

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 811 of 2002

Allahabad this the 7<sup>th</sup> day of October 2002

Hon'ble Mrs.Meera Chhibber, Member (J)

Krishna Kumar Gupta, S/o Shri Charan Dass Gupta, R/o  
Village Manikpur, District Chitrakoot (U.P.), Presently  
posted as Pharmacist at the Health unit, Central Railway,  
Manikpur, District Chitrakoot, U.P.

Applicant.

By Advocate : Shri R.C. Gupta.

Versus.

1. Union of India through the General Manager,  
Central Railway, Mumbai CST.
2. Divisional Railway Manager (personnel), Jabalpur,  
Central Railway, M.P.
3. The Chief Medical Supdt., Central Railway,  
Jabalpur.
4. Divisional personnel Officer, Central Railway,  
Jabalpur.

Respondents.

By Advocate : Sri K.P. Singh.

O R D E R

This O.A. has been filed by the applicant against  
the order dated 26.6.2002 (Annexure-10) whereby the  
applicant has been transferred from Manikpur to New Katni  
Jn. temporarily for six months in the same post of



pharmacist Gr.I in the same pay-scale of Rs. 5500-9000/- while in his place Shri G.K. Tripathi, pharmacist Gr.II has been posted.

2. It is specifically stated in the said order that these posts are being interchanged temporarily for six months in public interest and due to administrative reasons.

3. The applicant has submitted that prior to being posted at Manikpur when the applicant had requested for transfer from Jabalpur to Manikpur, he was informed by the respondents vide letter dated 22.6.99 (Annexure-1) that since he was holding sensitive post at Jabalpur he cannot be transferred unless he completes one year service at Jabalpur. He has submitted that he was transferred to Manikpur in Sept.'99 as per the respondents own transfer policy the applicant could not have been transferred before 4 years period. He has referred to O.M. dated 13.6.2002 on the subject of periodical transfer of Railway employees holding sensitive posts (Annexure-2), wherein it is stated as under :-

"In terms of extant instructions Railway servants holding sensitive posts including those who frequently come into contacts with public and/or contractors/suppliers, are required to be transferred every four years. For this purpose, a comprehensive list of sensitive posts has also also been drawn and circulated to the Railways vide this Ministerial letter No. E(NG) 1-37/TL/34/JCM-DC dated 27.9.1989."

4. Thus, the applicant's counsel has submitted that since the applicant was holding sensitive post and as per instructions he could not have been transferred before 4 years, therefore, the transfer is bad in law being contrary to the respondents' own transfer policy as such it is liable to be quashed. In support of his contention, he has relied on a judgment dated 21.5.2002 given by this Tribunal in O.A. No. 599/2002 and the O.M. dated 4.5.90 referred to in the above said judgment.



5. The applicant's counsel also submitted that the employees can be transferred on request after completion of one year service in one place but no periodical transfer could have been made before 4 years as that would be contrary to respondents' own policy.

6. The respondents have opposed the O.A. and have taken preliminary objections viz. that O.A. is not maintainable at Allahabad as the applicant was already relieved from Manikpur on 4.7.2002. They have further submitted that since the other person had already taken over the charge at Manikpur on 10.7.2002 and the applicant refused to receive the relieving order, which is evident from the registered envelop sent to the applicant (page 16 of the Counter), the applicant made a wrong statement before the Court on 17.7.2002 that he is not yet relieved, therefore, <sup>the</sup> interim order granted on 17.7.2002 may be vacated. They have also submitted that the applicant did not exhaust the departmental remedy, this O.A. is pre-mature.

7. On merits, they have submitted that this is only a temporary arrangement for six months due to administrative reasons and it is specifically mentioned in the impugned order as well and the pay and status of the applicant has been protected, therefore, no interference is called for in the case.

8. As far as circular dated 21.5.2002 is concerned, they have submitted it only says that the person holding the sensitive post is liable to be transferred every <sup>not</sup> four years, meaning thereby that the person should be kept at the same place for more than 4 years. It no-where suggests that transfer cannot be made before 4 years. They have, therefore, submitted that the applicant is interpreting the circular wrongly. They have further



explained that he was holding a sensitive post at Jabalpur as he was holding main drug store of the Division hospital from where the medicines etc. are supplied to small health unit such as Manikpur, therefore it is wrong to use the letter issued in Jabalpur for transfer in Manikpur. As far as the O.M. of Ministry of Telecommunication is concerned, it is submitted by the respondents that the same is not applicable to Railway employees, therefore, neither the said O.M. nor judgement given in O.A. No. 599/2002 is relevant in the present facts.

9. AS far as the letter dated 7.7.2002 is concerned, the respondents have stated if elections had been held on 20.4.2002, there was no justification to give information about it only on 7.7.2002 i.e. after the applicant had been relieved on 4.7.2002 and no such letter has been sent to the competent authority of railway department, therefore, no reliance can be placed on same. Even otherwise, the applicant has not followed the Medical Rules because he did not report sick under authorised Medical Officer of Railways. They have further submitted that there is only one post of pharmacist against which Sri G.K. Tripathi is already working. They have, thus, submitted that the O.A. may be dismissed.

10. We have heard both the counsel and perused the pleadings as well. The main contention of the applicant's counsel is that transfer is contrary to respondents' own guidelines, therefore, the same is not sustainable. We have seen the circular dated 13.6.2002 on the subject of periodical transfer of Railway Employees holding sensitive posts annexed as Annexure-2. The relevant extract from the said circular is <sup>already above,</sup> quoted ~~below~~ :-



11. A perusal of this circular shows that this deals with periodical transfers and only says that those who are holding sensitive posts are required to be transferred every 4 years meaning thereby that they should not be allowed to remain at one place for more than 4 years, obviously in order to see that they do not get too long association with suppliers/contractors etc. It nowhere says that any person holding sensitive post cannot be transferred before the period of 4 years. Infact the said circular will have no application in the present case as it is not one of those normal transfer which can be termed as periodical transfer. The impugned order itself clarifies that this is a temporary arrangement for six months only in administrative exigencies, so obviously after six months the applicant would come back to the same place. Therefore, the transfer for six months cannot be said to be against the circular.

12. As far as the judgment in O.A. no. 599/2002 and the O.M. dated 4.5.90 (page 19) are concerned, they are absolutely different and cannot help the applicant at all because first of all they have issued by Ministry of Communication which would have no application to the employees of Railways and even otherwise the language used in their O.M. dated 4.5.90 is also different e.g. in their O.M. there is a specific tenure mentioned and it is made clear that they may be rotated after completion of 4 years in a post. Clause 3 & 4 of O.M. dated 4.5.90 for ready reference read as under :


"The tenure of an officer at a station will be 4 years which can be extended upto six years in individual cases on administrative grounds:

The Executive Engineer (Civil)/Asstt. Engineer (Civil) may be rotated from field to planning and vice-versa after completion of four years in a post. No officer should be retained in field post for more than four years and every

officer should serve in a planning post for atleast a period of 2 years after completion of service in a field post."

13. Whereas in the O.M. issued by the Railways, there is no such language used to suggest that they can be roated only after four years. Even otherwise as mentioned above, the applicant has been transferred to the other place only for six months due to some administrative reasons, so it cannot be said to a roational transfer.

14. As it is Hon'ble Supreme Court has repeatedly held that Tribunal should not interfere in day-to-day functioning of the administration as who is to be posted where is best known to the administration. If the administration feels that for some time they need a person of higher responsibility at New Katni Jn., we should not be interferring in such arrangement unless it is shown that the transfer is due to malafide reasons. In the instant case, no malafides has been alleged. Therefore, I find no reason to interfere in the matter. Even otherwise the respondents have stated categorically that the applicant was relieved on 4.7.2002 and the applicant was sought to be informed by the registered post about it, but he avoid the service, which is evident from page 15/16 of the Counter as it shows postman had gone to the applicant's house on 6.7.2002, 7.7.2002, 8.7.2002, 9.7.2002, 10.7.2002, 11.7.2002, 12.7.2002, 13.7.2002 and 15.7.2002, but since the applicant did not meet so postman returned the letter. This clearly shows that the applicant avoided the receipt of the letter and now that the other person viz. Sri G.K. Tripathi had already taken over at Manikpur, the applicant must join at New Katni Jn. immediately and incase he has any genuine difficulty, he can always give representat



ion to the authorities. I am sure if there is any genuine difficulty projected by the applicant, the respondents will look into the same and pass necessary orders. In 1997 (1) SCSLJ 460 in re. Laxmi Narain Mehar Vs. U.O.I. & Others, the Hon'ble Supreme Court <sup>has</sup> held that transfer on administrative grounds <sup>can</sup> not <sup>be treated as</sup> arbitrary especially when service <sup>of</sup> experienced hands are required.

15. In view of the above discussions, I feel no interference is called-for at this stage. Therefore, the stay is vacated and the applicant is directed to report at New Katni Jn. I must, however, clarify that this would not mean that the respondents can keep him at New Katni Jn for indefinite period under the garb of temporary arrangement. I <sup>am</sup> ~~can~~ not interfere in the matter as it is temporary arrangement for six months only. Therefore, after six months the applicant must be brought back to his original posting. After six months if the applicant is not brought back to Manikpur, the applicant would be at liberty to move the Court.

16. With the above observations, the O.A. is disposed off with no order as to costs.



MEMBER (J)

GIRISH/-