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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 12<sup>th</sup> day of October, 2000

Original Application No.68/2000

CORAM:-

Hon'ble Mr. Rafiquddin, J.M.

Vishal Saxena,

S/o Late Sri D.K. Saxena,

working as Ticket Collector, Lucknow Junction,

Lucknow.

(Sri A.R. Masoodi, Advocate)

. . . . . Applicant

Versus

1. Union of India through the  
General Manager (Personnel),  
North Eastern Railway,  
Gorakhpur.

2. Division Commercial Manager,  
North Eastern Railway,  
Lucknow Junction, Lucknow.

(Sri A.K. Gaur, Advocate)

. . . . . Respondents

O R D E R

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

The applicant Sri Vishal Saxena is working as Ticket Collector Lucknow Railway Junction, Lucknow, which is in Lucknow Division of North Eastern Railway Zone, Gorakhpur. The applicant by means of this OA has challenged the validity of the order dated 10-12-1999 passed by the Divisional Commercial Manager, North Eastern Railway, Lucknow, respondent no.2 in compliance of the direction contained in letter dated 2-11-1999/8-12-1999 issued by the General Manager (Personnel) NER Gorakhpur. By the said order

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the applicant has been transferred alongwith post from Lucknow Division to Sonapur Division.

2. Briefly stated the case of the applicant is that he was placed under suspension vide order dated 1-9-99 in contemplation of departmental enquiry for his alleged involvement for issuing fake railway tickets. However, on appeal preferred by the applicant before the higher authorities, the suspension order was revoked and the applicant was reinstated vide order dated 10-12-99 and the impugned transfer order was passed.

3. The main grounds for challenging the validity of the transfer order are that his transfer from Lucknow Division to Sonapur Division is punitive in nature having been passed during the pendency of enquiry and the involvement of applicant in issuance of fake tickets was not established as well. The applicant has also pleaded that he has been transferred in the midst of the academic session which would disturb the studies of his sister who is studying in B.A. Final. The brother of the applicant is handicapped who would suffer irreparable hardship and inconvenience in the absence of the applicant. It is further pleaded that the General Manager, N.E.R. has no territorial jurisdiction to transfer the applicant from North Eastern Zone to Sonapur Division which admittedly forms part of newly created East Central Zone.

4. I have heard Sri A.R. Masoodi for the applicant and Sri A.K. Gaur for the respondents and perused the record carefully.

5. Learned counsel for the respondents on the basis of the pleadings contained in their counter affidavit has argued that the applicant is involved in racket of issuing fake excess fare tickets alongwith other three



railway employees. Consequently, the General Manager, NER Gorakhpur issued instructions that the retention of the four officials including the applicant on duty at Lucknow is not at all in the interest of administration and they should be transferred from Lucknow Division to other Divisions. Accordingly the suspension order of the applicant and other officers was revoked and he was transferred to Sonapur Division on administrative ground. It is also stated that investigation regarding racket of fake tickets is going on and due to prima facie involvement of the applicant in the racket of issuing fake tickets the inter-division transfer order has been passed. It has also been stated that the Eastern Central Railway was established in the year, 1996 with its Headquarters at Hazipur and the two Divisions of NER Gorakhpur i.e. Sonapur and Samastipur were merged in the newly created East Central Railway which has now been established. The overall administrative control over the East Central Railway is of the General Manager N.E.R. and it is the Officer on Special Duty with its office at Hazipur, who <sup>has</sup> the control over the staff at Hazipur. The transfer of the applicant from Lucknow Division to Sonapur Division has been made on administrative ground and in the exigencies of service with exercise of power under Rule 226, Chapter II of the IREC.

6. It is no doubt correct that the transfer being exigencies of service, ~~and~~ the transfer order of an employee cannot be interfered by the Tribunal on the ground that he has been transferred in the midst of the academic session which would cause injury to the studies of the children or relatives of the employees. Even it is no ground to interfere with the transfer order of the applicant that his brother is handicapped and as ~~XXXXXX~~ he would suffer inconvenience as a result of

the transfer of the applicant. Learned counsel for the applicant has, however, raised two pertinent points before me. Firstly, the impugned transfer order is punitive in nature and has been passed as a measure of punishment and secondly, ~~because~~ the applicant has been transferred from one Railway Zone to another Railway Zone without his consent, which may place him in inferior position vis-a-vis the employees of the newly created zone in the matter of seniority. The respondents have clearly pleaded in para 7 of the counter affidavit that due to prima facie involvement of the applicant in the racket of issue of fare tickets alongwith others, the impugned order has been passed. However, there is no material on record to prove that the applicant was involved in any racket of issue of fare tickets when no enquiry has yet been held and even no charge sheet has been served on the applicant regarding alleged incidence of issuing fake tickets so far. The applicant in his rejoinder affidavit vide para 3 has specifically stated that no charge sheet has been issued to the applicant so far. Obviously, it is not proper to transfer an employee as a measure of punishment without holding an enquiry. Thus, the transfer of the applicant cannot be said to have been made on administrative ground.

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7. It is not / that the applicant has been transferred to another zone East Central Railway without his consent. It has been rightly argued that in case of transfer of the applicant from one Rly to another, the question of seniority of the applicant would be relevant because as per Railway Ministry's decision dated 9-5-1955, the staff transferred at their request from one Railway to another is to be placed below all existing confirmed and officiating

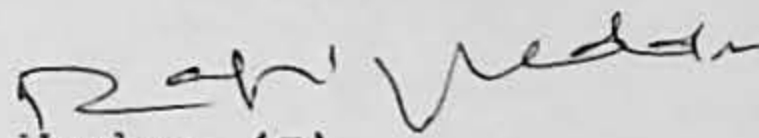
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staff in the relevant grade in the promotion group in the new establishment, irrespective of date of confirmation or length of officiating service of the transferred employees. There is no mention in the impugned transfer order regarding fixation of inter-se-seniority of the applicant vis-a-vis existing staff of Sonapur Division. This would create complication and it amounts to civil consequences and might adversely affect seniority of the applicant in the new zone. Such action of the respondent is, therefore, arbitrary and not permissible and cannot be sustained under law.

8. For the reasons stated above, the OA is allowed. The impugned transfer order dated 10-12-1999 contained in Annexure-1 to the OA is quashed.

9. There shall be no order as to costs.

  
Member (J)

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