

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 8th day of Nov. 1994.

Original Application No. 927 of 1993.

Hon'ble Mr. S. Dayal, Administrative Member.

Chandrama Prasad, S/o Shri Ram Deo, working as Gangman (CPC) under P.W.I., Northern Railway, Mirzapur, R/O Village; Chorwa Bari, P/o Sagmohal, Distt. Mirzaput.

..... Applicant.

C/A Shri Anand Kumar

Versus

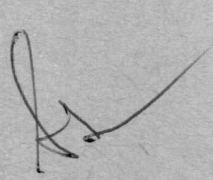
1. Union of India through General Manager, N. Rly., Baroda House, New Delhi.
2. Sr. Divisional Engineer (I) Northern Railway, Alld.
3. Asstt. Engineer, Northern Railway, Mirzapur.
4. Permanent Way Inspector, Northern Railway Mirzapur.

..... Respondents.

C/R. Shri M.C. Mishra and Shri D.C. Saxena.

O R D E R

Hon'ble Mr. S. Dayal, Member, A

 This is an application under section 19 of the Administrative Tribunal Act, 1985, requesting the Tribunal to quash the impugned transfer order with

all consequential benefits and allow the application with costs.

2. The applicant is a casual Gangman working in Gang no. 8A at Mirzapur. He was allowed CPC Scale on or after 28.08.85. In 1986, the applicant was transferred to Aligarh and in his own words as contained in his application "as and when the applicant came to know about his transfer to Aligarh, he got his wife operated" and requested the DEN to cancel his transfer order on that basis which was done. The applicant was again transferred from Mirzapur to Manda Road on 03.06.92. He claimed that he was posted in Gang no. 8A after the transfer was stayed by the Tribunal, and this gang is a permanent gang and can not be transferred outside Mirzapur. He claims that he was transferred this time out of annoyance of his senior officers "for reasons best known to them." Thus he was transferred to another seniority unit which will affect his seniority as he will be treated as the junior most in Panki. He has claimed that his case and ~~comparable with~~ the case of Ram Khilawan Vs. Union of India. He has claimed that Shri Kalloo and Shri Karhaiya Lal had got their wives operated and were posted at Railway Stations which were nearest from their homes. Only the applicant had been transferred from gang no. 8A which shows the malafide of the respondents. The transfer of the applicant to Panki allowing his juniors to remain at Mirzapur is said to be against the provisions of the Railway Establishment Manual.

3. The grounds of claiming the relief are that retention of juniors persons while transferring the the applicant is violative of Article 14 and 16 of the Constitution of India, that the applicant is entitled to be posted to the nearest Railway Station from his home as per the policy of the Railway Board, that the transfer was out of malafide intention of the respondents, that the applicant cannot be transferred beyond his seniority unit, that the acceptance of sterilization by his wife entitles him a posting of his choice, that the wife and daughter are getting treated in Mirzapur hospital and that the applicant is still a casual gangman after 15 years of service.
4. The respondent in their reply have stated that the seniority of the gangman is maintained division wise and the Divisional Officer is competent to transfer. They have said that the applicant is junior in gang 8 because he is in CPC scale and that is why he is transferred to Panki.
5. The arguments of the learned counsel for the applicant Shri Anand Kumar as well as learned counsels for the respondent Shri D.C. Saxena and Shri M.C. Mishra have been heard. The learned counsels for the respondents reiterated the points made in the application and added that the applicant should have been allowed to remain at Mirzapur because the work was not over. He cited ATR I 1989, 378 and 1988(8) ATC 845 and some other judgements. He also said that since the gang was permanent, none could be transferred. The learned counsel for the respondents contended that

the ratio of the judgement given by the Supreme Court in SL Abbas Vs. Union of India (1993-25 ATC) was that the powers of the Tribunal were limited in cases of transfer. He said that acceptance of family planning did not place any restriction on transfers. He said that grant of temporary status placed an employee on par with the government servants.

6. The first issue is whether family planning by way of sterilization adopted by applicant's wife gives the applicant any immunity from transfer or choice of place of posting. The answer has to be straight forward no because the document relied on by the applicant in RA I is not a policy directive of the Railway Board but a letter from headquarters office inviting suggestions of DRMs. The applicant has submitted no other evidence on this issue.

7. The second issue is whether there is any evidence to show that members of gang no. 8A in Mirzapur which was known as a permanent gang were non transferrable. No, evidence has been produced on this issue although a claim has been made in the arguments that members are not transferable outside. This claim too has no merit.

8. The third issue is that of premeditated malice. There is no instance given which may prove premeditated arbitrary action on malice except the instance of transfer. Malice or ill will has to be substantiated by instance of discrimination or strong reason on the part of respondent competent to transfer

for that ill will. No such instances have either been given in the pleadings or in the arguments apart from the act of transfer or rejection of verbal request for cancelling the transfer order. Thus this ground has no merit.

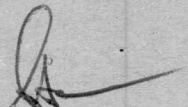
9. The fourth ground is the illness of his wife and daughter. These factors also do not protect the applicant from transfer according to the ratio of Union of India Vs. S.L. Abbas.

10. The only ground which has some force is non transferability of casual labour from a seniority unit to another seniority unit except on special grounds in accordance with paragraph 2001 of the Railway Service Establishment Manual. The case of Shri Ram Khilawan ^{annexure in pari materia} annexed as ~~no 6~~ is not ~~para~~ materic with this case because the case was inter divisional and the decision was only a directive to the respondents to consider the representation of Shri Ram Khilawan while the present transfer is within the division. However, there are other cases cited by the applicant in which the transfer of a casual labour granted temporary status has been dealt with and it has been held that such workers are not transferable in view of the provisions of paragraph 2501 in the older edition and paragraph 2001 in the current edition. The first one is a Popat Sidik, (1988) 8 ATC 845 and the second is Jivi Chaku's case, (1987) 3ATC 413, in which the judgement of the Supreme Court in L Rabert D' Senza Vs. Executive Engineer, Southern Railway, (1982) 1 SCC 645 is cited to say that person belonging to casual labour is not

liable to transfer. The common judgement in OA's 668, 729, 753, 874 and 919 of this bench is also cited in which para 2001 of Indian Railway Establishment Mannual is also referred in which casual laobur is said to be ordinarily not liable to transfer. Thus there have to be more than ordinary reasons for tranfer of casual labour. Besides the counsel for the applicant has also given a copy of Railway Board's letter no. E (NG) II/77/CL/46 dated 27.02.78 in which the seniority is stated to be inspector wise and casual labour diverted from one unit to another will rank as the junior most. The common judgment of this Bench referred ^{to} above refers to a letter of General Manager, Northern Railway, dated 14.08.87 in which the seniority position of open line casual labour is stated to be inspector wise. The respondents have pointed out that the applicant has been given C.P.C. scale. But they have only said that the seniority of gangman is maintained division wise. They have not stated that seniority of gangman who is in C.P.C. scale or who has his seniority in casual labour register is maintained division wise. Therefore, the claim of the applicant that he should not have been transferred out of the Seniority unit has merit. It is vital for a worker whose seniority is still in casual workers register to remain in his senirity unit till he is regularised against a long term vacancy and becomes entitled to the service conditions of a regular worker. Therefore, this application is allowed.

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11. The impugned transfer order is quashed in view of the discussion in the last paragraph. The parties should bear their own costs.


(S. Dayal)
Member 'A'

/pc/