

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 15th day of ~~October~~ November 2000

Original Application No.357 of 2000

CORAM :-

Hon'ble Mr. Rafiuddin, J.M.

Shri Bachchu Singh

S/o Chandan Singh,

R/o Village & Post-Shyamon,

Distt-Agra.

(Sri Saumitra Singh, Advocate)

..... .Applicant

Versus

1. Union of India through the General Managers, Western Railway, Mumbai C.S.T. Mumbai.
2. Divisional Railway Manager, Western Railway (W.R.) Kota Division, Kota.
3. Senior Divisional Commercial Manager (Establishment) Western Railway (W.R.) Kota Division, Kota.
4. Divisional Railway Manager, North Central Railway (N.C.R.), Agra Division, Agra.

(Sri G.P. Agrawal , Advocate)

..... .Respondents

O R D E R (O r a l)

By Hon'ble Mr. Rafiuddin, J.M.

The applicant who is posted as Senior Goods Clerk at Idgah Railway Station, Agra, has been transferred vide order dated 25-2-2000 (contained in Annexure-1 to this OA) to Goods Shed, Kota issued by the Senior Divisional Commercial Manager (Establishment), Western

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Railway, Kota Division, Kota (respondent no.3.). By means of this OA, the applicant challenges the validity of his transfer order.

2. The case of the applicant as disclosed in the OA is that the Railway Board vide letter dated 10-9-1996 notified the setting up of six new Railway Zones of the Indian Railway. The North Central Zone with its Headquarters at Allahabad is one of the six newly created zones. As a result of the creation of new zones the jurisdiction of various Railway Divisions was also changed vide the circular letter dated 30-4-1997 issued by the Ministry of Railway. The new divisions to be attached to the new zones and the date from which the specific activity would get transferred was also notified. The existing Allahabad Division of the Northern Railway has been attached to the newly created North Central Zonal Railway. By means of another circular dated 26-9-1997 issued by the Railway Board directions were issued to create Group 'C' and Group 'D' posts on organisation of zones and divisions. It was made clear that the strength of Group 'C' and 'D' posts are to be frozen as on dated 26-9-1997 because the territorial jurisdiction of the new zones/divisions could not be finalised by that date. It is further stated that vide the Railway Board circular dated 24-12-1998 it was decided to set up a new division at Agra which was carved out of the existing Jhansi Division of Central Railway, Kota and Jaipur Divisions of Western Railway, Allahabad Division of Northern Railway and Izatnagar Division of North Western Railway. The jurisdiction of the newly created Agra Division was also approved which inter alia mentions that Agra-Bayana Division excludes 87 Kms from Kota Division of Western Rly. This newly created division was included in the newly created

North Central Railway Zone at Allahabad. Thus, the perusal of these circulars clearly indicates that the area from Agra to Railway Route excluding Bayana Railway Station from Agra has been included in the jurisdiction of newly created Agra Division of the North Central Railway of Allahabad. Idgah Railway Station being situated on the said route has been included in the newly created Agra Division of the North Central Railway, Allahabad. Earlier Idgah Railway Station was within the jurisdiction of Kota Division of the Western Railway with its Headquarter at Bombay. It has been contended on behalf of the applicant that by means of the impugned transfer order the applicant has been transferred from one Division, namely, Agra Division to Kota Division and from one Railway Zone, namely North Central Railway to another Railway Zone, namely, Western Railway, Bombay. The impugned transfer order has been passed in violation of the directions issued by the Railway Board from time to time. The employees working in the Zonal Railway can be transferred after obtaining their consent. Similarly such employees can be transferred from one Division to another Division only after obtaining approval of the General Manager. The applicant has, however, been transferred from Agra Division to Kota Division without obtaining his consent. Besides, even if the post of the applicant has been declared surplus, the seniormost employee at the station should have been transferred because as a result of his displacement the seniority of the applicant would be adversely affected because the seniority is maintained divisionwise and no approval of the General Manager has been obtained. It is further stated that his transfer order is without jurisdiction because the said could only be passed by ^{order}

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the Railway Board.

3. I have heard counsel for the parties and perused the record carefully.

4. Learned counsel for the respondents has opposed the claim of the applicant mainly on the ground that the impugned transfer has not been passed in violation of any statutory provisions or ~~any~~ ^{with} malafides on the part of the respondents. The transfer being an exigency of service this Tribunal cannot interfere in the same. It is further stated that there is no independent Agra Division and the service of the applicant is controlled by the Divisional Railway Manager, Kota. It is also mentioned that since there is no vacancy at Agra, hence the applicant has been transferred to Kota. The respondents have also denied of setting up of North Central Railway Zone. Learned counsel for the respondents has further argued that the scheme of Ministry of Railway regarding creation of new zones has not yet been fully acted upon and despite creation of new zones the applicant is under the Divisional Railway Manager, Kota.

5. It is evident from the arguments put forward by the learned counsel for the respondents that the transfer of the applicant from Railway Station Idgah to Kota under the orders of respondent no,3 is of regular nature and under rules because despite creation of new zones, the same are not functioning independently and are under the administrative control of the same authority, In other words the creation of the new zones is incomplete. Hence, it cannot be said that the applicant has been transferred out of zone/division.

6. The main contention of the learned counsel for the respondents is that despite the creation of new zones the applicant is still under the administrative

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control of Divisional Railway Manager, Kota, Idgah Railway Station Agra being under the Kota Division controlled by Eastern Railway. It is also contended that since the post of the applicant has been declared surplus, hence in order to safeguard the service of the applicant, he has been transferred to Kota. The perusal of the circular letter dated 24-2-1998 issued by the Railway Board indicates that the Railway Board has decided to set up a new division at Agra which will be carved out inter-alia of the existing Kota Division, Western Railway and its jurisdiction on Agra-Bayana excluding upto 87 Kms has been approved. It has been contended that this circular is not applicable in respect of the applicant's case. However, it is not made clear as to why this circular is not applicable in respect of the case of the applicant when Agra Division has been clearly set up and its jurisdiction has been extended in respect of 87 Kms routes from Agra to Bayana. It has also not been specifically denied^{xx} that Idgah Railway Station Agra does not fall on this route. Similarly, the creation of North Central Zone Railway at Allahabad vide circular dated 30-4-1997 has also not been denied in which it has been clearly mentioned that w.e.f. 15-7-1997 the specific activities would get transferred to the newly created zone i.e. North Central Zone, Allahabad. The Railway Board circular dated 6-12-1996 addressed to all General Managers of Indian Railway and production units in which directions for calling option from Headquarters to serve in the Headquarters of the new Railway Zone, determination of seniority of staff and transfer to the new zones have been issued. In this circular it has been specifically been mentioned to call options of the non-gazetted staff working in the existing zones of Railway as to whether

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they would like to continue to work wherever they are working at present or to proceed to the Headquarters Office of their respective railways. The employees of the affected divisions have option to remain or join the Railway for which they exercise option. Learned counsel for the applicant has also drawn my attention to the Circular letters dated 5-5-1997, 23-7-1997 and 20-7-1997, copies of which have been annexed as Annexures- 5 to 7 to the OA through directions have been issued for calling option from staff to serve on the new Railway Zones, and determination of seniority of the staff on transfer to the new zones. The Railway Board vide circular dated 11-6-1999 has issued direction for freezing of posts of new divisions. It also provides that categories to be frozen w.e.f. 25-1-1999 and not changed should be allowed without consulting the Board. If in case, any changes have already been, the status quo should be restored taking 25-1-1999 as the base. The letter dated 9-2-1999, copy of which has been annexed as Annexure-10 to the OA has been issued from the Western Railway Headquarters in which it has been intimated that as a result of formation of Agra Division carved out of sections of various Railways including Agra-Bayana Section of Kota Division and action plan in consultation with the recognised union staff personnel, distribution of posts for new Agra Division of the Central Railway is to be formulated and vide letter dated 20-2-1999 issued by Senior Divisional Personnel Officer, Kota, it has been stated that after meeting with the recognised Trade Unions, it was decided not to transfer employees working on Bayana-Agra Section out of the Section to the extent possible and action plan has been prepared for calling options of the willing staff who wanted to join the newly created

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Agra Division, and the Division is also undertaking an exercise to decide the number of posts departmentwise to the Agra Division.

7. Considering all the aforesaid circulars and correspondences, it is evident that ~~new~~ new North Central Zone and new Agra Division in North Central Zone are in transition. It, therefore, does not appear to be appropriate that at such juncture the applicant should be transferred to the newly created Zones/Divisions without obtaining his consent for his transfer. It is also evident from the aforesaid circulars that the question of determination of the seniority of the staff is also under consideration because it is not in dispute that the applicant being a Class III employee his seniority is maintained at divisional level. The possibility of his seniority being adversely affected on his transfer from Agra to newly created Division of Kota cannot be ruled out. Therefore, in my opinion the transfer of the applicant from Idgah Railway Station, Agra to Kota is not justified.

8. It is an admitted case that the applicant is being transferred wholly on the ground that his post has become surplus at Idgah Railway Station. On this point, learned counsel for the applicant has contended that rule of surplus, in case a person is transferred, is that a person who is having longer stay at a particular station should be declared surplus. But in case of the applicant on his transfer from Modak Raj he joined at Idgah Railway Station on 14-4-1999. However, two more persons are still working on the post of Senior Goods Clerk at Idgah Railway Station, namely, Sri Dinesh Singh and Sri Ashok Kumar since, October, 1994 and September, 1995 respectively as Senior Goods Clerk. On the same post the applicant is held. Thus, both

the above two persons have a long period of stay at Idgah Railway Station. Therefore, in case of the post having declared surplus, the persons who are sent at the Railway Station should have been declared surplus.

I also agree with this contention because the aforesaid facts have not been challenged by the respondents. In this context learned counsel for the applicant has also alleged that vide circular dated 26-9-1997, the Railway Board has clearly directed that no other creation or creation of Group 'C' or 'D' post should have been made and their strength should be frozen as on 26-9-1997.

Under these circumstances, it was necessary to the respondents to obtain the approval of the Railway Board before declaring post of the applicant surplus and as a result the post of the applicant cannot be transferred from Idgah Railway Station of Kota Division even if the same has become surplus. In support of this contention learned counsel for the applicant has filed a copy of the letter dated 20-11-1997 issued by the Officer of Special Duty, North Central Railway, Allahabad, wherein it has been stated that due to imposition of ban on fresh creation of posts and transfer of posts to new zones as per Railway Board letter dated 20-6-1997, it was requested not to transfer any staff further to the new zones if fresh requirement is made by the office.

9. Learned counsel for the applicant has also challenged the jurisdiction of the D.R.M. Kota Division to issue transfer order of the applicant. I do not consider it ~~xx~~ necessary to give any opinion on this point because the impugned transfer order can be quashed for the reasons that the transfer of the applicant from Idgah Railway Station to Kota Division has been made in an arbitrary manner without following the various instructions given by the Railway Board, which have been mentioned and discussed above. Accordingly, the OA

allowed. The impugned order dated 25-2-2000 (Annexure-1 to the OA) in respect of the applicant is quashed. It is, however, open to the respondents to transfer the applicant to any other place within the newly created Agra Division of North Central Zone of Allahabad. The applicant may also be transferred to other zones as per Railway Board's instructions on this point. There shall be no order as to costs.

D. V. Dube
Member (J)

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