

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 1437 of 1999
this the 4th day of July 2002.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Manoj Kumar Pandey, aged about 28 years, S/o Sri Deena Nath,
R/o Village Chandpur P.O. Udaipur, District Varanasi.

Applicant.

By Advocate : Sri S. Agrawal & Sri S.K. Misra.

Versus.

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The General Manager/General Manager (P), N.R. HQS., Baroda House, New Delhi.
3. The D.R.M./ DRM(P), N.R., Lucknow.
4. Divisional Commercial Manager, Northern Railway, Lucknow.

Respondents.

By Advocate : Sri P. Mathur.

ORDER

The applicant while working as T.C./BSB of Lucknow Division of N.R. in the grade of Rs. 4000-6000/- has been transferred to Delhi Division alongwith the post on administrative grounds in the same pay, grade and capacity vide impugned order dated 4.11.99. The applicant has challenged the validity of the transfer order and has also sought directions to the respondents for restraining the respondents from interfering with the functioning of the applicant as Sr.T.C., N.R., Varanasi after cancelling his transfer order.

2. The ^{main} grounds on which the applicant has challenged the validity of the transfer order is that the same has been

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passed in contravention of the Rule 227 of the Indian Railway Establishment Code Vol. II. According to the applicant, his transfer from Lucknow Division to Delhi Division can only be made if there is an allegation of inefficiency or mis-behaviour against an employee or on his own written request.

3. I have heard the learned counsel for the parties and have also perused the pleadings on record.

4. The learned counsel for the applicant has contended that ^{there is} neither any allegation of inefficiency or mis-behaviour against the ^{applicant} nor ~~has~~ he made any request for his transfer, hence the impugned order is illegal.

The relevant part of 227 of Indian Railway Establishment Code Vol. II reads as under :

"227(a) A competent authority may transfer a railway servant from one post to another provided that except -

- (i) on account of inefficiency or misbehaviour or
- (ii) on a written request.

A railway servant shall not be transferred substantially or except in the case of dual charges appointed to officiate in a post carrying pay than the pay of permanent post on which he holds a lien or withhold a lien had his lien not been suspended under Rule 241 (FR-14). nothing contained in clause (a) of this rule or in clause 28 of rule 103 shall operate to prevent the transfer of a railway servant to the post on which he would hold a lien had it not been suspended."

5. It is evident from the perusal of the aforesaid provisions that it relates to the transfer of a railway servant from one post to another post. But, in the present case, it is clear that the applicant has not been transferred from one post to another, and he has been transferred alongwith the post. As a matter of fact, it is a case of transfer of a railway servant from one division to another division. Therefore, I do not find any illegality in the impugned transfer order.

6. It has been next argued by the learned counsel for the applicant that the applicant was placed under

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suspension on 1.6.1999 in connection with some incidence which occurred on 28.5.1999 when he was on duty between 14.00 hours to 20.00 hours. This suspension order was, however, revoked subsequently and the applicant was reinstated in service at Varanasi on his post. The applicant claims that no chargesheet was ever served on him, nor any disciplinary inquiry was initiated against him, therefore, the present impugned order has been passed as a measure of punishment and not on administrative grounds as stated in the impugned order..

7. The respondents have, **however**, not stated that the transfer order was made in connection with the incidence pointed out by the applicant in his O.A. It is no-doubt correct that the applicant was placed under suspension, but it is stated that it is nothing to do with the transfer of the applicant. The learned counsel for the respondents has referred to some policy decisions of the Railway Board contained in their letter dated 2.10.98 (Annexure CA-1) in which there is a provision for inter-division transfer of ticket checking staff, if it is found that the employee concerned is indulging in malpractice, but it does not appear to be a case of the respondents that the transfer of the applicant has been made on account of ^{the applicant} being found indulging in malpractice. The applicant has no doubt pleaded that interdivision transfer can only be made under the authority of the Railway Board. The learned counsel for the applicant has, however, not shown or brought to my notice any provision ^{in Ru} ~~for~~ which the power to transfer of a railway employee from one division to another division vests with the Railway Board ^{only} and the General Manager is not competent to pass such order.

8. It is next contended that there is no post available at Delhi division of Northern Railway. This

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cannot be a ground for declaring the transfer order as illegal because it is a purely administrative matter, which can be solved by the administrative authorities. Since the applicant has been transferred alongwith the post, it is the responsibility of the respondents to provide a post at Delhi Devision.

9. For the reasons stated above, the O.A. has no merit and the same is accordingly dismissed. No costs.

Rafiqul Haque
MEMBER (J)

GIRISH/-