

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Original Application No. 1374 of 1993

Allahabad this the 27 day of October 1994.

Hon'ble Mr. S. Dayal, Administrative MemberKaramveer Singh, S/O Shri Pancharam, R/O Vill & P.O.  
Chulawali, District Ferozabad.

..... Applicant

C/A Shri K.S. Saxena.

Versus

1. The Union of India, through General Manager, N. Rly Baroda House, New Delhi.)
2. The Divisional Railway Manager, Northern Railway, Allahabad.
3. The Divisional Superintending Engineer, (C), N. Rly DRM Officer, Allahabad.
4. The Asstt. Engineer (Line) N. Rly, Tundla.
5. The Inspector of Works, N. Rly, Hathras, Disstt. Aligarh.
6. Shri K.K. Singh Inspector of Works, Northern Railway, Tundla.

..... Respondents

C/R Shri A.K. Gaur.

ORDERHon'ble Mr. S. Dayal, Member (A)

This is an application under section 19 of the Administrative Tribunal Act, 1985, seeking the relief of cancellation of letters/Orders issued on 30.07.93 by the Divisional Engineer, the Assistant and the Inspector of Works pertaining to the applicant's transfer, of direction to the respondents to continue his posting under I.O.W. Hathras and award him any other

relief

relief and costs. The grounds on which relief has been asked for is violation of rule 232 of the Establishment code, malafide due to scheme of vested interests and false report of Shri K.K. Singh, not giving an opportunity to explain his case since the transfer was based on a complaint and was punitive .

2. The respondents in their written reply have claimed that the transfer was made in view of administrative exigency and was not malafide or punitive. They have stated regarding sick memo that it was deposited by the applicant in the office of the Inspector of Works, Hathras and it was sent by him to Inspector of Works, Chunar, by registered post. The applicant is stated to be a troublesome employee who was involved in terrorising Supervisor at Tundla and assaulting Inspector of Works at Tundla on 28.07.93. It is denied that the applicant was in <sup>h</sup>Hatras on 28.07.93 because the report of the Inspector of Works was supported by witness and contractors present at the place of incident.

3. The learned counsel for the applicant Shri K.S. Saxena said that the transfer was made on a complaint made by I.O.W. Tundla on 28.07.93. He stated that once earlier the applicant was transferred to Churk at the instance of I.O.W. Tundla, but the transfer was changed to <sup>h</sup>Hatras by higher authorities. He referred to the reply of the respondents in this case in which the applicant is referred to as the quarrelsome person. He said that Rule 232 necessitated the sanction of DRM in transfers not made in public interest. The learned counsel for the respondent


*h*

said that no rejoinder affidavit was filed, and, therefore, the statements made in the written reply of the respondents stands uncontrov<sup>er</sup>ted. He states that the applica<sup>ti</sup>o<sup>n</sup> has become infructious because the applicant has already been relieved on 30.07.93. He said that malafide was alleged as after thought which is why the Inspector of Works, Tundla was impleaded as a respondent by name subsequently. He cited AIR 1986 SC, 1955, AIR 1993 SC 763 and 1994 SCC (Lrs) 230 to stress that the transfer cannot be interfered with.

4. The documents annexed to the application (Annexure 4,5, and 6) shows that there was bad blood between applicant and respondents No. 6 and transfer had once been made to Chunar on 12.08.92 but was changed to Hat<sup>h</sup>ras Subsequently. The bad blood survived the transfer and after another incident reported to have taken place on 28.07.93, the applicant was transferred to Churk on 30.07.93. The orders by the Divisional Engineer, Allahabad, the Assistant Engineer, Line, Tundla, the Inspector of Works Hathras were made on the same day and the order was served by affixation on the applicant's residence and the applicant was treated as relieved on the same day. The applicant had pointed out that paragraph 232 of the Railway Establishment code was <sup>not</sup> complied with and, thus, there was a violation of statutory rules. However, paragraph 232 is by way of administrative instructions to indicate to the Accounts Officer whether transfer allowance would be payable or not and in the absence of any such communication, transfer in public convenience was to have been presumed. Thus a violation of this instruction would have no effect on the transfer order.

The circumstances given earlier in this paragraph indicate that the motive for making this transfer emanated from the alleged incident of 28.07.93 reported by respondents No. 6. The applicant has produced Annexure A-7 to show that he was present in Hathras on 28.07.93 but no details of the alleged incident particularly its alleged time of occurrence and a copy of the report of the incident by respondent No. 6 have been furnished by ~~the~~ either the applicant or the respondent. The respondents should have made the transfer order after an enquiry into the alleged incident. Their action in transferring the applicant merely on the basis of report of the Inspector of Works, Tundla, about whom the applicant had made complaints to higher management in the past, becomes a colourable exercise of power and the orders of transfer of the applicant have to be set aside. He may be reposted under Inspector of Works, Hathras.

5. There shall be no order as to costs.

  
 (S. Dayal)  
 Member 'A'

/pc/