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CENTRAL ADMINISTRATIVE TRIBUNALS, ALLAHABAD BENCH.

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Registration O.A. No. 384 of 1993

Rajeshwar Ram Applicant.

Versus

Senior Divisional Mechanical
Engineer and others Respondents.

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

In this O.A. No. 384 of 1993 filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, The petitioner has challenged the order dated 18.2.1993 passed by the respondent no. 1 (Annexure- A 2) transferring the applicant from the post of Loco-foreman, Chopan to the post of Power Transportation Inspector (P.T.I. for short) at Barkakana. He has also challenged the modified order of transfer dated 20.3.1993 (Annexure- A 8) by which the applicant has been ordered for transfer to Barkakana as Loco-foreman -B .

2. The brief facts of the case are that the applicant who is a Scheduled Caste employee has been working as Loco-foreman at Chopan since 1988. By the impugned order dated 18.2.1993, he was transferred from Chopan to Barkakana with change in cadre from Loco-foreman to that of P.T.I. The applicant submitted representations against the transfer whereupon, the earlier order of transfer was modified and a fresh order was issued on 20.3.1993 (Annexure- A 8) by which the station of posting was retained at Barkakana but the cadre of the applicant was not changed. The applicant

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has challenged both these orders on the ground that these orders are violative of Executive Instructions regarding ~~to~~ transfer of Scheduled Caste employee and also on the ground of malafide.

3. The respondents in their counter affidavit have contended that the transfer has been ordered in the exigency of public service. It has been stated in that counter affidavit that the applicant's representation against the impugned transfer order dated 18.2.1993 was duly considered by the competent authority and based on this representation, his cadre was not changed from Loco-foreman to PTI.

4. That applicant sought to rely on two executive instructions relating to transfers. He made available the copies of these instructions. One relates to mid session transfers and states that mid session transfers should be avoided as far as possible. The other instructions relates to transfer of scheduled Caste employee which reads as under;

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"Transfer of SC/STs; They should normally be transferred only to a place where the Railway can give them quarters, or within their native or adjoining districts. Even there the transfers should be as minimum as possible and for very strong reasons."

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 transfers unless the same are not in violation of statutory rules or malafide.

6. That in the instant case, the transfer is not violative of any statutory rules. The instructions of the Railway Board relied upon by the petitioner are in the nature of guide-lines. 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. The orders of transfer cannot, therefore, be assailed on the ground of violation of the executive instructions.

7. As regards the plea of the malafide taken by the applicant, I find that he has not been able to lay firm foundation for presuming existence of malafide in this case.

8. Lastly, the applicant has taken the plea that it will not be possible for him to obtain proper treatment for his ailing daughter, if he is posted to ~~at~~ Barkakana, I find no merit in this plea.

9. In view of the foregoing discussions, I find that the petition is devoid of merits and the same is dismissed. Parties to bear their own costs.


Member (A)

Dated: 10 December, 1993.

(n.u.)