

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 697 of 1995

Allahabad this the 28th day of July 1995

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

1. S.N. Singh, Senior Cashier, Northern Railway, Allahabad.
2. L.P. Singh, Senior Cashier, Northern Railway, Allahabad.
3. Uday Shankar Srivastava, Senior Cashier, Northern Railway, Allahabad.

APPLICANTS

By Advocate Shri D.P. Singh.

Versus

1. Union of India, through Chairman, Railway Board, New Delhi.
2. The Financial Advisor and Chief Accounts Officer, Northern Railway, Baroda House, New Delhi.
3. The Senior Divisional Accounts Officer, Northern Railway, Allahabad.
4. The Assistant Chief Cashier, Northern Railway, Allahabad.

RESPONDENTS

O R D E R (oral)

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

This O.A. has been filed by S/ Shri S.N. Singh, L.P. Singh and U.S. Srivastava who are Senior Cashiers in Northern Railway, Allahabad challenging the impugned order of transfer (Annexure-I) passed on 20.7.1995. The contention of the applicants is that they are working as Senior Cashiers at

Allahabad which are declared sensitive posts in accordance with the circular (Annexure-II) and the holders of sensitive post are required to be transferred every four years. The impugned order was passed in violation of this circular issued by the Railway Board and, therefore, the order of transfer is contended to be illegal. The applicants, therefore, seek quashment of the said order of transfer.

2. The notices of the O.A. were served on the respondents in response to which objection about maintainability of the O.A. was filed. The learned counsel for the applicants and the respondents were heard at the point of maintainability of this O.A.

3. The contention of the learned counsel for the applicants is that the order of transfer has been challenged only on the ground that the instructions which were issued and which form part of rule by the Railway Board, have not been complied with and, therefore, the order of transfer is illegal and liable to be quashed. In this connection my attention has been drawn to para 123 of Indian Railway Establishment Code, ^{elsewhere} Volume I, it is mentioned that the Railway Board have full powers to make rules of general application to Group C and D railway servants under their control.

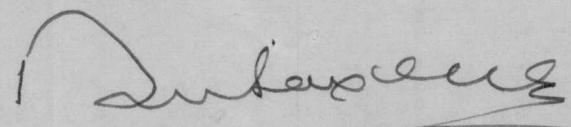
It has been urged on behalf of the applicants that the Circular (Annexure-II) was issued in exercise of the powers conferred on the Railway Board and thereby the Circular takes the shape of rule. In support of it, the Judgment of the Hon'ble Supreme Court in the case 'State of Gujarat Vs. Akhilesh C. Bhargava and Others A.I.R. 1987 S.C.C. 2135' has been relied upon. In the said case the circular of Home Ministry with reference to the I.P.S(Probation) rules was under consideration and it was held that the instructions which did not run counter to the rules in existence, the validity of the instructions cannot be disputed. The reliance is also placed on the case 'Babu Lal Shukla Vs. Sec. cum General Manager and Others (1993) 3 U.P.L.B.E.C. 2110 in which the order passed by the Registrar under Section 120 of the Act prescribing the qualification, was under challenge; and it was held that the order passed by the Registrar, could be in exercise of the powers of framing regulations. Besides it, the reliance has also been placed on the decision in the case 'Railway Board and Others Vs. P.R. Subramaniyam and others in 1978 (I) L.L.J. page 208' in which it was held that the circular of Railway Board issued in terms of Rule 157 of the Code ^{had} ~~at~~ the force of rule. It has been pointed out on behalf of the applicant that Rule 157 of the Code has now been made Rule 123. Thus, the ^{crux} ~~crux~~ of the matter

is whether this circular (Annexure-2) should be held taking shape of rule and whether any departure therefrom was possible or not. The rule making power as is pointed out, is only with respect to the service conditions of the employees. Their Lordships in the case 'Rajendra Rai Vs. Union of India 1993(1) S.L.R. 126' and 'State Bank of India Vs. R.P. Khurana 1994(1) SLR 588' held that the transfer is an incidence of service. A person holding a transferable post, has no legal right to remain posted at one place or the another. It was further held that no interference by the Court/Tribunal should be made, unless the transfer orders are made in violation of any mandatory or the statutory rule or on the ground of malafide. In another case 'Union of India Vs. S.L. Abbas 1994 S.C.C. (L&S) 230' it was further held that unless the order of transfer is malafide or is made in violation of statutory provisions, the Court/Tribunal cannot interfere. It was further observed in the same case that not following any instructions/guidelines made in this respect, would not be sufficient to quash the order as being malafide. The contention of the learned counsel that annexure-2 takes the shape of rule, cannot be upheld because it is not either a term^s or a condition of service in general. The transfer is an incidence and it cannot be attached as a basic condition of service. At the most, it

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can be treated as instruction or guideline.

The learned counsel for the applicant has fairly conceded that this case has not been filed, alleging any malafide. Only point involved is that the transfer was made against the instructions and according to him that instruction amounted rule. I have already expressed my view and that in the light of latest decisions of the Supreme Court referred to above that the instructions contained in annexure-2 cannot be placed in the category of rule. As such no violation of mandatory rule could be established. The O.A. is therefore, dismissed at the stage of admission itself.



Member (J)

/M.M./