

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ¹⁶~~16~~ DAY OF April 1997

Original Application No. 1876 of 1994

HON. MR. JUSTICE B.C. SAKSENA, V.C

Bhupesh Kumar aged about 31 years
S/o Late Shri Nathi Ram Bansal,
C/o Shri Brij Bhooshan Lal Gupta, Advocate
Bhagat Singh Colony, New Bajoria Marg,
Near D.M's residence Saharanpur.

Applicant

(By Advocate Shri Rakesh Verma)

Versus

1. Union of India through the
General Manager, Northern Railway
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway, Ambala Cantt.
3. The Senior Divisional Personnel Officer
Northern Railway, Ambala Cantt.

Respondents

(By Advocate Shri Prashant Mathur)

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this OA the applicant challenges an order dated 13.12.94 transferring the applicant from Saharanpur to Bhatinda as TXR after cancelling earlier transfer order dated 25.11.94 through which the applicant was transferred on his own request to Saharanpur.

2. The applicant's case in short is that his father late Shri Nathi Ram Bansal was working as Head T.T.E and was posted at Saharanpur. He died in harness while in service. The applicant was appointed on compassionate grounds. The applicant's case further is that as required under the rules the applicant had submitted an affidavit before the respondents making statement on oath that in case he is appointed he will look after his mother and

other dependents and in case of default he shall be liable for such actions as considered by the Railways.

3. The applicant moved an application in the month of July 94 and sought his posting at Saharanpur proper instead of Khan Alampura Yard where he was then posted on the ground that his mother had suffered heart attack in April 94. To take proper care of his mother he had sought his transfer. The applicant has further stated that his request for transfer to Saharanpur was pending before the respondent no.3 and he passed an order of transfer dated 22.9.94 transferring the applicant from Khan Alampura Yard to Bhatinda. After receiving the transfer order the applicant states that he approached respondent no.3 and reminded him with his application for transfer on his own request to Saharanpur was pending which had not been taken into account while passing the order of transfer dated 22.9.94. The respondent no.3 by an order dated 25.11.94 cancelled the said transfer order and transferred the applicant to Saharanpur from Khan Alampura Yard. The order stated that the transfer was on his own request.

4. The applicant's case is that he joined on 1.12.94 at Saharanpur but within a period of 12 days the respondent no.3 issued another order dated 13.12.94 cancelling the earlier transfer order dated 25.11.94. In these facts the applicant pleads that the order of transfer dated 25.11.94 having ~~orally~~ ^{effect} coming into ~~a late~~ ^{effect} the question of its cancellation does not arise. The second plea taken by the learned counsel for the applicant is that once an order of transfer is passed by the appointing authority it can be cancelled only by an authority who is higher in rank than the authority which passed the order in other words the plea is that the same authority cannot reverse or cancel the order.

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5. The respondents have filed a detailed counter affidavit. The respondents ~~were~~^{have} indicated in their counter that the earlier order transferring the applicant from Khan Alampura Yard to Bhatinda had been passed in administrative exigencies of service and it was wrongly cancelled. It has further been indicated that on the representation of other employee the earlier order of transfer was cancelled and the applicant has been ordered to be transferred from Saharanpur to Bhatinda in the same pay and grade. The respondents have further pleaded that the transfer orders were issued with the approval of the personal branch and respondent no.2, i.e. the Divisional Railway Manager is the over all incharge of the Division. The transfer order transferring the applicant from Saharanpur to Bhatinda has been issued by the personal branch with the approval of the branch officer. The further plea of the respondents is that on dispute the cases are referred to the Regional Railway Manager for its reconsideration and accordingly as the order of transfer from Khan Alampura Yard to Saharanpur was found to have been wrongly issued and as such a revised order dated 13.12.94 was issued. The respondents further case is that the applicant alongwith other staff on the basis of their seniority were transferred from Khan Alampura Yard to Bhatinda. The respondents state that the order dated 25.11.94 was inadvertantly issued and as such the same was cancelled and the applicant was transferred on administrative grounds to Bhatinda where all medical facilities were available to the applicant and for his family members.

6. The applicant has filed rejoinder reiterating the averments made in the OA. The respondents have filed M.A. 1610/96 to ^{bring on} record certain facts. In the said application it has been indicated that by ordsr dated 13.12.94 one

Devendra Kumar had also been transferred on the same set of circumstances as the present applicant. It has been indicated that the said Devendra Kumar filed OA. No. 7/95 and the same has been dismissed by an order dated 10.7.96. A copy of the said judgment has been annexed as Annexure I to the misc. application. The applicant has filed written objections indicating reasons which distinguishes his case and that of Devendra Kumar. The only feature stated by the applicant in his objection is that the applicant was granted compassionate appointment on submission of an affidavit that he will look after his mother and the dependants. This plea shall be dealt with in subsequent paragraph.

7. I, now proceed to deal with the submissions made by the learned counsel for the applicant. The first submission was that the applicant had been granted compassionate appointment and he had submitted an affidavit stating on oath that he would support his mother and other dependants if given a compassionate appointment. Copy of the affidavit has been placed on record. The learned counsel for the applicant was unable to indicate that the order of appointment of the applicant contained any such condition as the affidavit has been given. Even if this was a condition for appointment the transfer of the applicant in no way detracts or causes hindrance in discharge of the said undertaking. The applicant is a permanent resident of Muzzaffarnagar as indicated in the affidavit. His posting at Saharanpur or any other place would not cause any hindrance to the applicant abiding by the affidavit given by him. This plea is therefore wholly irrelevant and baseless.

8. The second submission of the learned counsel for the applicant was that once an order of transfer is implemented and given effect to there arises no occasion

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to cancel it. As corollary to this submission it has further been urged that an order of transfer passed by the authority can be interfered with or cancelled or modified by the superior authority not the same authority. As far as this plea is concerned, though the counsels for the parties did not cite any decisions it would be useful to indicate a decision reported in 1987 (5) Lucknow civil decisions pg 253 Smt. Beena Tripathi Vs. State of U.P. In that case the order transferring the Teacher had been cancelled after she had assumed charge at her new place of posting. In dealing with the impugned order cancelling her transfer it was observed "the petitioner had already taken charge at Gonda and as such the order of transfer could not have been cancelled." It is from this decision that in subsequent rulings of the Allahabad High court the principle has been sought to be carved out that after order of transfer has been implemented it cannot be modified or cancelled. It is not necessary to refer to the various decisions in that behalf. Suffice it to refer to a Full Bench decision of the Allahabad High court reported in 1995(2) UPLBEC 1128 the Director Rajya Krishi Utpadan Mandi Parishad Lucknow and Ors Vs. Nathi Lal. The Full Bench considered quite a number of ~~cases~~ ^{decisions} and took the view that the decision in Smt. Bina Tripathi's case did not lay down the correct law and it was overruled. In the opinion of the Full Bench the observation in Bina Tripathi's case referred to hereinabove was merely one of the reasons for granting relief to the petitioner. The Full Bench held that no such legal principle was designed to be enunciated nor indeed can the observation be read as a legal principle as has been sought to be so construed in some subsequent judgments of the Allahabad High court.

9. The Full Bench also referred to a judgment in Suraj

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Narain Vs. The District Magistrate Kanpur 1958 ALJ 283 wherein dealing with the cancellation of an order of allotment made by the Rent Control officer under the U.P.(Temporary control of rent and eviction) Act 1947 it was observed" no exception can be taken to the general proposition that the power in an administrative officer to pass an order includes the power to reconsider or cancel it."

The Full Bench further referred to Section 21 of the U.P. General Clauses Act 1904 and held that it clearly caused hindrance to the proposition that an order of transfer after it has been complied with cannot be cancelled or revoked. The Full Bench therefore laid down that "no bar to lack of authority or jurisdiction to cancel an order of transfer once it has been implemented can be supported by any law or legal principle"

10. In view of the said decisions the plea under consideration raised by the applicant deserves to be rejected and it is rejected. The law laid down in the said Full bench decision negatives both the pleas of the applicant viz that an order of transfer if implemented cannot be cancelled thereafter or that the authority which pass the order of transfer was not competent to cancel/modify the order.

11. The learned counsel for the respondents drew my attention to the order dated 10.7.96 passed in OA 7/95 by the learned Single Member of the Bench of this Tribunal. A bare perusal of the order shows that the facts in the said case are wholly similar to the facts in the present case. The applicant Devendra Kumar was posted at Khan Alampura Yard. He made an application for his transfer and posting at Saharanpur due to illness of his mother. Ignoring the said application Devendra Kumar was transferred to Bhatinda on his pointing out that the

transfer order has been passed without taking into account the request for transfer to Saharanpur. The order transferring him to Bhatinda was cancelled and passed an order of transfer transferring him to Saharanpur.

Incidentally the said petition had also been filed through Shri Rakesh Verma the counsel for the applicant in the present case. The same grounds were urged as have been urged before me. It appears from the order that the relevant administrative file had been made available by the respondents for perusal by the court. The learned Single Member was satisfied that the concerned executive officer, in consultation with the Senior Divisional Personnel Officer, reviewed the matter and order issued earlier for transfer to Saharanpur was cancelled restoring the earlier order of transfer of the applicant to Bhatinda. The learned Single Member also rejected the plea that no reasons have been recorded by modifying the order. He held that the detailed reasons recorded in the file need not be conveyed while disclosing the appeal or passing of an order. The learned Single Member also rejected the contention that the Competent Authority who passed the order cannot revise the order passed by him. I have indicated further reasons for rejecting the said contention.

12. The learned counsel for the applicant faced with the situation that the decision in Devendra Kumar would apply in the present case also cited the following two decisions:

Major A.A. Aphraim Vs. Director General National Cader Corps, New Delhi and Others reported in (1989) 9 ATC 763.

This decision was relied upon in another decision reported in (1996) 33 ATC S.S. Chandanwale Vs. Union of India and Ors

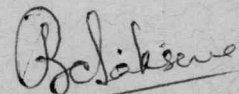
13. In the first case the facts were that a transfer on request on account of personal exigencies was allowed after deleberation for one and half years. The transferee was given advance T.A and was relieved from the old station and joined there and got his children admitted in schools there. The order was cancelled on the basis ~~that~~ ^{and} on the ground of earlier postings and vested property interest in the new place. The Bench applied the principle of Promissory Estoppel in view of its finding that there is nothing to show that the posting order was procured by the applicant ^{by} misrepresenting the facts or in connivance with others

Similarly, the principle of promissory estoppel ^{was} ~~and~~ relied on ⁱⁿ the Ernakulam Bench decision in Major A.A. Aphraim(Supra)

14. In view of the Full bench decision and the provisions of section 21 of the General Clauses Act I am not persuaded to agree with the view expressed in the aforesaid two decisions. In the facts of the present case also I am of the opinion that no case for interference is made out. The order transferring the applicant from Khan Alampura Yard to Bhatinda had been passed. He did not comply with the said order but got the order cancelled to one of transfer from Khan Alampur yard to Saharanpur. ^{This} ~~a~~ subsequent act of the respondents in cancelling the order transferring the applicant from Khan Alampura yard to Saharanpur and thus retaining the earlier order transferring him to Bhatinda cannot be faulted. I also do not see any good reason to ~~defer~~ ^{diverge} from the view taken in OA 7/95. As noted hereinabove the facts are wholly identical. The only exception is that before me the above noted two decisions have been cited by the learned counsel for the applicant. I have read both the decisions. The ambit of judicial review of administrative ^{ive} ~~order~~ ^{order} of ¹⁸⁰²

transferis by now fairly settled. A transfer order can be interferred only if it suffers from malafides or violates any statutory provision.(See Supreme Court decision in Mrs. Shilpa Bose Vs. State of Bihar, AIR 1991 SC 532 and Union of India Vs. S.L. Abbas AIR 1993 S.C 2444). There are no allegations of malafides in the present case nor the breach of any statutory provisions is pleaded. The principle of promissory estoppel, though it is very doubtful whether it would apply against administrative orders and also exercise of inherent powers of the administrative authorities. In the facts of the present case since the applicant's request for transfer to Saharanpur even if it could be held had been accepted it was on the ground of illness of the applicant's mother. From Khan Alampura yard as the applicant has stated in his OA there is no road or any other mode of conveyance except the staff train which runs after the end of every shift. The applicant was interested in his transfer outside Khan Alampura yard. His transfer to Bhatinda ^hwere as per the averments of the respondents all medical facilities are available ^{does} ~~thus~~ not in any manner detract from the promissory estoppel which the respondents are being saddled with. Transfer is an incidence of service. The applicant is holding a transferable post.

15. In view of the above no case for interference is made out. The OA lacks merit and is accordingly dismissed. The interim order passed earlier is hereby vacated. Parties to bear their own costs.



VICE CHAIRMAN

Dated: April. ¹⁵16. 1997