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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration no. 634/87

R.M.Paul

Applicant.

Vs.

General Manager(Personnel) N.E.R.Gorakhpur
and other1

Respondents.

Hon'ble D.S.Misra, A.M.

Hon'ble G.S.Sharma, J.M.

(Delivered by Hon'ble D.S.Misra)

This is an application under Section 19 of the A.T.Act XIII of 1985 against the order of transfer dated 8.7.87 passed by General Manager(Personnel) N.E.R.Gorakhpur transferring the applicant from Lucknow to Gorakhpur.

2. The applicant's case is that he is due to retire from service on 30th November, 1989 and his transfer at this stage is in violation of Railway Board's Circular dated 5.4.82 (copy annexure 3); that the transfer has been ordered as a measure of punishment due to some frivolous complaints made by his immediate superior officer (Sri Prahlad Swaroop) Senior Divisional Signal and Tele Communication Engineer, N.E.R.Lucknow (respondent no.2) to General Manager(Personnel) N.E.R.Gorakhpur (respondent no.1); that the applicant is a heart patient and has been taking treatment at Lucknow and he will suffer irreparable loss by his transfer to Gorakhpur; that the applicant's children have been studying in Schools and Colleges and their studies will be seriously affected if the applicant is made to comply with the order. The applicant has prayed for quashing of his transfer from Lucknow to Gorakhpur.

3. In the reply filed on behalf of the respondents, it

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is stated that the applicant had been transferred from Lucknow to Gorakhpur in routine way and the orders have been issued by the General Manager(Personnel) after due approval from General Manager Signal,N.E.R.,Gorakhpur; that the instruction contained in the Railway Board's Circular dated 5.4.82 is not applicable to the facts and circumstances of the present case and it is by way of guide lines and does not preclude transfer even within 2 years prior to the date of retirement; that the applicant has already been relieved and one Sri C.M.Mani Tripathi has joined on 17.7.1987 in place of the applicant; that the applicant is hale and hearty and even if he is not well, there are better medical facilities available at Gorakhpur than / the Lucknow; that the transfer order of the applicant has been issued along with the transfer of other staff and is in no way arbitrary and has been issued in administrative process; that the applicant has not made any representation or filed any appeal against his transfer from Lucknow to Gorakhpur and the petition is liable to be dismissed on this score alone.

3. In the rejoinder affidavit, filed by the applicant, it is stated that the applicant had submitted an application for voluntary retirement on account of harassment put on him by respondent no.2 and that the order of transfer has been passed as a measure of punishment because his wife had sent a notice to the respondent alleging allegations of harassment of her husband by respondent no.2; that the applicant has remained posted in Lucknow only since 1980 whereas several persons who have remained posted at Lucknow for periods ranging from more than 10 to 25 years have not been transferred and that the order of transfer is arbitrary, malafide and is liable to be set aside.

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4. We have heard the arguments of the learned counsel for the parties and have also carefully perused the record. Learned counsel for the applicant laid much emphasis on the fact that the order of transfer was as a measure of punishment due to malafide attitude and complaint of respondent no.2 and that the order of transfer was also in violation of the Railway Board's Circular dated 5.4.82. A notice dated 11.3.87 on behalf of the wife of the applicant was sent to the Divisional Railway Manager, N.E.R.Gorakhpur containing allegations of harassment of the applicant by respondent no.2 calling upon the D.R.M. Lucknow to direct respondent no.2 to behave like a gentleman with his junior officers and staff and if he continues to adopt harassing attitude with the applicant, she will be compelled to claim damages if anything goes wrong with the health of her husband for which the said Sri P.Swaroop and the Railway Administration as a whole shall be held responsible. The contention of the applicant is that when no reply was received to this notice ,he applied for voluntary retirement from service on 6.5.87(copy annexure 7) in which it was stated that the respondent no.2 frequently adopts unfair language,which is not tolerable for any gentleman and he was tendering his voluntary retirement due to uncalled for harassment. This notice of voluntary retirement was withdrawn subsequently.We have considered this matter and we find that the legal notice served on the D.R.M.,N.E.R.Lucknow on behalf of the wife of the applicant was a very unusual step taken by him for redressal of his grievances against his immediate superior officer. None of these letters give any specific instance of the kind of

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foul language used, or the nature of harassment caused to him by respondent no.2. We have also perused the order of transfer(~~copy~~ annxure 2) and it contains a list of six persons who have been transferred from one station to another station. We are, therefore, unable to accept the allegation of the applicant that there is any mala fide or arbitrariness in the issue of the order of transfer passed by respondent no.1, who is stationed at the Head Quarters of N.E.R. at Gorakhpur. The applicant has not denied that he has made no representation to the higher authorities pointing out his difficulty in complying with the order of transfer. We see no reason why the higher authorities would not consider the genuine difficulty^{if any} of the applicant caused by this transfer and not taking suitable steps for removing his genuine grievances against his immediate superior officer. We are of the opinion that the applicant should have exhausted the departmental remedy available to him before filing this petition.

5. The second point urged by the applicant's counsel is that as per Railway Board Circular dated 5.4.82, the applicant could not have been transferred. In support of this, the applicant has filed a document at annexure-3 which is not a true copy of the Railway Board's Circular dated 5.4.82 but there is a mention of this circular in this document which does not bear any number or date and appears to be an extract from some book or periodical published by some agency. The respondents have categorically stated that the circular dated 5.4.82 is not applicable to the case of the applicant and in any case it does not prohibit transfer on administrative ground of an employee even within 2 years of his retirement. The document at annexure 3 filed by the applicant does not provide any assistance to this case and in view of the positive assertion made by the respon-

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dents, we are of the opinion that this document does not give any help to the case of the applicant. On his own admission the applicant is due to retire by 30th November, 89 and the order of transfer is dated 8.7.87 which is not within 2 years of the date of retirement. Transfer is an incident of a government service and posting of officers is entirely at the discretion of the competent authority. The applicant has failed to establish that the impugned order is by way of punishment and we are of the opinion that it is neither malafide nor arbitrary. It is not a fit case for interference.

In the result the application is dismissed without any order as to costs.

A. M. 29.10.87

J. M. 29.10.87

J.S./29.10.1987