

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 578 of 1995

Allahabad this the 04th day of June 1996

Hon'ble Dr. R.K. Saxena, Member (J)

Baij Nath, S/o Sri Ram Prasad at present posted as
Chargeman F.I.C. (B) Loco Shed Northern Railway,
Meerut City.

APPLICANT

By Advocate Sri Satish Dwivedi

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Mechanical Engineer(Operatings),
Northern Railway, New Delhi.
3. Divisional Personnel Officer, Northern Railway,
New Delhi.
4. Assistant Personnel Officer, Northern Railway,
New Delhi.

RESPONDENTS.

By Advocate Sri J.N. Singh.

JUDGMENT

By Hon'ble Dr. R.K. Saxena, Member (J)

This O.A. has been filed to challenge the transfer order dated 9.5.1995 - annexure A-1 so far as it relates to the applicant. The direction is also sought to treat the applicant as F.I.C.(A) and to pay the salary and allowances accordingly w.e.f.

8.2.1986.

2. The facts of the case are that the applicant was appointed as Chargeman F.I.C.(B) and remained posted at different places. When

he was posted at Saharanpur, the promotion to the post of F.I.C.(A) was given to the juniors @@@ ignoring the claim of the applicant. Subsequently the applicant was also given adhoc promotion but vide order dated 27.2.86, the order of promotion was withdrawn and the applicant was reverted. The applicant then filed O.A. 168 of 1987 which was allowed on 8.4.93 and the order of reversion was quashed. The Tribunal further directed the respondents to consider the case of the applicant for regular promotion as F.I.C.(A). That judgment has not been given effect to, and thus contempt petition was filed.

3. It is averred that the respondents are biased and prejudiced against the applicant and for that reason the post of Chargeman was kept vacant at Delhi, the applicant was transferred to Tughla-kabad. It is also alleged that even the cadre of the applicant was changed, Hence this O.A. is filed seeking composite reliefs as were already mentioned.

4. The respondents resisted the case on the grounds that the steam loco shed Delhi was closed and the staff of the said loco-shed was declared surplus, itwas transferred. As such, it is claimed that the transfer of the applicant alongwith other persons was purely on administration ground. It is averred that the applicant, by challenging the order of transfer, is trying to claim a prescriptive right over the present place of posting. According to the respondents, the applicant holds a transferable post.

The ground of prejudice or malafides has been denied.

5. So far as the case for promotion to the post of FIC(A) is concerned, it is contended that the applicant was not found suitable. The respondents, therefore, pleaded that the O.A. be dismissed.

6. The applicant filed rejoinder and supplementary rejoinder and the same facts which were mentioned in the O.A., were restated.

7. I have heard the learned counsel for the parties and have perused the record.

8. In this case two different remedies which are not dependent on each other, have been taken. There is clear prohibition for taking plural cause of actions in the same matter. The applicant seeks in 8 (i) that the order dated 9.5.95 annexure A-1 which is a transfer order, be quashed. In 8 (ii) he seeks a direction to the respondents that he (the applicant) be treated as FIC(A) and salary including allowances of the said post, be paid to him. By no stretch of imagination, these two reliefs can be said consequential to each other or overflow from the same order under challenge. Thus the O.A. is bad on that ground and is not maintainable.

9. The applicant admitted in the O.A. that the order of reversion was challenged through another O.A. and the same was allowed on 8.4.93 but the respondents failed to comply with the direction. He furthered

that it was then that the petition for contempt was filed. In such a situation, the relief 8 (ii) could not be sought through this O.A.

10. As regards the impugned order of transfer, the applicant has come with the plea that the respondents were prejudiced with the applicant on the ground that the applicant was the office-bearer of the Union and he had filed cases including the contempt petition against the respondents. This allegation has been refuted by the respondents. On the other hand, it is contended that the staff of steam loco-shed, Delhi was declared surplus because of the closure of the said loco-shed. Hence the staff including the applicant was transferred to different places. The applicant has been transferred to Tuglakabad which is at a distance of 20 km. from Delhi. It is also asserted that Delhi division covers Tuglakabad as well as Meerut city. Thus a transfer to a place at a distance of only 20 km. from Delhi cannot be said to be the result of any prejudice. The total insistence of the applicant appears that on Sri Jai Sharan Gupta has been given a posting carrying the extra benefit of Rs. 10,000-00 p.m. while it was denied to the applicant. The posting of an employee in a particular place ~~or~~ post, ~~or~~ is the total discretion of the employer. Such a matter cannot be made justiciable. What we have to see is if the transfer is penal in nature, or suffers from malafides, or is against the rules. On the scrutiny of the facts, none of them is found established. The respondents have come with a

clear case that the order of transfer was made because the steam loco-shed was closed.

11. The applicant avers that some staff was detained at loco-shed Delhi. The learned counsel for the respondents pointed out that skillon staff was detained for a period so long as the winding up of the shed is not completed. Thus it is not a relevant ground. It is also pleaded on behalf of the applicant that he had sought transfer to Delhi for a couple of years back so that his daughter may be treated well. It is already mentioned that Tuglakabad where the applicant is sent on transfer, is only 20 km. away from Delhi. Thus this transfer does not cause any hinderance in the treatment.

12. On the basis of scrutiny of the facts and other circumstances, I come to the conclusion that there is no merit in the case. The O.A. is, therefore, dismissed. The order of status-quo granted on 27.6.95, stands vacated.

13. No order as to cost.

(Dr. R.K. Saxena)
Judicial Member.

#M.M./