

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 31<sup>st</sup> day of October 1995.

Original Application no. 1456 of 1994.

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

Kashi Ram, S/o Sri Itwari Lal, R/o Near Railway Malgodam,  
Quarter No. E-7/G Haridwar.

... Applicant.

C/A Sri R.K. Asthana.

Versus

1. Union of India, through Secretary Railway Board,  
Baroda House New Delhi.
2. Divisional Rail Prabandhak, Northern Railway,  
Moradabad.
3. Chief Medical Officer Railway Hospital,  
Moradabad.
4. Health Inspector, Haridwar, Northern Railway, Haridwar.

... Respondents.

C/R Sri K.D. Pandey

ORDER

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

The applicant, who was posted Safaiwala under Chief Medical Officer, Railway Hospital at Haridwar was transferred from Haridwar to Moradabad by order dated 04.02.1993. He has challenged the transfer on the ground of malafidie and in the ground that the transfer is against statutory provisions.

2. The contention of the respondents is that as

as the applicant has been transferred for administrative reasons, and as much the same is beyond the scope of judicial review.

3. The settled law on the subject of transfer is that the courts should not interfere with the transfer order which is made by competent authority in public interest and for administrative reasons. The courts, however, can step in aid of an employee who has been transferred in violation of mandatory rules or on grounds of malafidie.

4. I have heard the learned counsels for the parties and perused the record and find that the ~~officer~~ <sup>DRM</sup> ~~officer~~ who passed the impugned transfer order, is competent authority to transfer the applicant.

5. This leads next to the consideration of the question whether the impugned transfer order has been passed in violation of a mandatory rules. The learned counsel for the applicant has filed to bring to my notice any rule which is alleged to have been violated.

6. The only question that remains to be examined is whether the transfer of the applicant is vitiated for the reason of malafidie. It was pointed by the learned counsel for the applicant that earlier in 1991 also the applicant was transferred from Haridwar to Moradabad on the recommendation of Medical Officer, Haridwar. The ~~alone~~ recommendation, it is alleged, was made on the basis of false complaint made by one Gopal Safaiwala. The applica-

nt submitted a representation to the DRM against his transfer on the ground that the same has been made on wrong complaint. The representation, it was argued, was allowed after inquiry and the transfer from Hariwar to Moradabad was cancelled vide order dated 04.06.92 Annexure A-1. The learned counsel further submitted that when the applicant joined at Haridwar, after his transfer to Moradabad was cancelled the respondent did not pay his salary from 03.01.92 to 11.06.92. He had to file representation annexure A-2 to Chief Medical Officer. In less than a year of cancellation of the transfer of the applicant he has again been transferred to Moradabad. The learned counsel for the applicant submits that cancellation of earlier transfer has agrieved the respondent to such <sup>an</sup> extent that the applicant has been shifted out of personal *Vendetta*. The above circumstances, it is submitted, are sufficient to infer malice on the part of the respondents in re-transferring the applicant from Haridwar to Moradabad.

7. The learned counsel for the respondents has contended that the application is ~~Barred~~ by Limitation in as much as the impugned order of the ~~Tribunal~~ <sup>transfer</sup> was passed on 04.02.93 and this application challenging the same was filed in September 1994 more than a year after the cause of action had accrued. The applicant in para 3 of the rejoinder has contended that the order dated 04.02.93 was not served upon him. He, however, admits that the Sanitary Inspector had asked him to receive transfer order on 04.02.93. He, states that, he ran from pillar to post but the transfer was not made over him. The averment made in paragraph 3 of the rejoinder thus makes it absolutely clear that the applicant was aware of his transfer from

Haridwar to Moradabad.

8. The impugned order of transfer, according to the respondents, was passed by the D.R.M. in administrative interest to maintain discipline and efficiency of working at Haridwar. It was agreed that the applicant, on re-transfer from Moradabad to Haridwar joined his duty on 12.06.92 and did not work from 03.01.92 to 11.06.92, the said order period was regularised against his leave due and payment of salary accordingly made to him. He was, it is, stated, kept under watch after his re-transfer to Haridwar. The applicant, <sup>it</sup> is stated, did not <sup>mend</sup> ~~mandate~~ his ways. His conduct is stated to have adversely affected discipline of the staff in the Sanitary Department. The D.R.M. on receipt of the report regarding the activities of the applicant's transferred <sup>him</sup> ~~back~~ to Moradabad by impugned order. The material brought on record, in my opinion, is not adequate enough to lead to the conclusion that the applicant was not transferred for administrative reasons. I, therefore, find no substance in the argument of the learned counsel for the applicant that the transfer of the applicant is actuated by malice.

8. From the record it appears that the representation of the applicant for cancelling his transfer, which was forwarded by one M.P., by letter annexure A-4, is stated to be pending. The facts that emerge from the aforesaid letter are that the applicant belongs to Scheduled Caste and that his son was ill for a long time, and was being treated at Haridwar. The said representation ~~stated to be~~ <sup>is</sup> pending for consideration. The applicant has not challenged his


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transfer on the ground that he is Schedule Caste employee and was entitled to the benefit of special provision as are contained in the circulars issued by the Railway Board. Railway Board has issued circular dated 14.01.75 providing that the employees belonging to SC and ST should be transferred very ~~rarely~~ <sup>rarely</sup> and for very special reason. This circular was again considered by the Railway Board on 21.08.89 and further directions were issued that ~~the~~ circular dated 14.01.75 should be strictly followed. I do not propose to preempt the decision of the respondents by recording any opinion as to the legality or otherwise of the transfer of the applicant. <sup>can be</sup> In view of the aforesaid instructions, because the representation filed by the applicant is still pending.

9. In view of the discussion made above I consider it appropriate to dispose of this application with a direction to the respondents to dispose of the representation filed by the applicant for cancellation of his transfer in light of the instruction issued by the <sup>Board</sup> Railway Board pertaining to the transfer of SC/ST employees, and also guidelines issued by the board from time to time regarding giving choice posting in the last leg of employees' service. This direction should be complied with within a period of three months from the date of the service of this order.

10. There shall be no order as to costs.

  
Member-J

/pc/