

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.633 OF 2002
FRIDAY, THIS THE 15TH DAY OF NOVEMBER, 2002

HON'BLE MAJ GEN K.K.SRIVASTAVA, MEMBER-A

Babu Khan
aged about 50 years,
son of Late Shri Chand Khan
resident of Gram Silgan,
District-Lalitpur.

..... Applicant

(By Advocate Shri A.K. Dave)

Versus

1. Union of India,
through General Manager,
Central Railway,
Mumbai C.S.T.
2. Divisional Railway Manager
Central Railway,
Jhansi.
3. Assistant Executive Engineer,
Central Railway,
Jhansi.
4. Divisional Engineer,
South Central Railway,
Jhansi.
5. Chief Permanent way Inspector Lalitpur/
Senior Section Engineer,
Lalitpur. Respondents

(By Advocate Shri S.K. Anwar)

O R D E R

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

This O.A. has been filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged letter no.S-2 dated 23.06.2002 issued by Senior Section Engineer, Lalitpur, Jhansi to relieve the applicant on transfer to Gate No.338 in Unit no.12 from Gate No,331. As the applicant has prayed that the order dated 23.06.2001 be quashed and direction be issued to respondent no.3 to consider the posting of the applicant at Gate No.330 as requested and duly recommended by Chief Permanent Way Inspector (CPWI). The applicant has also prayed for payment of the salary for the intervening period.

2. The applicant's case is that he was posted as Gateman since 21.02.1975 under Jhansi Division. The applicant was posted at Lalitpur under P.W.I. Lalitpur, at Gate No.331 from 1977. On 03.01.2001, a theft took place at the shop of the applicant's son and applicant's son lodged an FIR against the suspected miscreants. On filing of the FIR by his son the villagers got offended and filed the bogus complaint against the applicant on 04.01.2001. The respondent no.3 ordered the applicant to be relieved from Gate no.331 to Gate no.338 by impugned order dated 23.06.2001 despite the fact that respondent no.5 did not submit any enquiry report. Aggrieved by that, the applicant filed a representation on 05.07.2001 before DEN. Mean while on 25.07.2001 the CPWI submitted the report with the findings that the complaint was fabricated and false. The applicant was allowed to continue at Gate No.331 by an order of CPWI with effect from 03.08.2001 (Annexure A-7). On 05.10.2001 the CPWI informed the applicant that he would be relieved on transfer to gate no.338. The applicant became sick from 06.10.2001 and submitted a representation dated 31.12.2001 with a request to post him at gate No.330 which is nearer to Gate no.331 if he was at all to be shifted. His request of posting at Gate no.330 was recommended by CPWI Lalitpur by his letter dated 20.04.2002. His case was also recommended for retention at Gate no.331 by Shri Sujan Singh Bundela M.P. The respondent no.3 as per applicant is hell-bent on relieving the applicant on transfer from Gate no.331 to 338 ignoring the recommendations from various persons of eminence. Hence this O.A. which has been contested by the respondents.

4. Shri A.K. Dave, learned counsel for the applicant submitted that in view of the recommendations from the various people and even also by his immediate Superior i.e., CPWI, the impugned transfer order is illegal as it has

been passed on the basis of a complaint lodged by the villagers which was false and fabricated. The learned counsel for the applicant also submitted that the proper enquiry should have been got conducted and only then, if it was found that the applicant was guilty of whatever had been said in the complaint, he could have been transferred. He has also not been given any opportunity to explain his stand and, therefore, the order of transfer dated 23.06.2001 is liable to be quashed. The learned counsel for the applicant has placed reliance on the judgement of Hon'ble High Court in Nabi Ahmad Khan Versus State of U.P. and others (1996)2 U.P. LBEC 1202 in which the Hon'ble High Court has laid down that an order of transfer passed on the ground of complaint can be interfered with by the High Court. On the same analogy the applicant's counsel contended that this Tribunal has got the powers to interfere in the instant case.

5. Resisting the claim of the applicant Shri S.K. Anwar, counsel for the respondents submitted that the applicant has only challenged the relieving order dated 23.06.2001 and not the transfer order dated 12.06.2002. However, this plea of the respondent's counsel is not tenable because the applicant has challenged the order dated 23.06.2001 which has a reference of the transfer order dated 12.06.2001 which as per applicant was never served upon the applicant.

6. The learned counsel for the respondents further submitted that the transfer order dated 12.06.2001 is an order simplicitor without any stigma. He argued that the order of CPWI dated 03.08.2001 filed as annexure A-7 for putting the applicant on gate no.331 has not been passed by the competent authority and hence, it has no value in the eyes of law as it is non-existent.

7. Shri S.K. Anwar, counsel for the respondents also invited my attention to RA-4 which is a representation dated 26.07.2002 and submitted that the applicant is taking different stand at different times. While in earlier representation the applicant took the ground of his transfer on the basis of complaint by the villagers, whereas in the representation dated 26.07.2002, which is the subsequent one, he has taken the stand of some land dispute. Therefore, the version of the applicant cannot be relied upon. The transfer order of the applicant has been passed on administrative grounds and, therefore, it does not warrant any interference. In support of his arguments, he has placed reliance on the judgement of Hon'ble Supreme Court in State Bank of India Versus Anjan Sanyal and others 2001 Supreme Court Cases (L&S) 858 and also on full bench decision, special bench of this Tribunal in Kamlesh Trivedi versus Indian Council of Agricultural Research and another, Full Bench Judgement (CAT) 1986 to 1989 Page 80. The learned counsel for the respondents finally submitted that the complaint lodged against the applicant was enquired into by the Divisional Security Commissioner and he has found that the complaint made by the villagers has substance. He has given his findings on 24.04.2001 filed as Annexure RA-1 to the counter.

8. Heard counsel for the parties, considered their submissions and perused records. The grievance of the applicant is that on a false and frivolous complaint he could not be transferred from Gate no.331 to 338 and also that his transfer has been ordered without even giving a chance to the applicant to explain his position. The transfer orders of the applicant were passed on 12.06.2001 by DEN Jhansi. The orders were to be complied with immediately and accordingly, the relieving order dated 23.06.2001 was issued which has been challenged. I have

seen both the orders and I find that both the orders dated 12.06.2001 and 23.06.2001 are orders simplicitor and in no way it can be termed as stigmatic. The learned counsel for the applicant has relied upon the judgement of Hon'ble High Court in Nabi Ahmad Khan Case (Supra) in which it has been held by the Hon'ble Allahabad High Court that courts can interfere in the transfer orders. It has further been held by the Hon'ble High Court in para 14 as under:-

"If after fact findings enquiry charges are prima facie established and there are material to proceed against the petitioner departmentally, then the respondents shall be entitled to initiate "disciplinary proceedings" and pass final order, including removal from service, after affording the petitioner an opportunity of hearing, in accordance with law."

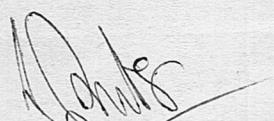
9. In the instant case, I do not find any good ground to interfere. Besides the respondent's counsel submitted that on receipt of the complaint the inquiry was got conducted by Senior Divisional Security Commissioner and he found that there was substance in the complaint. The allegations levelled by villagers in their complaint may be such as not to attract any disciplinary action. The submission of the learned counsel for the applicant is that the inquiry should have been got conducted by somebody from the administration side is not of much relevance. Therefore, the case law cited by the learned counsel for the applicant will not be of much help. I also find force in the submission of the respondent's counsel that without cancelling the order of transfer by the competent authority i.e., Assistant Divisional Engineer, Jhansi, the CPWI had no power to retain the applicant at Gate No.331 and in my opinion, it is a matter of great concern, that in administration, orders of Superior Officers are ignored by a subordinate officer. Respondent no.5 has flouted the cardinal principle of administration and it would be appropriate that the competent authority takes notice of this lapse on the part of respondent no.5 i.e., CPWI working directly under respondent no.3.

10. The learned counsel for the respondents has relied upon the judgement of Hon'ble Supreme Court in case of State Bank of India (Supra) wherein the Hon'ble Supreme Court has held in para 4 as under:-

"An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

The necessary conditions for courts to interfere in transfer order laid down by the Hon'ble Supreme Court are if it has been passed out of mala-fide or against the rules or the authority who has issued the orders is not competent to do so. The same view has been taken by the Full Bench of this Tribunal, in the case of Kamlesh Trivedi (Supra). In the present case the transfer order dated 12.06.2001 does not attract any of the conditions mentioned above for interference. The O.A lacks merits and is liable to be dismissed.

11. In the facts and circumstances and aforesaid discussions, the O.A is dismissed being devoid of merits. There shall be no order as to costs.



Member-A

/Neelam/