. A perusal of the speaking order dated 22.7.2005 passed by D.R.M Jhansi makes it amply clear that appeals for changes in posting are considered on individual merits of the case, policy being followed, administrative requirement etc. It also points

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out that the case of the applicant will be considered as per Rule on its turn. There is also a clear assurance that under no circumstances his registration will be overlooked without personal approval of D.R.M.

8. I have heard learned counsel for the parties and perused the pleadings.

9. It is not disputed that the applicant has remained posted in Jhansi for more than six years. The applicant, in my considered view, is occupying a transferable post. He has no right to be remain posted at any particular place forever. Besides, the transfer is not only an incident but an essential condition of service. In a catena of decisions, the Hon'ble Apex Court has settled the legal position regarding transfer and posting. As observed by the Supreme Court in Union of India Vs. H.N. Kirtania, JT 1989 (3) SC 131; transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory Rules or on ground of malafide. Besides, it is for the Competent Administrative Authority to decide who should be transferred where and when from his present post.

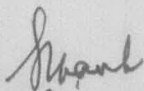
10. I have given anxious consideration to the averments of learned counsel for the applicant that transfer of the applicant from Jhansi to Chitrakut Dham was in consideration of extraneous influence and malafides on the part of respondent NO.3. As decided by the Hon'ble Supreme Court in Federation of Officers Association Vs. Union of India and others 2003 A.I.R. S.C.W. 1764, it was

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held that allegation of malafide has to be specifically made. In the peculiar facts and circumstances of the present case, allegation made by the applicant against respondent NO.3 does not warrant any enquiry for the reason that the same are insufficient to suggest malafide on the part of respondent NO.3. In the factual matrix of the present case, the allegation of malafide remains in the realm of surmise or conjecture. The allegation of malafide, thus, remains unconvincing and unestablished.

11. For reasons and the case law cited above, the O.A. is dismissed with no order as to costs.

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MEMBER- A.