

(7) (13)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

O.A.No. 1078/1987

Subimal Datta

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B.Gorthi, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was a confirmed Senior Clerk in the scale of Rs 330-560 in the office of Divisional Railway Manager, Nagpur(South Eastern Railway) applied for mutual exchange transfer with one Smt.Pushpalata Gupta who was working in the Central Railway, Jhansi.The said mutual transfer was allowed in the month of October, 1983 and the applicant was posted as Senior Clerk in the office of D.R.M.Jhansi on 12.10.83. Thereafter the order dated 1.11.83 was passed reverting the applicant to the post of Junior Clerk in the grade of Rs 260-400. When the applicant joined he was paid at Rs 428/- per month. At Jhansi he could learn that the services of Km. Pushplata Gupta had already been ~~terminated~~ transferred and his transfer on mutual exchange was permitted by the authorities including by the Divisional Personnel Officer. The said Km. Pushplata Gupta had been removed from service even prior to 12.10.83 when the applicant joined the post at Jhansi. A recovery memo was also issued for an amount which was drawn by the

8

AB
2

applicant at Jhansi when he was reverted. The applicant filed a representation against the same. Thereafter he filed the claim petition which was rejected on the ground that he had not availed of the departmental remedies. The applicant filed representation and failed to get any response from the respondents and hence he approached the Tribunal praying that the order dated 7.10.83 posting the applicant as junior Clerk may be quashed and the order dated 1.11.1983 reverting the applicant from the post of Senior Clerk to Junior Clerk may also be quashed. He has also requested for quashing order dated 18.10.83 regarding the applicant's transfer on his own request and for quashing the orders dated 16.9.85 and 11.7.86 and to pay the salary deducted from his salary.

2. Respondents have contested the claim of the applicant. It has been stated that on 12.10.83 i.e. subsequent to the date when the applicant's transfer had already been granted, the applicant gave intimation that he has come on transfer on mutual exchange. On arriving there, he was advised that the lady Clerk (with whom he had mutual exchange) has since been removed from service, as such therefore there was a ~~feeling~~ that his alternative arrangement cannot be made against the post. As an alternative the applicant suggested to kindly post him on non-personal side as Jr. Clerk on ^{bottom} seniority.

3. According to the applicant this letter was taken from him under duress. From the language of the letter it is revealed that it was not his own but it was dictated by some one. It appears that in order

W

(9)

~~AB~~
3

to rectify the mistake and allowing the mutual transfer the officer concerned took such a writing from the applicant. Obviously it was not the act of the applicant ^{and} was not written before the transfer but on the date ^{when} he joined at Jhansi. Such letter which was taken by the applicant not prior to joining but after joining was of no avail and cannot be given recognition to. As it was a transfer on mutual exchange with the employee who was not in service, such mutual transfer is not permissible under rules. The transfer order is void in its very existence. Accordingly, the transfer order is quashed. The applicant will be deemed in continuous service at Nagpur and the consequences will follow. The department will itself see that the applicant gets proper posting and proper pay scale instead of ^{his} approaching again to this Tribunal. Let it be done within three months from the date of receipt of a copy of this order taking that the transfer had never been effected.

transcript
A.M.

l.c.

V.C.

Allahabad Dt. 13.9.91