

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 1228 of 2002

Allahabad this the 04th day of February, 2004

Hon'ble Mr. A.K. Bhatnagar, Member (J)

Anand Mohan Dubey (Ticket No. 8689)
A/a 47 years, son of Sri Upendra
Nath Dubey, Posted as Fitter Grade-
II in Production Control Organization,
N.E. Railway, Mechanical Workshop,
Gorakhpur.

Applicant

By Advocates Shri Sudhir Agarwal
Shri S.K. Mishra.

Versus

1. Union of India through the General Manager, N.E. Railways, Gorakhpur.
2. The Chief Workshop Manager/Chief Workshop Manager (P) Mechanical Mechanical Workshop, N.E. Railways Gorakhpur.

Respondents

By Advocate Shri K.P. Singh

O R D E R (ORAL)

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the order No. 244 dated 03.10.2002 (annexure A-1) passed by the respondent no. 2 transferring the applicant in Shop Floor from Production Control Organization, and prayed for quashing the same. He further prays for a direction to restrain the respondents from interfering in the functioning of the applicant as Inspector Grade II/Fitter Grade II in PCO of Eastern Railway Mechanical

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Workshop, Gorakhpur. He also prayed for direction to give all consequential benefits and to extend the benefit of Judgment of Hon'ble Supreme Court in the case of Shiv Ratan Soni Vs.U.O.I. and Others in Civil Appeal No.7286-95 of 1983 decided on 7.3.1995 and to consider the applicant as permanent employee in P.C.O. with all other consequential benefits.

2 The brief facts of the case are that the applicant was initially appointed in the scale of Rs.196-232 on 13.05.1976 and was promoted to Fitter Grade II in the scale of Rs.950-1500 on 25.06.1987. The applicant was posted in Production Control Organization vide order dated 08.03.1996. The applicant was further promoted on the post of Fitter Grade II in the scale of Rs.4000-6000 vide order dated 30.07.2002. It is also claimed that the applicant was promoted after he passed the requisite Trade Test conducted in P.C.O. result whereof was declared on 25/30-07-2002. Aggrieved by the impugned transfer order dated 03.10.2002 the applicant filed this O.A.

3. Learned counsel for the applicant submitted that the action of the respondents in changing the cadre and reverting the applicant to Shop Floor after more than six years is per se, arbitrary, illegal and violative of Article 14 and 16 of the Constitution. It is also submitted that the impugned order has been issued not on account of any other exigency of service but in order to penalize the applicant for showing courage to approach this Hon'ble Tribunal for redressal of his grievance and the impugned order, thus, is liable to be set aside.

4. Resisting the claim of the applicant, the respondents filed the counter-reply, and contended that

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the employees from different grades and trades are called for a period of five years on tenure basis, which is evident from the Railway Board letter dated 13.09.1984. It is further submitted that all the posts in the PCO are ex cadre tenure posts and the staff from the Shop Floor shall be transferred to the PCO only in the same grade and no staff shall be transferred to PCO, on promotion which is clear from para 2 and 2(ii) of the Railway Board's letter dated 13.09.1984. Learned counsel further submitted that the applicant was promoted and posted in his parent cadre vide letter dated 03.10.2002 on the higher grade post of Fitter Grade II in the pay scale of Rs.4000-6000 because the applicant cannot be posted on promotion within PCO as per the extant rules. Therefore, the promotion and transfer order dated 03.10.2002 is legal and as per Railway Board's circular/policy, as such, the claim of the applicant is liable to be rejected.

5. I have heard the learned counsel for the parties and considered their submissions.

6. Learned counsel for the applicant placed before me an order of this Tribunal passed on 01st September, 2003 in O.A.No.176 of 2001 along with connected Original Applications, which was passed keeping in view the Judgment of Hon'ble Supreme Court in Shiv Ratan Soni Vs.U.O.I. and others(annexureA-8). Learned counsel submitted that the present case of the applicant is squarely covered by the order dated 01.09.03 passed in O.A.No.176 of 2001(supra). Learned counsel for the respondents submitted that he has also gone through the Judgment. The relevant portion of the order is reproduced as below:-

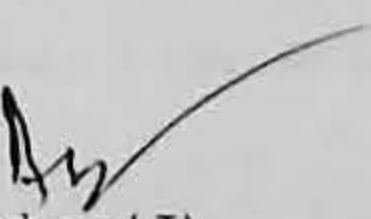
"In these circumstances, in our opinion, ends of justice will better be served if the applicants are given liberty to make representations before the competent authority against their transfer. In such representation, they will place the facts

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applicants to make individual representation before the respondent no.3, the Chief Workshop Manager/Chief Workshop Manager(P) Mechanical Workshop, NE Railway, Gorakhpur. The representation, if so filed, shall be considered and decided within a period of 03 months from the date a copy of this order is filed and till the representations are decided impugned transfer order shall not be given effect to. It is made clear that, in case, any of the applicants does not make any representation in pursuance of this order, this protection shall not apply to him. No order as to costs."

7. After hearing the submissions of learned counsel for the parties and on perusal of the order dated 01.09.2003 I am of the view that the case of the applicant is fully covered by the order of this Tribunal and the applicant, thus, is entitled for the same relief which has been accorded to the applicants in the cases mentioned above.

8. The O.A. is accordingly disposed of finally in terms of the order dated 01.09.2003 passed in aforementioned O.As, by giving liberty to the applicant to make a representation within 2 weeks before the respondent no.2-Chief Workshop Manager/Chief Workshop Manager(P) Mechanical Workshop, N.E. Railways, Gorakhpur placing all the facts showing that if the applicant is transferred, he will suffer irreparable loss or injury. The representation, if so filed, shall be considered and decided by the respondent no.2 within a period of 3 months from the date of receipt of a copy of representation along with copy of this order and till the representation is decided, the impugned transfer order 03.10.2002 shall not be given effect to. No order as to costs.



Member (J)

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