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Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Registration (O.A.) No. 236 of 1988

Khalid Menhadi ..... Applicant.

Versus

Union of India & another .... Respondents.

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Hon'ble Ajay Johri, A.M.

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant, who is working as a Goods Driver on the North-Eastern Railway and was posted at Loco Shed, Bareilly City, has challenged his transfer, back to Samastipur, order of 16.2.1988 by the Divisional Railway Manager (P), Izatnagar and has prayed for a relief that the order may be cancelled and he may be retained under the Izatnagar Division in terms of the General Manager's (GM) order <sup>received by him on</sup> ~~dated~~ 4.1.1988.

2. On 8.4.1988 after hearing the counsel for the parties this Tribunal had made the following observations:

"However, we notice that only recently the petitioner was transferred from Samastipur Division to Izatnagar Division with the concurrence of the General Manager. It is, therefore, not intelligible how within a period of six weeks the exigencies of service required his retransfer to the same Division. We will like to know the causes which have led to the passing of the impugned transfer order before passing any further order. Hence the stay order dated 25.3.1988 shall continue....."

Thereafter the case was listed for hearing on 11.7.1988

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when further time of one month was allowed to the respondents to file their reply. The case has come up for hearing to-day before me. I have heard the learned counsel for the parties.

3. Briefly the facts of the case are that the applicant, who had originally been appointed on the Izatnagar Division as a cleaner, was transferred from Izatnagar to Lucknow in 1969 and thereafter from Lucknow to Samastipur in 1972 as a Cleaner on account of activities connected with the All India Loco Running Staff Association. He has been working at Samastipur since then. According to the applicant, his wife has been working as a Teacher under the Basic Siksha Parishad, Bareilly at Karanpur near Bareilly since 1975 and the applicant has been requesting for his transfer back to Izatnagar on account of the fact that his family was away from him and his old mother was also to be looked after, who was staying with his wife at Karanpur. Since the rules do not permit transfer on request in the intermediate grade his request could not be considered for sufficiently long time. However, when he brought his personal difficulties to the notice of GM, GM in keeping with the directions issued by the Railway Board in their letter of 31.3.1971, a copy of which is annexed as Annexure 'I' to the application, transferred the applicant from Samastipur to Izatnagar on administrative grounds by an order dated 1.1.1988. The applicant reported for duty on 4.1.1988 and was also deputed on learning road by the Loco Foreman (LF), Bareilly City. He remained on learning road duties upto 19.2.1988, but in the meantime on 16.2.1988 the impugned order transferring him back to Samastipur on administrative grounds was issued by the respondents.

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4. The respondents' case is that GM was not aware of the background of transfer of the applicant from Izatnagar to Lucknow and thereafter from Lucknow to Samastipur at the time when he made the order dated 1.1.1988 and when he came to know ~~xx~~ of this background he cancelled the transfer order issued by him on 1.1.88 and issued the order dated 16.2.1988 transferring him back to Samastipur. The respondents have denied that the administration was pressurised by any of the Unions as has been brought out by the applicant in para 6(9) & (10) to the application. According to the respondents it is taking in view the administrative convenience and after the GM was fully convinced that the applicant should not be posted to Izatnagar, the impugned orders were issued.

5. According to the contentions raised by the learned counsel for the applicant the transfer back to Samastipur is <sup>or ai</sup> tainted with malice in view of the fact that a copy of transfer order has been endorsed to the Divisional Secretary, <sup>31</sup>PRPKS and NERMU, who according to the learned counsel have been at the back of this transfer. It was the learned counsel's contention that if it was not so it was not necessary for the administration to endorse a copy of transfer of an individual to the Divisional Secretary to Unions. It was also contended that the work of the applicant has not been adversely reported <sup>or upon</sup> and when the GM issued the order on 1.1.1988 he had taken all the existing circumstances in <sup>31</sup>the consideration and, therefore, there could be no exigencies of service now that the order of 1.1.1988 should be cancelled and the applicant who has already reported at Izatnagar should be transferred back to

Samastipur. The learned counsel has relied on K.K. Jindal v. General Manager, Northern Railway and others (ATR 1986 CAT 304) and Hira Lal Dhar Dubey v. Jokhu Singh & others (1987 (4) ATC 521) and said that even if the applicant was involved in any activities a transfer on that ground cannot be justified in view of the decision taken by the Principal Bench of this Tribunal in Jindal's case. It was also contended by the learned counsel that the applicant is not any more interested in any activities of the Association and he is seriously concerned only with his work and the problems of his family and, therefore, if anything existed against him in 1969 or 1972 it could no more be a ground to cancel the transfer order. This was the main contention also raised by the learned counsel for the respondents who emphasised that GM cancelled the order only after coming to know of the background of the earlier transfer of the applicant. There was no other ground for cancellation of the transfer order dated 1.1.1988.

6. A transfer in the normal course would not be challengable before the court of law. It is also well established that the Government would be the best judge to utilise the man power in the most efficient way and would be at liberty to <sup>by order</sup> ~~address~~ the same according to administrative requirements. However, when a transfer order is found to have been ordered for colateral purposes or with mala fide intentions or an arbitrary use of the power the same would be justiciable. In the applicant's case the transfer order back to Samastipur has been issued in the background of the previous activities of the applicant. These activities pertained to a period nearly 15-20 years back. It cannot be said that if a person had been difficult <sup>to</sup> to the administration 15-20 years back he would continue to be difficult <sup>to</sup> even after the

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expiry of such a long time. A human being is not like a bad coin which will always remain bad. Therefore, forming an opinion now on something that happened such a long time back and arriving at a conclusion that he has not improved himself will not be just. There should be fresh cause of action that should motivate the demands of exegency of ~~XXXX~~ service, even in such a case the employee will have to be adequately warned about his prejudicial activities. Nothing has been brought out by the respondents to show that after his posting at Samastipur the applicant has continued to be a bad egg due to his undesirable activities. On behalf of the applicant it has been said that he will not indulge himself in activities prejudicial to the efficient running of the administration. In the above background I feel that the cancellation of the order of 1.1.1988 and transferring the applicant back to Samastipur was a premature exercise and should have not been resorted to without sufficient cause. So the impugned order of 16.2.1988 cannot sustain itself and needs to be set aside.

7. In view of the above I set aside the order dated 16.2.1988 <sup>3/</sup> and ~~order dated 16.2.1988~~ <sup>3/</sup> and order that the applicant will be continued under the Izatnagar Division in terms of the order issued by GM on 1.1.1988. The respondents will, however, be at liberty to watch the activities of the applicant at Izatnagar over a period of <sup>at</sup> ~~above~~ <sup>about</sup> one year and if they find that there are reasons to shift him due to administrative exegency they will be at liberty to do so. The application is allowed in the above terms with no order as to costs.

*(Signature)*  
MEMBER (A).

Dated: November 2, 1988.  
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