

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.

Allahabad This The <sup>31st</sup> Day Of May, 2000  
Original Application No. 240 of 2000

CORAM:

Hon'ble Mr. S. Biswas, A.M.

Krishna Kant Tripathi, Son Of Sri Hari Narayan, Resident Of Village  
and post Shankargarh, District Allahabad, presently posted as point  
Man, (Kantey Wala) Central Railway, Shankar Garh Railway Station,

.....Applicant

(By Adv: Sri S. Madhyan) *K. K. Tripathi*

Versus

- 1- The Union Of India, through General Manager, Central Railway,  
Mumbai.
- 2- The Divisional Rail Manager, Central Railway, Jabalpur
- 3- The Divisional Rail Manager, (Personnel), Central Railway, Jabalpur.
- 4- The Assistant Personal Officer, (Traffic) Central Railway,  
Jabalpur.
- 5- Sri Raju Khan, Station Manager, Central Railway, Shankar Garh  
Railway Station, Allahabad.

.....Respondents

(By Adv: Sri G.P. Agrawal)

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(By Hon'ble Mr. S. Biswas, A.M.)

The applicant has impugned the order dt. 13-12-99 passed by Respondent No. 4 transferring <sup>him</sup> from Sankargarh Railway Station to Jhukehi Railway Station and sought that the said order be quashed and he be retained at Sankargarh.

2- Heard the parties. Through the submissions of rival sides, the following undisputed facts have emerged.

3- The applicant, presently a points man, ~~Came~~ to Sankargarh on retransfer on request for domestic compulsion. He joined at Sankargarh on 25-5-97 and had barely completed 2 years when the impugned transfer order dt 13-12-99 of Respondent No.4 was issued. However, the applicant in different spells was posted in Sankargarh for 13 years in a period of 20 years of service and that he was transferred to Jhukehi Railway Station having equitable medical and other facilities on administrative grounds admittedly with the same pay scale and status.

4- According to the respondent the applicant who spent most of the time serving in Sankargarh his home place, was transferred following a complaint, which on enquiry was found to be correct and hence an administrative exigency arose to consider his transfer by appropriate authority.

5- The respondents' counsel cited the following rulings in case No. FLR 2000 Vol. 84949 (Para 7) Rajesh Talwar Vs. S.T.C. & others . It was held, " The law relating to transfer of an employee is well settled by catena of judgments pronounced from time to time by the Apex Court, that the transfer is an incident of service and an administrative functions and the employee is the best judge above <sup>the</sup> requirement

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and posting of its employees. Courts are not to interfere with the discretion of the employee in the matter of transfer except on the grounds namely:

- (I) The transfer is an act of malafides on the part of the employees
- (II) When the transfer is made in violation of any statutory provision.

It is not the case of the applicant that the said transfer on administrative ground was made in violation of any of these two preconditions.

6- In the case of Union Of India S.L. Abbas, 1993 FLR 293 (SC) it was held that "an order of transfer is an incident in Govt. service who should be transferred <sup>and</sup> where is a matter for appropriate authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of any statutory provisions the court cannot interfere with it---- Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

7- In the case of Sri N.K. Singh vs. U.O.I. reported in 1994 (69) ELR (SC) similar directive/observations were made finally---" challenge <sup>in</sup> courts of a transfer when career prospects remain unaffected or there is no detriment to the Govt. service must be eschewed and interference by court be rare. Only when a judicially manageable and permissible ground is made out."

8- The respondents' counsel therefore has sought dismissal of the O.A. as the transfer was made after complaint which on enquiry was found correct and therefore, <sup>transfer</sup> was warranted. The medical and other facilities in Jhkeli are equitable and the transfer is with the same status & salary.

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9- I have considered the plea that the transfer was punitive and made following a complaint by respondent No. 5 who is the station master. The incident of alleged ~~flogging~~ order to do certain Cabin duty on 22-10-99, is matter to be looked into by the administration which has been done. The complaint of the station master (R-5) has eventually crystallise into an enquiry report to be taken cognisance of by the transferring authority. I have, however, taken note of the fact that the enquiry report was placed before the transferring authority after the transfer was effected; but a transfer in between the time of the incident and the enquiry report also cannot be adjudged as ~~be~~ <sup>beyond</sup> the jurisdiction of the administrative <sup>authority</sup>. By no means this administrative decision can be held ~~authority~~ as a punitive exercise either.

10- The applicant's counsel cites the case State Of U.P. vs. Sheshmani Tripathi (AIR 1991 SC 532 Referred & Explained) In this case the transfer, were too many and as frequent as 2 month. This ratio of a 1991 order is not materially pertinent to the present issue.

11- In the case of State of U.P. and Another vs. Sheshmani Tripathi (1991) 2 U.P. LBEC (1303) also the complaint was private and no enquiry report was obtained as in this case. Hence the facts to proceed ~~against~~ <sup>against</sup> the applicant was materially confirmed in the present case.

12- I am, therefore, of the view that the applicant has failed to make his transfer case as one due to administrative malafide, as the said very authorities brought him to Sankargarh on request and could not be held in the situation to have transferred ~~out~~ of malafide. Nor any rule on transfer policy was provenly infringed in this transfer on

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administrative exigency which is the domain of the transferred authority to determine- as per the ratio of the cited court cases (Supra).

13- The O.A. fails on merits . The O.A. is dismissed without costs.

  
A.M.

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