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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 1300 of 1993

Sri Brij Bhushan Prasad Srivastava ... Applicant.

Versus

Union of India
and others ... Respondents.

...

(By Hon. Mr. S. Das Gupta, Member(A))

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has challenged the order dated 25.5.1993 passed by the respondent no.3 transferring the applicant from Raserha to Phephna.

2. The brief facts of the case are that the petitioner is a Leave Reserve Assistant Station Master and was posted at Phephna where he reported on 4.9.1990 on transfer from Suraimanpur, District Ballia. The petitioner's date of birth is 1.7.1937 and thus he would be attaining the age of superannuation on 30.6.1993. He had submitted several representations requesting that in view of the fact that he is on the last leg of his service, he should not be transferred from Raserha. Despite this, the impugned order of transfer dated 25.5.1993 has been passed transferring him to Phephna. Subsequently, the petitioner submitted representations against the transfer but to no avail.

3. In the counter affidavit, the respondents have contended that the transfer of the applicant from Raserha to Phephna is an administrative exigencies of

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work. They have also contended that the representation of the petitioner against the transfer was considered and the same was rejected by the competent authority vide communication dated 20.8.1993.

4. The applicant has relied on Circular No.940-E/O-III (CIV) dated 14.3.1974 issued by the Railway Board which reads as follows;

"In supersession of the instructions contained in this office letter No. 940-E/O(EIV) dated 2.9.1990(P.S. No. 920) it has been decided that transfer of staff from one station to another in the same grade should not as a matter of principle be made within two years of the date of superannuation."

He has also pleaded that due to ill health, he is not in a position to cope up with the ~~arduous~~ ^{arduous} nature of work at Phephna which is a junction station.

5. It is now the well settled position of law that transfer is an incident of service and no court/tribunal should interfere with the transfer unless the same are not in violation of statutory rules or malafide.

6. In the instant case, the applicant has sought to ~~reply~~ on certain instructions issued by the Railway Board which state that transfer of a staff from one station to other in the same cadre should not, as a matter of principle be made within 2 years of the date of superannuation. The date of retirement of the petitioner is 30.6.1995. The order of transfer on the other hand was issued on 25.5.1993 thus, when the transfer order was issued, the applicant had

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more than 2 years of service. The transfer order is thus, not in violation of the instructions of the Railway Board relied upon the applicant. In any case, it was held by the Hon'ble Supreme Court in the case of Shilpi Bose and others Vs. State of Bihar and others, 1992 Supreme Court Cases (L&S) 127, that even if a transfer order is issued in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department.

7. During the course of arguments, the petitioner pleaded that while he will abide by order of transfer from ~~Ras~~ Raserha, he may be posted to a station which is not a junction station in view of his ill health.

8. In view of the foregoing discussions, I am not inclined to interfere with the transfer order which is said to have been issued in administrative exigencies of service. However, keeping in view the fact that the petitioner now has less than 2 years to serve and he is stated to be unwell, the respondents may consider whether he should be posted to a station which is not a junction. Should, however the same be not possible, the transfer as ordered shall be given effect to. There will be no order as to Costs.

Member (A)

Dated: 10th December, 1993

(n.u.)