

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH, ALLAHABAD

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Allahabad : Dated the 3rd day of November 1995
Original Application No.681 of 1993

QUORUM:-

Hon'ble Mr.S.Das Gupta, A.M.

Vishram Maurya son of Sri Buddho, Material
Checking Clerk under Bridge Inspector, Northern
Railway, Bareilly, Resident of Rly. Quarter
No.76-A,, Bareilly Junction, Bareilly (U.P.)

(By Advocate Sri R.D. Agarwal)

. Applicant
Versus

1. The Union of India through General Manager,
Northern Railway, Baroda House, Headquarters Office,
New Delhi.
2. Dy. Chief Engineer, Bridge Headquarters Office,
Baroda House, New Delhi.
3. Senior Civil Engineer, Bridge, Northern Railway,
Lajpat Nagar, New Delhi-110024.

(By Advocate Sri R.D. Agarwal)
(Sri Prashant Mathur)

. Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

Through this Application the Applicant has
challenged the order dated 21-12-1992 by which the
Applicant was transferred and also the order dated

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17-2-1993 by which his monthly salary has been stopped. It has been further prayed that the Respondents be directed to post the Applicant at Bareilly or near Bareilly Railway Station and to pay him salary month by month regularly.

2. Both, the Applicant and the Respondents have filed a number of affidavits. Cut down to its essentials, the Applicant's case is that he was working as a Material Checking Clerk in the Northern Railway and was posted at Bareilly Railway Station. There was no complaint against the Applicant with regard to his working or behaviour, yet the Respondent No.1 passed the imougned order dated 21-12-1992 transferring him from Bareily to Jullundur Cantt. The Applicant has challenged this order on the ground that the said order is illegal and malicious and passed ~~on~~ the instigation of other officers. Other grounds taken are that the order of transfer has been passed in the midst of the academic session and, therefore, it will affect the education of the Applicant's children adversely. It has been emphasised that the transfer is based on colourable exercise of administrative powers and is not based on any administrative reasons.

3. The Respondents have contested the case. In written reply it has been stated that the order of transfer was passed in the exigencies of administration. It has been further stated that the post of Material Checking Clerk is a transferable post and the administration has full power to transfer the Applicant from one station to the other in the interest of work. It is ~~the~~ further ~~the~~ contention of the Respondents that there is

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a complaint pending in the vigilance department against the Applicant with regard to his unlawful working and misbehaviour. The order of transfer itself is an order simplicitor and therefore cannot be challenged before the Tribunal.

4. In subsequent affidavits filed by the Applicant it has been reiterated that the transfer was only actuated by malice and was not in exigencies of public service.

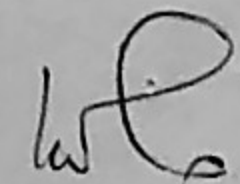
5. We have heard the Learned Counsel for the parties and perused the records. It is settled position of law that the transfer is an incident of service and the employer has the right to decide how and where the services of an employee shall be utilised. An order of transfer which has been issued in the exigencies of public service cannot be challenged, except on the ground of violation of statutory rules, or unless it could be shown that such an order is in colourable exercise of the power vested in the administration. It is not the case of the Applicant that there has been any violation of any any statutory law by issuing the order of transfer. There is no denial ~~that~~ the post on which the Applicant was working is transferable. The Applicant's case, however, is that the order of transfer is a colourable exercise of power and not ~~in~~ ^{however,} genuine interest of the administration. There is, ~~further,~~ no sufficient material on record to presume that such was the case and that the order of transfer is really borne out of malice

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against the Applicant. The Learned Counsel for the Applicant vehemently argued that such malafide would be evident from the fact that while in the impugned order of transfer, the Applicant was shown to have been transferred with the post, another person was promoted and posted vis-a-vis the Applicant at Bareilly. This however cannot conclusively prove the existence of malice ^{towards} the Applicant. The Learned Counsel for the Applicant also laid great stress on a letter issued by the Bridge Line Office at Lajpatnagar, New Delhi by which the Applicant was to be directed to report for duty at Lajpat Nagar. The Learned Counsel for the Applicant contended that while the Applicant was posted to Jullundur Cantt by the impugned order of transfer, by the said letter issued by the Bridge Line Office at Lajpat Nagar, he was being asked to report at Lajpat Nagar. In this regard, the Respondents had filed an affidavit giving a chart to indicate the organisational structure of the Bridge Organisation and the lines of control. From this I am satisfied that there is no anomaly in the order of transfer and the letter issued by the Lajpat Nagar Office.

6. In view of the foregoing I find no merit in this case and the same is dismissed accordingly. There is no order as to the costs.

RBD/


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