

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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original Application No. 904 of 2002.

this the 13th day of May 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Farid Khan, S/o Shri Sardar Khan, R/o 296-B New Model Railway Colony, Izzatnagar, Bareilly.

Applicant.

By Advocate : Sri T.S. pandey.

Versus.

1. Union of India through General Manager, N.E.R., Gorakhpur.
2. Divisional Manager, N.E.R., Izzatnagar, Bareilly.
3. Divisional Railway Manager (Karmik), Bareilly.
4. Asstt. Personnel Officer, Office of Divisional Railway Manager, Izzatnagar, Bareilly.

Respondents.

By Advocate : S/Sri D.C. Saxena and K.P. Singh.

O R D E R

By this O.A., the applicant has challenged his transfer from Bareilly city to Sonpur Division on administrative grounds (Annexure A-3) vide order dated 26.7.2002.

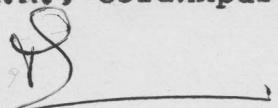
2. It is submitted by the applicant's counsel that the applicant was posted at Bareilly as LTC. He was initially transferred from Bareilly to Fatehgarh vide order dated 18.6.2002 (Annexure A-1), but due to applicant's father's ailment he could not join there and proceeded on leave and gave his representation dated 21.6.2002 to DRM, Izzatnagar, Eastern Railway (Annexure A-2). Thereafter, he received an order dated 26.7.2002 issued ^{by} Asstt. Personnel Officer, Izzatnagar transferring the applicant from Fatehgarh to Sonpur which is in State of Bihar

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(Annexure A-3).

3. It is submitted by the applicant that the APO is not competent to transfer much less the inter divisional transfer as inter divisional transfer can be made only by the zonal officer and no approval has been taken by the competent authority. He has, thus, sought quashing of the order dated 26.7.2002 and sought a direction to the respondent no.2 to decide his representation at an early date.

4. The O.A. is opposed by the respondents who have stated that the applicant was initially appointed as Marks Man in the scale of Rs.800-1150 (Class IV) on 10.9.87. He was promoted from Class IV to Class III as Ticket Collector in the scale of Rs. 950-1500 w.e.f. 23.3.93 and as per AVC he has again promoted as LRTC in the month of June'94 and posted at Bareilly city. As his periodical transfer was due, he was transferred from Bareilly City to Fatehgarh, but he did not join at Fatehgarh. In the meantime vide G.M. (P)/GKP's office order no. E/283/15/InterDivision/VI (II) dated 23.7.2002, he was transferred from Izzatnagar Division to Sonpur Division at N.E. Railway. Accordingly, he was spared from Izzatnagar Division vide office order dated 26.7.2002. They have further submitted that the representation dated 21.6.2002 alleged to have been filed by the applicant has not been received in the office of the respondents and the applicant has not disclosed the mode of dispatch of the so-called representation. Therefore, they have stated that the applicant should be put to strict proof of the allegation made by him, but still in view of the interim order passed by the Tribunal and honour the same, the respondents have decided the representation by passing a detailed order dated 13.11.2002 (Annexure CA-1 to the Counter). In the said order, the respondents have clearly mentioned in para 3 that inter divisional transfer was made by the General Manager, N.E.R., Gorakhpur, which is as per



rules and the order dated 26.7.2002 is based on the headquarters letter no.E/283/Inter division/Estt (II). They have, thus, submitted that since the order dated 26.7.2002 was issued with regard to the General Manager's office order dated 20.7.2002, who is fully competent to issue such type of transfer orders, there is no illegality in the said order and the office order dated 26.7.2002 issued by the Division is only local sparing order for the staff in compliance of the General Manager's order. They have, thus, submitted that there is no merit in the O.A. and it is liable to be dismissed.

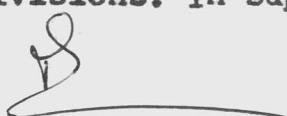
5. In the Rejoinder, the applicant has submitted that even though it is assumed that the impugned order dated 26.7.2002 has been issued by the General Manager, but he would have no competence to pass the impugned order as he possess no jurisdiction over North East Central Railway, which is ~~another~~ another railway as they have their own General Manager. Therefore, the order dated 26.7.2002 has been issued by a person who is not competent to issue the impugned order. Therefore, impugned order dated 26.7.2002 is liable to be quashed.

6. I have heard both the counsel and perused the pleadings as well.

7. During the course of arguments, the respondents have placed on record two orders issued by the Railway Board: first order is dated 7.8.2001 and the other is dated 13.8.99 which are taken on record. The counsel for the applicant has strenuously argued that since these orders are not placed on record by the respondents, they do not form ~~the~~ ^{to the} part of the record, nor any reference ^{to the} has been made in the Counter. Therefore, they cannot be relied-upon. I have applied my mind to the issue raised by the applicant's counsel. It is seen that the applicant himself has not made any averments with regard to bifurcation of North Eastern Railway and North East Central Railway. It is only in the

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Rejoinder that he has referred to in para 12 that the General Manager of N.E.R. is not competent as he possess no jurisdiction over the North East Central Railway, which is an another railway distinct and different from N.E.R. Since the applicant has made this averment only in the Rejoinder, it becomes necessary to find-out whether the N.E.R. and North East Central Railway were separate and distinct as submitted by the applicant and in any case these letters throw light on the correctness of the allegations made by the applicant which go to the route of the matter. Since, the applicant is submitting that the General Manager, N.E.R. has no ~~prejudice~~ competence to issue this order. I think no in-justice would be caused to the applicant, if the said letters issued by the Railway Board are taken on record as no prejudice will be caused to the applicant. On the contrary, it will help me to decide the matter in correct perspective. Therefore, the objection of the applicant's counsel is over-ruled and the Railway Board's letters dated 13.8.99 and 7.8.2001 are taken on record. A perusal of the letter dated 13.8.99 shows that the Railway Board had clarified to the General Manager (P), N.E.R., Gorakhpur that the parent zone i.e. N.E. Railway will exercise full control including transfers and postings over their staff except for ~~once~~ posted at the headquarter of the East Central Railway, Hazipur. Thus, only those staff who are posted at the office of OSD/ECR/Hazipur will be controlled by OSD/ECR and all other staff including those posted in Samastipur & Sonpur divisions shall continue to be controlled by G.M., N.E. Railway till further intimation in this regard. Similarly, the letter dated 7.8.2001 addressed to all Railways including N.E.R., Gorakhpur, which makes it clear that the territorial jurisdiction of proposed new zones/divisions have not been notified as yet. However, certain instructions were issued vide letter dated 11.6.99 regarding freezing of posts on sections to be eventually transferred to proposed new divisions. In supersession of



the said letter, it is clarified that pending full operationalisation of new zones/divisions, all the existing activity coming within the contemplated jurisdiction of proposed new zones/divisions save the newly created headquarter office of new zones continue to function within overall administrative control of the existing zonal/divisional offices. A perusal of this letter clearly shows that so far new zone/divisions were only proposed and were not yet made operational, therefore, the powers still vested with the General Manager, N.E.R. and he can post or transfer the officials belonging to Group 'C' & 'D'. I have been informed by the respondents' counsel that North East Central Zone came into existence only w.e.f. 1.10.2002, whereas, the impugned order was passed on 26.7.2002. Therefore, the contention of the applicant's counsel that the General Manager, N.E.R., could not have the jurisdiction over Sonpur Division as it came under North East Central Railway zone is not sustainable. The applicant's counsel also submitted that these Railway Board's letters are only an executive orders as such they cannot override the statutory rule and Rule 226 of IREC does not provide for inter divisional zonal transfer. I do not find force in the contention of the applicant's counsel as he has not been able to show as to how these executive orders are said to be over riding the statutory rules. Rule 226 of IREC for ready reference reads as under:

"Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the president to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group 'C' and Group 'D' railway servants, the power of the president under this rule in respect of transfer, within India, may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."



8. In view of the above discussions, it is clear that N.E.R. and N.E.C.R. had not come into existence on 26.07.02 i.e. the date when the impugned order was passed. Therefore, the contention of the applicant's counsel that the General Manager of N.E.R. could not have transferred him to another railway zone is not sustainable. Similarly, the General Manager, N.E.R. having been authorised by rule 226 of IREC was fully competent to make inter divisional transfer and since the very premise of the applicant's contention was that the General Manager of N.E.R. did not have jurisdiction over the N.E.C.R., whereas the N.E.C.R. has not yet been made operational therefore, his contention is totally mis-conceived. The same is accordingly rejected. Applicant's counsel had also submitted that since he was being transferred to/different division, his seniority would be affected but since the other Division was not even made operational, this contention is also to be rejected as on 26.07.02 the other division had not even been made operational so there couldn't have been any separate seniority. The applicant's counsel has relied on two judgments given by this Tribunal in O.A. No.68/2000 and 542/99 decided on 12.10.2000 and 28.2.2001. He further submitted that against the judgment of Tribunal in above matters U.O.I. had filed writ petition in the Hon'ble High Court of Allahabad but the writ petition was also dismissed, therefore once the judgment of Division Bench has been upheld by Hon'ble High Court this single Bench can't take a different view. I have perused both the judgments. In none of these cases respondents had brought on record the subsequent clarifications issued by the Railway Board, so naturally those judgments were given on the basis of facts available before them. In the High Court writ petition was dismissed as none had appeared on behalf of



petitioners so naturally these facts as have been explained before me now were neither placed before Tribunal earlier nor before Hon'ble High Court as such those judgments can't be cited as a precedent. Moreover perusal of O.A. No.542/99 decided by Division Bench shows that the transfer order was quashed in that case because respondents had issued two orders of transfer without cancelling the earlier order. (Page 5) Tribunal had not given any finding on the competence of General Manager, in issuing the transfer order, therefore, that judgment even otherwise doesn't help the applicant. Respondents have brought on record all the relevant letters with the permission of court including the clarifications issued by the Railway Board situation has changed and it can no longer be suggested that I should still follow the same judgment and ignore the letters which are placed before me. I have to decide the case on the basis of material produced before me. It becomes more relevant because in a batch of O.A.'s viz. 1114/99, 197/99, 1018/99 and 1061/99 and 1569/99 this Tribunal had directed the Railway Board to issue clarification with regard to powers of General Manager for transfer over grade C & D employees in view of the new formation of New zones/Divisions. The Railway Board issued the clarification vide letter dated 07.08.2001 wherein it was stated as under:-

"Instructions were issued vide above mentioned, to keep Group 'C' & 'D' Staff Strength in the proposed new zones to the barest minimum freezing it to the level obtaining on 26.9.1997. This is to clarify that these instructions were issued only in respect of headquarter offices of proposed new zones. The expression "new zones" as finds mention in the said letter must, therefore, for all purposes, be construed as meaning headquarter offices of proposed new zones. The instructions do not, in any way, restrict transfer/posting of Group 'C' & 'D' staff to/from the activity centres (eg. DRM offices, Area office Diesel sheds) coming under the contemplated territorial jurisdictions of proposed new zones/divisions.

The territorial jurisdiction of proposed new zones/divisions have not been notified as yet. Certain

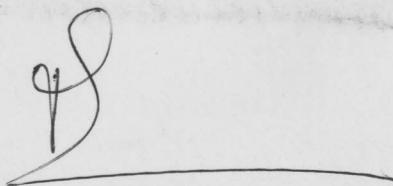
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instructions were however issued vide letter No.97/E&R/700/1/PL dated 11.06.1999 regarding freezing of posts on sections to be eventually transferred to proposed new divisions. In supersession thereof, it is clarified that pending full operationalisation of new zones/divisions, all the existing activity centres coming within the contemplated jurisdictions of proposed new zones/divisions, save the newly created headquarter office of new zones, continue to function within overall administrative control of the existing zonal/divisional offices.

It is further clarified that notwithstanding instructions on freezing of overall (Group 'C' & 'D') staff strength at headquarter offices of proposed new zones/divisions, there is no ban on transfer/posting of staff. The GMs of the existing zones continue to have full powers with regard to staff of all Divisions under their jurisdiction including the staff at these divisions/sections which are proposed to be eventually transferred to new proposed zone/Divisions. The only exception being the staff of new Zonal Headquarters which functions under respective OSDs of new zones."

9. Perusal of this makes it admittedly clear that the territorial jurisdiction of proposed new zones/divisions had not been notified as late as on 07.08.2001 and the General Managers of consisting zones continued to have full powers with regard to staff of all divisions under their jurisdiction including the staff at these divisions/sections which are proposed to be eventually transferred to new proposed zone/divisions, therefore it would be wrong to allege that the order of transfer dated 26.07.2001 was passed by an incompetent authority as admittedly transfer was issued as per the orders of General Manager who was very much authorised to pass the transfer order. Assistant Personnel Officer had only communicated the order, therefore, it is wrong to say that transfer was issued by Asstt. Personnel Officer.

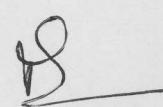
10. The applicant's counsel next contented, in the alternative, that the impugned order was not sustainable as

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no approval was taken by the General Manager. This contention could have been rejected at the outset itself because the very first opening sentence of the impugned order states that this order is being passed in pursuance of the order dated 20.07.2002 issued by the General Manager (P), Gorakhpur and it also shows that the order has approval of the competent authority which makes it clear that the order was issued for the DRM(P) only to communicate the order issued by the General Manager. However, since the applicant's counsel insisted that there is no such order on record, I had directed the ~~respondents~~ to produce the file wherein the decision was taken by the General Manager (P), Gorakhpur.

11. The respondents have produced the file as directed by the court. A perusal of the same shows that the orders were indeed issued by the General Manager, therefore, contention of applicant's counsel is rejected.

12. In view of the above discussions, I find no merit in the O.A. The same is accordingly dismissed with costs. ^{8/18}


Member-J

/Neelam/