

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad : This the 4th day of April, 1996

Original Application No. 1008 of 1993

Hon'ble Mr T.L.Verma, Judicial Member

B.K. Gupta s/o Late Shri O.P. Gupta

aged 47 years resident of E/39-B,

Railway Colony- Choupla,

Bareilly.

.... Applicant

C/A Shri

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.

2. General Manager (Personnel)
N.E. Railway,
Gorakhpur.

3. Mandal Rail Prabandhak,
N.E.Railway,
Izzat Nagar.

.... Respondents

C/R Shri

ORDER

By Hon'ble Mr T.L.Verma, Member-J

The applicant, who was posted as P.W.I. Grade II at Izzatnagar N.E.Railway, has in this application challenged his transfer from Izzatnagar to Gorakhpur on the ground that the post on which he was working is a Division controlled post and his transfer to any place outside Izzatnagar Division was against rule and that frequent transfers of the applicant within a span of one year was in the nature of punishment and therefore was illegal void and against rules.

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2. The case of the applicant in short is that he was appointed as PWI in 1971 and was promoted as PWI Grade II on 1.1.1984. The post of PWI was initially head quarter controlled post till 1988. This post was, however, decentralised by decision communicated vide letter dated 11.10.88, By this decision the post of PWI Grade II upto the scale of pay of Rs.2000-3200 was brought under the control of the Division. The applicant, it is stated, was drawing pay in the scale Rs.2000-3200 on the date the impugned transfer order was passed. The case of the applicant is that after decentralisation of the post seniority of the P.W.Is upto grade Rs.2000-3200 is maintained at the divisional level and their promotions are made on the basis of divisional seniority. The transfer of the applicant from one seniority unit to another seniority unit, it is said, will adversely affect his seniority as well as promotional prospect. The impugned transfer of the applicant from Izzatnagar Division to Gorakhpur Division, it is said, is bad in law and as such should be set aside.

3. The further case of the applicant is that, he was transferred 5 times within the span of one year contrary to instructions issued by the Railway Board in that behalf from time to time. He is stated to have been transferred from Izzatnagar to Lalkuan vide order dated 10.6.1992 (Annexure-1). This order of transfer was modified, by order dated 19.6.1992 (Annexure-2), and he was transferred as PWI safety in place of Shri M.C.Shukla. He was again transferred as PWI survey Gorakhpur vide order dated 29.12.1992 (Annexure-3). He has again been transferred by order dated 18.11.1992 and thereafter by impugned order dated 14.6.1992. These transfers, in quick succession, it is alleged, are malafide and against instruction issued by the Railway Board.

4. The respondents have contested the claim of the

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applicant. In the written reply filed on behalf of the respondents, it has been stated that the transfer orders referred to by the applicant in his petition could not be implemented as the applicant instead of complying with them submitted representation to allow him to remain at Izatnagar. Representation against transfer order dated 19.6.1992 was allowed and the transfer order was cancelled. The applicant was thereafter directed by the Headquarters by order dated 29.12.92 to join as P.W.I. grade Rs.1600-2600 under Chief Engineer(Constrn.& Survey) Gorakhpur in administrative exigencies. The applicant again made representation to the effect that if he is transferred on promotion in the scale of Rs.2000-3200, he was willing to join as P.W.I. at Gorakhpur. The impugned order of transfer, it is stated, was passed in terms of the representation filed by the applicant. The further case of the applicant is that the competent authority is empowered to make inter divisional transfers in the interest of administration and that the impugned transfer has been passed by competent authority in public interest, hence cannot be interferred with by the Tribunal.

5. The applicant has in his rejoinder affidavit denied the averments made in the written reply and reiterated averments in the O.A.

6. We have heard the learned counsels for the parties and perused the records.

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7. It is well settled that a govt. employee holding a transferable post has no legal right to insist for being posted at any particular place. The transfer order, issued by the competent authority do not vitiate any of his legal rights. The Supreme court in Shilpi Bose and others V/s. State of Bihar and others reported in 1992 S.C.C. (L & S) page 127 has held that "transfer order which is made in public interest and for administrative reasons should not be interferred with by the courts. The courts, however, may come in aid of a govt. servant, who has been transferred in violation of mandatory rules or on the ground of malafide." The learned counsel for the applicant has urged that the post of P.W.I. Grade-II being in the scale of pay of Rs.2000-3200/- is a divisional controlled post and as such inter-divisional transfer made by the impugned order was arbitrary, illegal and without jurisdiction and malafide. The respondents, in written reply, have not denied that the post of P.W.I. Grade II is a divisional controlled post. All that has been stated in para 4.viii of the counter affidavit is that "assuming though not admitting that the petitioner's post is controlled by the division, but, inview of delegation of power delegated to the Chief Engineer, the applicant can be transferred even out of division in the exigency of administration." The applicant, has filed the divisional seniority list of P.W.I.s grade II of North-Eastern railway as well as the seniority list of P.W.I.s grade II of Gorakhpur division, which indicates that the seniority of the P.W.I.s is being maintained division-wise. In view of

this and having regard to the fact that the respondents have not denied that the post of P.W.I. upto scale Rs.2000-3200/- has been decentralised, obvious conclusion that followed is that the post ^{which} the applicant is holding is a division controlled post. As a result of de-centralisation, the seniority of the P.W.I.s is being maintained at the divisional level. Promotion to higher grades are to be regulated on the basis of divisional seniority list.

8. Rule 226 of the Indian Railway Establishment code Volume I provides that " Ordinarily a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or rail way establishmer^t including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India, may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated. "

9. From the above it follows that inter departmental transfer may be made, by the President of India in public exigency. Inview of the above, it is to be examined whether the transfer of the applicant from Izatnagar division to Gorakhpur division was made in public exigency. The learned counsel for the

resppndents urged that the President has delegated the power of making transfer from one division to another division in the interest of the administration to the Chief Engineer vide annexure 3 to this O.A.

10. The impugned order of trasnfer dated 14/16-6-1993 does not recite any public interest. The C.A. filed on behalf of the respondents also does not disclose whether the transfer of the applicant was in public interest. All that has been stated in the C.A. is that the authority empowered to make inter-divisional transfer has passed the ikpugned transfer order in public interest. What public interest would have been achieved by transferring the applicant from Izatnagar division to Gorakhpur division has not been indicated.

11. The Supreme Court in Ram Adhar Pandey V/s State of U.P. and others has held :

" That it cannot be gainsaid that transfer is a necessary concomittance of every servant, but if such a transfer could be effected only on certain conditions, it is necessary to adhere to those conditions and in this case " the Public interest " being absent, the impugned order of transfer cannot be supported. "

In view of the principle of law laid down by the Hon'ble Supreme court in the case referred to above, the impugned order of transfer, which does not recites public interest as the ground for transfer, cannot be supported.

12. As we have already noticed above, after decentralising of the post of P.W.I., the seniority of P.W.I. upto the scale of Rs.2000-3200 is to be maintained at divisional level. Their promotions to higher grades also is to be regulated on the basis of their divisional seniority. ~~list~~. The transfer order, transferring an employee to a different seniority Unit without taking care of his seniority is likely to affect the promotional prospects of such employee. The impugned order does not

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make any mention as to how the seniority of the applicant on his transfer from one seniority Unit to another seniority Unit would be adjusted. ~~This~~ For this reason also, the order transferring the applicant from ^{one} Seniority Unit to another Seniority Unit can not be said to be a bonafide and as such cannot be sustained.

13. For the reasons stated above, this application is allowed and the impugned order of transfer is quashed. Parties will bear their own cost.



J.M.

Siddiqui