

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 24TH DAY OF APRIL, 2002

Original Application No.457 of 2002

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.M,AJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Juned Ahmed, son of Late F.U.Siddiqui

Ticket Collector, Northern Railway

Lucknow Division, at Prayag

Station.

... Applicant

(By Adv: Shri A.K.Srivastava)

Versus

1. Union of India, through
The General Manager, Northern
Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager
Northern Railway, Lucknow
Division, Lucknow.
3. The Divisional Railway Manager,
Northern Railway, Allahabad
Division,. Allahabad.

... Respondents

(By Adv: Shri A.K.Gaur)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

This OA has been filed challenging oprder dated 10.12.01 by which applicant has been transferred to Moradabad Division on administrative ground on same pay and grade.

The counsel for the respondents has raised a preliminary objection regarding maintainability of this OA on the ground that applicant filed OA No.1562/01 in this Tribunal challenging order of transfer dated 10.12.01.This OA has been dismissed after hearing parties on merits on 23.1.02 and this OA is not legally

maintainable.

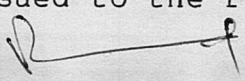
Shri A.K.Srivastava learned counsel for the applicant, on the other hand, submitted that initially applicant was transferred from Allahabad to Lucknow by order dated 19.3.1999. The aforesaid order was challenged in OA No.330/99. The OA was allowed by order dated 26.4.01 by following direction:-

" For the above I find, the impugned order has not been issued by the authority who was competent to issue the same and, therefore, quashes accordingly. However, the competent authority is not precluded to pass fresh order.

The OA is disposed of accordingly. There shall be no order as to costs."

The learned counsel has submitted that taking advantage of the liberty granted in the above order competent authority General Manager passed the order of transfer dated 8.8.01 on the basis of which the impugned order of transfer was passed on 10.12.01. The order dated 26.4.01 has not been complied with. The applicant filed contempt application no.269/01 which was disposed of finally on 2.4.02 by the following direction:-

"Shri A.K.Srivastava, learned counsel for the applicant submitted that in fact the attitude of the respondents towards the applicant has been discriminatory by transferring him from Allahabad to Moradabad as he was appointed at Allahabad on compassionate ground and he is entitled for relief. The applicant if so aggrieved, is permitted to come on original side. No case of contempt is made out. Contempt proceedings are dropped. Notice issued to the respondent no.4



is discharged. No order as to costs."

The learned counsel for the applicant has submitted that as the Division Bench hearing contempt application permitted the applicant to challenge order, the present OA has been filed and it is maintainable.

We have carefully considered the submissions of the counsel for the parties. However, in our opinion this OA is clearly barred by resjudicata as the impugned order of transfer was challenged in ^{OA} No.1562/01 which was heard and rejected on merits. The observations of the Division bench hearing contempt application cannot be helpful for two reasons. Firstly, from the order of the D.B. it is not clear that the division bench was apprised about the existence of the order dated 23.1.02. Secondly, the bench hearing contempt matter could not pass an order creating jurisdiction barred by law. In the present case the second OA against the order was not legally maintainable and was barred by principles of resjudicata.

For the reasons stated above, in our opinion,, this OA is not legally maintainable and is accordingly rejected. No order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 24th April, 2002

Uv/