

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

O.A.No. 947/92

Mangoo Ram.....

.....Applicant

Versus

Union of India and others..Respondents.

Hon'ble Mr. Maharaj Din, J.M.

(BY Hon'ble Mr. Maharaj Din, J.M.)

The applicant has filed the application under section 19 of the Administrative Tribunal Act for quashing the order of transfer dated 9.7.92.

2. The applicant is posted as Station Superintendent Northern Railway, Bhadohi. He has been transferred from Bhadohi to Amethi vide telephonic message on 9.7.92. It is stated that the applicant has not handed over the charge at Bhadohi and he is still working there as Station Superintendent. The order of transfer has been challenged on the ground that it has been passed in arbitrary manner and malafides are also alleged in passing the said order.

3. The respondents have filed ^{Short 2} reply and opposed the application on the ground that the order of transfer of the applicant from Bhadohi to Amethi has been passed in exigency of service and on administrative ground.

4. I have heard the learned counsel for the parties and perused the record of the case.

5. In order to show the malafides on the part of the respondents in passing the impugned order of transfer the applicant has narrated that prior^a to being posted at Bhadohi he was transferred to Dalmau. The applicant had to file a case before the Tribunal for quashing the said order and it is said that in pursuance of the direction

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issued by the Tribunal he was granted the relief by the department. As the order of transfer was withdrawn, now the applicant has been ordered to be transferred from Bhadohi to Amethi again.

6. The applicant has taken specific plea that his daughter Km. Gaitri is the student of Intermediate final in Gian Devi Balika Inter College at Bhadohi and he also sought for retention of his posting at Bhadohi only for a short period of 10 months. The petitioner has however expressed his categorical willingness that he would join at Amethi ~~and~~ after completion of the educational sessions of his daughter. The applicant alone has been transferred from Bhadohi to Amethi by order dated 9.7.92. This order cannot be termed as periodical transfer. The order of transfer was conveyed to the applicant through telephonic message with the instruction that he should immediately be relieved but the applicant was not informed that he was being transferred on administrative ground or on any complaint. The order of transfer has not seen the light of the day so far except that it was conveyed to the applicant by transportation Inspector vide letter Annexure A3 in which it is said that the applicant has been transferred from Bhadohi to Amethi on Administrative ground. Why the proper order of transfer was not passed and what was the exigency by which he has been transferred by telephonic call, has not been ^{explained} ~~informed~~ by the respondents. It is worth while to mention that the respondents have not filed the proper reply of the application as contemplated under order 6 rule 15 C.P.C. as well rule 12 of the Administrative Tribunal Act. A short reply has been filed duly

signed by the counsel for the respondents himself. The contents of this reply are not verified as required under law. The written statement or reply can only be filed by the Government through the officers duly authorised on its behalf. The Advocate appearing on behalf of the respondent is not in a position to verify as to which of the contents of the reply are in his personal knowledge and which of the contents are in his belief. So in the absence of proper reply the allegation about malafides and arbitrariness in passing the impugned order remained unrebutted.

7. Sri G.R.Gupta has been posted ~~vice~~ the applicant at Bhadohi as Station Superintendent. The applicant in his rejoinder affidavit has said that Sri G.R.Gupta is a most junior candidate in the cadre of station masters. He has been promoted as a superintendent to succeed the applicant on adhoc basis without holding any selection for the post of Station Superintendent in the grade of 2000-3200.

8. The applicant has not so far been relieved from the post of Station Superintendent Bhadohi on the basis of spare memo issued by the Traffic Inspector Varansi or on the basis of telephonic message dated 13.7.92 Annexures A2 and A3. The memo of Traffic Inspector is Annexure A2 given to the applicant which reads as under:

" The working charge of the station has been made over to Gopal Ram Gupta, as per telephonic message of Senior DCS Lucknow on date. He will look after all work of Bhadohi except cash and goods till the charge is not made over by Sri Mangoo Ram."

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9. This fact is also evident from the telephonic message of Gopal Ram Gupta to the Senior Divisional Superintendent. "Sr.DOS O/TI(M) BSB" inspite of decision of appeal of SS Mangoo Ram dated 9.7.92 still he is not making over charge ^{to} ~~me~~ Annexure I of RA).

10. The respondent does not say that there was any complaint against the applicant ^{and} ~~or~~ his transfer cannot be termed to have been made on administrative ground. The junior person who is not approved for the post of Station Superintendent has been deputed to work as station Superintendent Bhadohi. This shows ^{an} arbitrariness on the part of the authorities in passing the order of transfer. As regards malafides it is stated that he is being shifted from Bhadohi to Amethi to accommodate Sri Gopal Ram Gupta on first promotion on adhoc basis. This fact is also not rebutted by filing the proper reply.

11. The applicant no doubt will face a great hardship if he is transferred from Bhadohi where his daughter is studying in Intermediate final. The applicant put this difficulty before the authorities by way of representation. The authorities did realise the difficulty of the applicant if he is shifted from Bhadohi to Amethi and permitted the applicant to retain the official residence of the station superintendent of Bhadohi till the educational sessions of his daughter is over (Annexure A1). If the applicant joins at Amethi retaining the official residence at Bhadohi, he has to make double establishment which will cause him financial loss and hardship. There is a question of 10 months

to permit the applicant to continue as SS Bhadohi only and when he has been permitted to retain the official residence it could be in conformity of the things that he should be permitted to continue there for a period of 10 months.

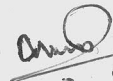
12. The applicant has drawn my attention towards circular letter no. 940/E/Q-IV-E/G dated 27.6.83 of the General Manager according to which transfer of the staff coming into contact with the public, customers/suppliers etc. were due on the basis of 4 years tenure should be immediately ordered and implemented. The applicant has admittedly not completed 4 years tenure at Bhadohi and still there is a scope for him to continue for another one year at that ^{Station} stage. Thus the policy decision and the guide lines of the department have been also ignored while making the impugned order of transfer.

13. The respondent has referred the decision made by the Hon'ble Supreme Court in 1989 Supreme Court Cases (~~R~~² & S) 483 Union of India and others Vs. H.N. Kirtani wherein it has been laid down " after recording positive finding that the transfer order was legal , valid and it was not vitiated by any unfairness or malafide whereupon the writ petition should have been dismissed." The law laid down in the above said case are not applicable to the facts of the present case as I have already observed above that the impugned order of transfer has been passed in arbitrary manner and malafides are also alleged by the applicant which is not refuted by the competent person on behalf of the respondents. So in view of these findings I find that it is

a fit case in which the Tribunal can interfere in quashing the transfer order.

14. The application is allowed and impugned order of transfer is quashed with no order as to the costs.

Dated: Allahabad
^{2nd Sept}
~~31st August~~, 1992


2.9.92
Member (J)

(AR)