

(6)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

Allahabad : Dated this 13th day of March, 2001  
Original Application No.676 of 2000

CORAM :-

Hon'ble Mr. SKI Naqvi, J.M.

Khoob Singh Saini

S/o Shri Nathoo Singh,

Resident of Rly Qr.No.T-4/C,

Northern Railway, Bijnore.

(Sri KS Saxena, Advocate)

. . . . . Applicant

Versus

1. The Union of India  
Through Divisional Rly. Manager,  
Northern Railway, Moradabad.
2. The Senior Divisional Operating Manager,  
Northern Railway, Moradabad.
3. Shri R.K. Rawat, Divisional Operating Manager,  
Northern Railway, Moradabad.
4. The Station Superintendent,  
Northern Rly. Bijnore.

(Sri Prashant Mathur, Advocate)

. . . . . Respondents

ORDER (O\_r\_a\_l)

By Hon'ble Mr. SKI Naqvi, J.M.

The applicant Sri Khoob Singh Saini, ~~while~~ posted as Assistant Station Master in the pay scale of Rs.5000-8000 at Bijnore Railway Station has been transferred to Duganpur Railway Station in the same capacity vide the impugned transfer order dated 27-4-2000, a copy of which has been annexed as Annexure-A-1 to the OA. The applicant has impugned this order mainly on the ground that it is out of

5

7

malafide, arbitrariness and in violation of rules and also on the ground that he has been transferred before he could complete five years tenure at Bijnore which is against rules in this regard. The applicant has also taken the ground that as per the impugned order, he has been transferred on administrative ground but no ground has been furnished. The applicant has also taken a ground that the matter is partly subjudice in view of OA No.671/1999 and that he is sick and, therefore, is not in a position to undertake the journey on transfer. During the course of arguments learned counsel for the applicant does not press for the two grounds i.e. the matter being subjudice and sickness of the applicant.

2. To explain malafide and prejudice the applicant has pleaded that Sri RK Rawat, Divisional Operating Manager, Northern Railway, Moradabad is nursing prejudice against him because in the departmental proceedings he passed order for the applicant's removal from service but that order was modified in the appeal by the Senior Divisional Operating Manager, Northern Railway, Moradabad and the punishment was ~~reviewed~~ <sup>modified</sup> with the observation that the punishment of removal was harsh. As per the applicant, Sri RK Rawat also nursed prejudice because in the OA No.671/1999, which the applicant preferred against the departmental proceeding, the applicant was allowed to retain the official resident allotted to him and on his failure on these two fronts, Sri RK Rawat became biased against him and transferred him malafidely.

3. The respondents have contested the case and filed counter reply with specific pleadings to justify the impugned order.

4. Heard learned counsel for the rival contesting

✓

9

parties and perused the record.

5. It cannot be disputed that the applicant is holding <sup>transferable</sup> responsible post and <sup>the</sup> his transfer is <sup>also</sup> in exigencies of service but at the same time it is to be seen that if the transfer order is coloured by any malafide or prejudice or has been passed against the rules in this regard, there can be judicial interference in the matter. Keeping this position in view, I find that in the present case the applicant has come up with the plea that Sri RK Rawat, Divisional Operating Manager, passed this order only out of malafide but the fact, as narrated and argued on behalf of the applicant do not mention any specific instance and the factum of malafide and prejudice has been denied by Sri RK Rawat who has filed the counter reply in this matter through affidavit. It will be too much to be believed that <sup>if</sup> the punishment order of an officer is modified <sup>or</sup> if any case has been brought in the Court will prejudice his mind and his action in this regard will amount to outcome of malafide. <sup>if</sup> His such instances are taken as act of malafide <sup>or</sup> out of prejudice <sup>then every</sup> and that any order of the superior against the subordinate will give <sup>rise</sup> right to such assumption, <sup>is</sup> taking place on passing any order subsequent.

6. So far as the stay of applicant <sup>part</sup> of tenure <sup>is not</sup> allowed <sup>for</sup> as five years is concerned, the rule in this regard <sup>is</sup> not mandatory but suggestive only.

7. For the above, I find that the relief sought for cannot be provided. The OA is dismissed as having no merit. There shall be no order as to costs.

*S. C. Rao*

Member (J)

Dube/