

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 12th day of February , 1996
Original Application No. 469 of 1995^B

District : Agra

CORAM:

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

Mohd. Kadir S/o Shri Tuffail Ahmad
R/o Railway Quarter No.15/L, Railway
Colony, Idgah, Western Railway,
District-Agra.

(By Sri Prashan Mishra, Advocate)

. Applicant

Versus

1. Union of India, through Secretary
Government of India, Ministry of Railways,
Rail Bhawan, New Delhi.

2. Divisional Railway Manager,
Jaipur Division, Western Railway,
Jaipur (Rajasthan).

3. Senior Divisional Mechanical Engineer
(Establishment) Jaipur Division,
Western Railway, Jaipur (Rajasthan)

(By Sri Lalji Sinha, Advocate)

. Respondents

O R D E R

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

Under challenge in this OA filed under Section 19
of the Administrative Tribunals Act, 1985, is an order
dated 17-4-1995 passed by respondent no.3 transferring
the applicant from Idgah to Achhanera. He has sought
the relief of quashing the aforesaid order and also the

direction to the respondents not to create any hurdle in his functioning as a driver at Idgah Railway Station.

2. The factual matrix of the case is that the applicant was posted as Shunter (Diesel) at Achhnera Railway Station, Railway Station in the Jaipur Division, Western Railway. On 16-11-1994, he was promoted as Goods Driver (Diesel) and transferred to Phulera Railway Station, Jaipur Division. A copy of the order dated 16-11-1994 is Annexure-2. The applicant requested for transfer to Idgah Railway Station in the same Division. This request was accepted by the respondents and the applicant was transferred from Phulera Railway Station to Idgah Railway Station by an order dated 14-3-1995, a copy of which is Annexure-3. The applicant, pursuant to that order joined duties at Idgah Railway Station on 16-3-1995. He was allotted a residential quarter on 21-3-1995. He was also elected as an office bearer of Idgah Branch of the Western Railway Employees Union. This fact was intimated to the Senior Divisional Personnel Officer, Jaipur by the president of the Union through a letter dated 22-3-1995. The Divisional Railway Manager (Establishment), Jaipur prepared a list of the office bearers of Jaipur Division vide his letter dated 17-4-1995 (Annexure-6) and circulated the same to the subordinate authorities advising grant of special treatment to the elected office bearers like providing special leave and passes for the purpose of participation in the Divisional Committee meetings. The name of the applicant also appears at Serial No.8 at page 8 of the list. It is

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stated that the aforesaid Union is a registered and recognised Union affiliated to the All India Railway Men's Federation and Hind Majdoor Sabha. The applicant claims that in accordance with the agreement between the authorities and the Union, the office bearers of recognised trade unions have certain protection from transfer from one station to another. Despite this, the respondent no.3 vide the impugned order dated 17-4-1995 (Annexure-1) transferred the applicant to Phulera by re-instating the order dated 16-11-1994. It is stated that this order was passed without issuing any notice to the aforesaid Union and without assigning any reason for cancelling the order dated 14-3-1995 by which the applicant was posted to Idgah Railway Station. It is a further case of the applicant that one Shri Tikam Das who was posted at Idgah Railway Station and ^{who} had earlier refused promotion to the post of Goods Driver and had been barred for further promotion for one year was subsequently promoted and posted as Goods Driver at Idgah whereas the applicant who was senior to the said Tikam Das was transferred to Phulera and hence this application.

3. The applicant has taken several grounds to challenge the impugned order. In the first place, it has been pleaded that the impugned order having been passed without giving any opportunity to the applicant being heard is violative of the principles of natural justice and also that the reasons for the transfer not being specified in the impugned order, it is illegal and unjust to transfer him within a few months. The second plea taken is that the respondents could not have transferred the applicant without notice

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to the union. The third plea is that the respondents having accepted the applicant's request for transfer from Phulera Railway Station to Idgah Railway Station, his transfer to Phulera Railway Station is against the principles of promissory Estoppel. Lastly, it has been pleaded that the impugned order amounts to victimisation of the applicant.

4. The respondents have filed a counter reply contesting the applicant's case. It has been stated therein that the applicant's promotion as Goods Driver was a local promotion on adhoc basis and on such promotion, he was posted to Phulera Railway Station. He, however, did not carry out the orders of transfer on promotion at Phulera Railway Station and after about three months he submitted a representation for retention on personal grounds at Achhnera. The applicant had by then already been relieved from Achhnera, but the competent authority on humanitarian grounds changed the order of posting to Idgah Railway Station, which was to be the station nearest to Achhnera. However, while doing so, it has been stated, he was wrongly posted in the higher grade of Goods Driver and he should have been posted only in the lower grade at Idgah Railway Station. Because of this, he was again transferred from Idgah Railway Station to Phulera Railway Station on promotion to the higher grade. It has been further stated that the agreement dated 27-12-1978 between the authorities and the Union, which the applicant relied upon, has not been superseded by a circular dated 6-1-1995, a copy of which is placed at Annexure-2 to the counter reply. In accordance with this circular, the order of transfer of an office bearer of a recognised Union has not to be implemented for 15 days in order to enable the the recognised Union to represent against such transfer

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and in case no such representation is received within 15 days, then the same is to be implemented. The respondents have contended that no such representation was received from the Union objecting to the transfer of the applicant to Phulera. As regards promotion of Sri Tikam Das, it has been stated that he was earlier debarred from promotion for one year on his refusal to accept promotion on transfer. After the period was over, he was again promoted as Goods Driver at Idgah Railway Station. It has further been stated that there is only one post of Goods Driver at Idgah Railway Station and, therefore, the applicant's services had to be utilised only as a Diesel Shunter until his transfer to Phulera was ordered.

5. The applicant has filed a rejoinder reply in which it has been admitted that his promotion was on adhoc basis. It has been further stated that after the transfer order was issued, he had fallen ill and was on the medical treatment of the Railway Doctor from 18-12-1994 till 13-3-1995, and thus it was wrong to say that he did not carry out the promotion and transfer orders. Subsequently, on his request he was posted to Idgah Railway Station and it has been denied that his posting at Idgah Railway Station in the higher grade of Goods Driver was erroneous as contended by the respondents. The rest of the contention made in the O.A. has been reiterated. ^{5A} So far as the transfer of ~~an~~ the employee is concerned, the position is now well settled that if the transfer of the employee is in exigencies of service, the same cannot be challenged except on the ground of contravention of a statutory rule in this regard or unless

it is actuated by malafide. Even contravention of the guidelines of the department will not come to any assistance ^{of} to an employee. This principle has been established by the Apex Court in a series of judgements. It would be sufficient to mention the case of B. Vardha Raju Vs. The State of Karnataka reported in 1986 SCC Vol(4) 13, Shilpi Bose Vs. Union of India & Ors reported in AIR 1992, SCC (L&S) 127 and Union of India Vs. S.L. Abbas & Ors. reported in AIR 1993 SC 244. The respondents case being that the transfer of the applicant to Phulera Railway Station was on administrative, the same cannot be successfully challenged by the applicant as he has not shown any contravention of a statutory rule, nor is there any *prima facie* case of malafide actuating such transfers. ^{S.B.} We now come to the question as to whether any promissory estoppel would apply in this case. The applicant's case in this regard is that the respondents having accepted his request for posting near Achhnera by ^{changing} ~~challenging~~ station of posting from Phulera to Idgah Railway Station, they are stopped from transferring him to Phulera Railway Station again. In this regard he has relied upon the decision of Ernakulam Bench of the Tribunal, in the case of Major AA Abraham Vs. Director General N.C.C. reported in AIR 1989 (2) SLR 792 and also on the decision of the Himachal Pradesh Administrative Tribunal in the case of Jeevan Ram and Others Vs. Himachal Pradesh State reported in 1989 (7) SLR page 227.

6. In the case of Major AA Abraham, the applicant was transferred from Lat/hur to Trichur on his own request.

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After he had actually proceed to the new station of posting and had also shifted his belongings, the local officer at Trichur refused to allow him to join stating that his order of posting to Trichur had been cancelled. The Ernakulam Bench of the Tribunal held that the principles of promissory estoppel would apply in such a case and in the absence of any overriding public interest to withhold the order of transfer, the respondents should be held to be bound by the order of transfer. This case is clearly distinguishable on ~~the~~ facts from the case before me. In the present case, the applicant was allowed to join at Idgah Railway Station and it was only after several months that he was transferred to Phulera Railway Station, which was his initial station of posting on promotion. In the case ^{LA} Jeevan Ram, the applicant was transferred from Ghiri to Kanaid after serving his normal tenure at the earlier station of posting. However, just after two months of his taking over at Kanaid, he was transferred back to Ghiri. The Tribunal held such order as illegal and not justified on the ground of promissory estoppel. No doubt, the facts of this case are somewhat similar to the facts of the case before me. I am, however, unable to persuade myself to follow the ration of this decision, firstly, in the absence of any ^{discussion} ~~description~~ as to how the principles of promissory estoppel would come to apply in that case and also in view of the fact of the subsequent decisions of the Hon'ble ^{Supreme Court} ~~SC~~ that transfer of an employee in the exigencies of service can be challenged only on the ground of contravention of statutory rules and on the grounds of malafide.

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7. The ~~the~~ applicant has also sought reliance on the decisions in the cases of SS Verma Vs. UOI & Ors reported in 1994 (1) (CAT) and T. Abdul Kader Vs. UOI & Ors reported in 1994 (2) (CAT) 289. In the first case the Jodhpur Bench had set aside the order of transfer on the ground that the applicant being a member of the SC, his transfer could have been made only for very strong reasons and the facts did not disclose that such strong reasons did exist. It is not the case of the applicant that he is the member of SC ^{Community} and, therefore, this decision is wholly inapplicable to his case.

8. In the case of T. Abdul Kader, the Ernakulam Bench had set aside the order of transfer on the ground of ~~malaf~~ malafide. As already observed, I have found no evidence of malafide in the transfer of the applicant and, therefore, the decision of the Ernakulam Bench also does not come to his assistance.

9. I now come to the question as to whether there is any violation of the department's circular regarding transfer of an office bearer of the Union. In this regard, the applicant has relied on a letter dated 27-12-1978 (Annexure-8) forwarding minutes of the meeting that the Western Railway Majdoor Sangh held on 30-10-1978 on the subject of transfer of staff on contraction of cadre. This indicates that after discussion with the WRMS it was agreed that in addition to preserving the rights of the SC/ST employees, the rights of the Trade Union Officials with regard to transfer will also be protracted.

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10. The aforesaid agreement is prima facie in the context of contraction of cadre. Also it has not been specified in the agreement as to the nature of the protection to be given to the Trade Union Officials with regard to transfer. The applicant has cited the decision of the Hon'ble ^{Supreme Court} SC in the case of M/s. Moti Lal Padampat Sugar Mills Co. Ltd. vs. State of U.P. reported in ^{AIR} 1979 SC 621 to contend that the respondents would be bound to honour the said agreement by the application of the principles of promissory estoppel. Even assuming that the respondents are bound by the aforesaid agreement, it would be wholly inapplicable in the case of applicant as his transfer is not on the ground of contraction of cadre.

11. Similarly, circular letter dated 17-4-1995 (Annexure-A_6) issued by the General Manager (Establishment) addressed to the Subordinate Authorities enclosing a list of the office bearers of the recognised unions enjoins upon the such authorities that the office bearers of the unions should be issued passes and granted leave etc. There is nothing in the circular regarding protection to such office bearers from transfer.

12. The respondents on the other hand have relied upon a circular dated 6-1-1995, copy of which is annexed as ~~Annexure GA-1~~. This circular indicates that after an order of transfer of an office bearer of a recognised union is issued the same should not be implemented for 15 days, ^{and if no representation is received from the union within this period,} the transfer order should be implemented. The applicant had averred that a copy of his transfer order was not sent to the recognised union. This, however, has been refuted

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by the respondents by enclosing the impugned order of transfer as Annexure-8 from which it would appear that the copy of the same was endorsed amongst others to the recognised union. They have, however, denied the contention of the applicant that the recognised union represented against such transfer. The applicant has, however, annexed a copy of the letter dated 24.4.1995

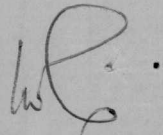
stated to have been issued by the Western Railway Employees Union, would indicate that the union had objected to the transfer of the applicants and this was within 15 days from the date of issue of the order. Even though the respondents have denied receiving of any letter from the union, in the absence of any rebuttal of the contention in the RA, I am of the view that the respondent should consider the said objection and take a decision thereupon.

13. In view of the foregoing, I direct the respondent to consider the representation dated 24-4-1995 stated to have been made by the Western Railway Employees Union and take action thereupon in accordance with the instructions contained in their own circular dated 6-1-1995. In order to facilitate such consideration, the applicant is directed to forward a copy of the aforesaid representation to the respondents within two weeks from the date of this order. The applicant is continuing at Idgah Railway Station by virtue of the interim order. The interim orders shall continue until a decision is

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taken by the respondents on the aforesaid representation made by the recognised union and it will stand vacated once a final decision is taken regarding the transfer of the applicant after considering the union's objection to the same.

14. The application is disposed of with the above directions. There shall, however, be no orders as to costs.


Member (A)

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