

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 28/11 th day of November, 1997

Original Application No. 649 of 1995

District : Allahabad

CORAM :-

Hon'ble Mr. D.S. Bawela, A.M.

Gopal Krishna Son of Shri Raghavan
Resident of House No. 376-C/1, Mirzapur Road,
Naini, Allahabad.

(By Sri PK Kashyap, Advocate)

. . . Applicant

Versus

1. Union of India through
Divisional Railway Manager, Northern Railway,
Allahabad.
2. Senior Divisional Electrical Engineer (IRB)
Northern Railway, Allahabad.
3. Senior Personnel Officer,
Northern Railway, Allahabad.
4. Mohammad Ekram Siddiqui,
Senior Fitter
Under C.T.F.O./Northern Railway,
Mirzapur.

(By Sri Prashant Mathur, Advocate)

. . . Respondents

ORDER

By Hon'ble Mr. D.S. Bawela, A.M.

Through this application the applicant has sought the relief of issuing a direction to the respondents to post the applicant as PSI Fitter Grade II in the scale of Rs. 1200-1800 at Allahabad and also to declare his transfer order from Allahabad to Mirzapur as illegal.

2. The applicant while working as PSI Fitter Grade-III in the scale of Rs. 950-1500 was transferred from Khurja to Allahabad as per transfer order dated

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15-2-1995. Before this transfer, the applicant had passed the trade test for promotion to Fitter Grade II as notified vide order dated 7-12-1994. The applicant has been promoted as Fitter Grade II and transferred out of Allahabad to Mirzapur as per the order dated 5-6-1995. Feeling aggrieved by this transfer order, the applicant has challenged the same through this application filed on 6-7-1995.

3. The main thrust of the arguments advanced by the applicant while challenging the impugned order dated 5-6-1995 are as under :-

- (a) The wife of the applicant is posted at Allahabad and after making repeated representations since 1991, the applicant had been transferred to Allahabad. However, within a short period of joining at Allahabad, the applicant has been transferred out in violation of the extant instructions laid down as per the Railway Board's letter dated 1-10-1971 according to which the husband and wife are to be posted at the same place.
- (b) There was a vacancy existing at Allahabad of Fitter Grade II and the applicant had made representation to promote him at Allahabad itself before the transfer order had been issued. The applicant also contends that he had been verbally assured that he will be posted at Allahabad in Fitter Grade II as and when the vacancy arises.

4. The notice was issued to respondent no.4. However, no counter affidavit has been filed. Neither the respondent no.4 has appeared through his counsel or in person. In view of this, I have proceeded ex parte against the respondent no.4.

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4. The ^{official} respondents have filed counter reply. The respondents have pleaded that the applicant has not exhausted departmental remedies by way of making representation and has directly approached the Tribunal. Thus, in view of this, the present application deserves to be dismissed as being premature. The respondents further contend that the applicant was transferred to Allahabad in the Grade of Rs.950-1500/- in the normal course in his own turn and he had been given no assurance that he will be promoted to Fitter Grade II at ~~xx~~ Allahabad itself. The applicant has been transferred out of Allahabad on promotion in the Grade of Rs.1200-1800. The vacancy at Allahabad has been filled by a request of transfer in terms of the extant instructions. ^{have} The respondents ^{has} also submitted that the applicant ^{has} misconstrued the contents of the Railway Board Circular dated 1-10-1971. In view of these facts, the respondents plead that the applicant has failed to make out any case of mala fide intention or violation of statutory rules and as such, there is no merit in this application calling for judicial review.

5. The applicant has controverted the submissions of the respondents through the rejoinder reply.

6. I have heard Shri PK Kashyap and Shri Prashant Mathur, counsel for the applicant and respondents respectively. The arguments advanced during the hearing have been carefully considered along with the materials brought on record.

7. In the matter of transfer of employees, the law is well settled through catena of judgements of the Apex Court. The order of transfer can be subject of

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judicial review, if it is a case of proven arbitrariness/
malafide or the the transfer/^{order} has been passed as a
measure of penalty or in disregard of the statutory
provisions or it is a case colourable exercise of
power. None of these grounds have been taken by the
applicant in challenging the impugned transfer order.

8. The applicant has challenged the impugned transfer order only on the ground that the guidelines laid down for posting husband and wife together at the same station as per the Railway Board's letter dated 1-10-1971 have been violated. On the other hand the respondents have contended placing reliance on the instructions contained in the same letter that one Shri Akram Siddique who was working in the grade of Rs. 1200-1800 has been transferred to Allahabad as per his name noting for transfer. I have carefully gone through the contents of the letter dated 1-10-1971. It is noted that this letter lays down the instructions with regard to registration of the request for transfer within the same seniority unit. It has also laid down that while transferring employees from one station to another, the fact that the employee's spouse is posted at a particular station, may be kept in view and similarly request for transfer on this situation may also be considered. Thus, the Railway Board instructions cover both the cases of the request of transfer within the same seniority unit as well as the transfer of the employees for posting together of husband and wife at the same station. From the transfer order, it is noted that Mohd. Akram Siddique

had been transferred at his own request and he is not entitled for transfer pass and the joining time etc. It is obvious that his transfer order has been passed, keeping in view his registration for transfer in grade of Rs. 1200-1800 ~~XXXXXXX~~ and the laid down guidelines by the Railway Board. The transfer of the applicant has been effected on promotion to grade of Rs. 1200-1800 and not in the same grade. It is quite fair that on promotion junior person should move out and senior who is already working in that grade should be posted as per his request against the available vacancy. Keeping these facts in view, I am of the view that no illegality has been committed in the transfer of the applicant and the post at Allahabad had been filled up as per the guidelines laid down.

9. It is noted that the applicant was transferred to Allahabad only during March, 1993 in the grade of Rs. 950-1500 and he has been transferred out on promotion in the grade of Rs. 1200-1800 as per the order dated 5-6-1995 i.e. within a period of about three months. Before the transfer, the applicant had already been trade tested for promotion to the grade of Rs. 1200-1800 and his name was placed in the panel notified on 7-12-1994. It is obvious that the applicant knew that he would be promoted to the next grade shortly. The applicant ^{should} have been prudent not to carry out transfer from Khurja to Allahabad in the grade of Rs. 950-1500 and instead should have made the representation that he should be transferred on promotion to Allahabad in the grade of Rs. 1200-1800. After carrying out the transfer in the grade of Rs. 950-1500, the applicant ^{then only} made a representation for promotion in the next grade at Allahabad itself

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against the work charged vacancy. The respondents also have not acted properly in transferring the applicant in the grade of Rs.950-1500 when it was quite known that he would be promoted to the next grade being placed on the panel. He could have been transferred on promotion to Allahabad in case his request for posting of husband and wife at the same station was to be considered. The learned counsel for the applicant has placed reliance on the judgement of the Hon'ble High Court of Allahabad in the case of Smt. Deepa Vashishta Vs. State of U.P. and another, 1996 (1) U.P.L.B.E.C. 54. This is a case where the petitioner was transferred out of the place where the husband and wife were posted xxx together in violation of the guidelines laid down with regard to posting of husband and wife together at the same station. It is held in this judgement that guidelines laid down for posting of husband and wife at the same place should be followed and the transfer to different places may be ordered only in the administrative exigencies or public interest. ^{and} this should be only in exceptional cases, keeping in view the hardship caused to the family due to husband and wife not being posted at the same place. The Hon'ble High Court in this case has directed that the representation of the petitioner ~~be reconsidered~~ by the competent authority keeping in view the observations made by the Hon'ble ^{High} Court. In the present case, it is noted that the applicant has approached the Tribunal without making any representation against his transfer. In fact, the respondents have opposed this application on the plea that the applicant has not exhausted the departmental

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remedy before filing this OA. The present case is, therefore, distinguishable from the case covered by the judgement of the Hon'ble High Court as referred to above due to the ^{fact} ~~fact~~ that no representation had been made by the applicant and further ~~XXXXX~~ the transfer of the respondent no.4 had also been order in compliance with the guidelines laid down for request ~~of~~ transfer within the same seniority unit. The only question that arises ^{that who} ~~is~~ ^{should} have been considered for posting at Allahabad when the case of both the applicants as well as that of the respondent no.4, was equally covered by the guidelines as per the letter dated 1-10-1971. In the present case, the competent authority has decided to transfer the respondent no.4 for posting at Allahabad in the same grade. Since the transfer has been effected in compliance with the guidelines, as already recorded earlier, there is no infirmity in the transfer order calling for any interference. However, keeping in view what is held by the Hon'ble High Court above, in the judgement referred to, it is provided that the applicant should make a representation to the competent authority and the competent authority will consider his ^{existing} ~~represent-~~ ation for posting at Allahabad against the ~~vacancy~~ ^{existing} ~~XXXXX~~ or the vacancy arising in the near future keeping in view the need of the applicant for posting of husband and wife together at the same station in line with the guidelines laid down by the Railway Board vide letter dated 1-10-1971. The application will be disposed of within a period of two months. after the representation is filed by the applicant within a period of one month from the date of receipt of this order.

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10 In the light of the above discussion, I find no merit in the application and the same is dismissed accordingly. However, as provided in para 9 above, the applicant may make a representation for posting at Allahabad and the respondents shall dispose of the same within the period stipulated above. No order as to costs.

S. H. Singh
Member (A)

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