

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 29th day of September 2000.

ORIGINAL APPLICATION NO. 130 of 2000.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member

Suresh Tiwari,
S/o Late Shri Shrikant Tiwari,
Presently posted as Goods Superintendent-II,
Deoria, Sadar N.E. Railway.

... Applicant

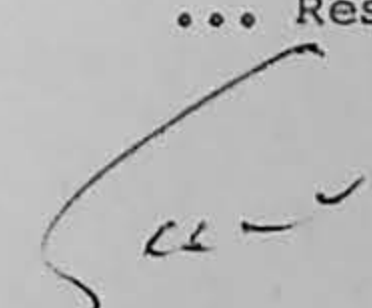
C/A Shri V. Tewari

Versus

1. Union of India through Senior Divisional,
Manager, N.E. Railway,
Varanasi.
2. Divisional Railway Manager (N.E. Rly.,)
Gorakhpur.
3. Station Superintendent, N.E. Rly.,
Georgia.

... Respondents

C/Rs Shri A.K. Gaur



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O R D E R

Hon'ble Mr. S.K.I. Naqvi, Member-J

In this OA the order dated 01.10.1999 has been impugned through which the applicant has been transferred from Deoria to Gopalganj. It has been submitted that the order ~~has~~ been passed with malafide and is punitive in nature, as much as while the applicant was working as goods Supdt. Deoria, he was suspended vide order dated 01.09.1999 by the Divisional Commercial Manager (DCM), which was revoked vide order dated 07.07.1999 by Commercial Controller, Varanasi, but the Divisional Commercial Manager (DCM) nursed vengence against the applicant and passed the impugned transfer order dated 01.10.1999. The applicant has also pleaded on compassionate ground with the mention that the children of the applicant are studying in Gorakhpur University and in the collage, affilliated to the U.P. Board, on transfer to Gopalganj, in State of Bihar, it may adversely affect their educational career.

2. The respondents opposed the prayer of the applicant on the ground of being devoid of merit as much as that neither the case of malafide is made out without mention of specific instance nor otherwise too, it can be a case of malafide where the applicant

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has been transferred as an incidence of service. It has also been submitted that the applicant has alleged malafide against the Divisional Commercial Manager, Gorakhpur, but has not arrayed him as party in the OA, who could explain the actual position and, therefore, no adverse inference can be drawn at his back.

3. Considered the arguments placed from either side and perused the record.

4. The first contention of learned counsel for the applicant, that the transfer order is punitive in nature, which has been passed out of malafide, does not stand good as against the fact that for alleged monetary defalcation, the applicant was suspended vide order dated 01.09.1999, but this suspension order was revoked within span of 7 days and the impugned transfer order is dated 01.10.1999. It could only be surmise of the applicant that DCM, Gorakhpur was nursing some illwill against the applicant, therefore, he passed the impugned transfer order. Only this fact that the D.C.M. Gorakhpur has passed suspension order which was revoked by the officer of the same stature will give rise to some illwill, cannot be accepted. Moreover, no assumption can be drawn against any authority at its back, unless he has been given opportunity of being heard.

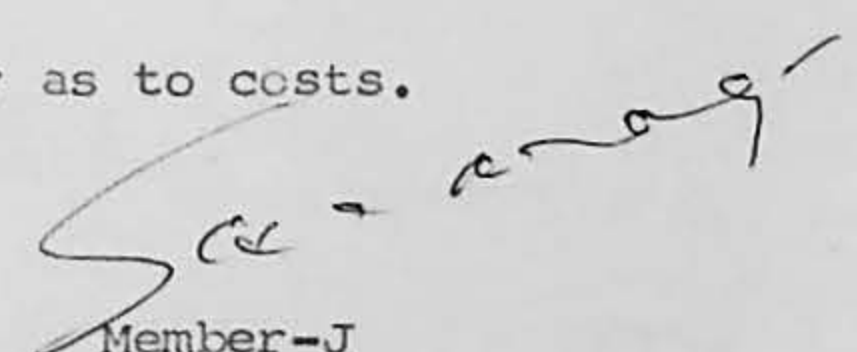
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5. Learned counsel for the applicant has also pressed that if the applicant proceeds on transfer to Gopalganj, Bihar it would adversely effect the education of the children amongst whom his daughter was studying at that time in M.A. part I and his two sons were in class 11 and 9 respectively. Since the transfer is an incidence of service, and, therefore, judicial interference is not called for and it is for the departmental authorities to consider such factors, ^{hence} ~~Therefore,~~ no direction in this regard is ~~possible.~~ ^{deemed} ~~As per.~~

6. For the above I find that, it is not a fit matter to interfere with the impugned transfer order. However, it is provided that the respondents shall consider the personal difficulties of the applicant and decide the pending representations, copies of which have been annexed as annexure 6A and 6B within 2 weeks, from the date of service of copy of this order and pass appropriate orders thereon.

7. There shall be no order as to costs.


Member-J

/pc/