

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1243 OF 2003

ALLAHABAD, THIS THE 9th DAY OF JANUARY, 2004

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

Paritesh Bhadra a/a 55 years
s/o Late Mr. K.C. Bhadra
Presently working as Executive Engineer/Construction
(Under transfer)

Northern Central Railway, Allahabad,
r/o 866-B, Loco Colony, Allahabad.

.....Applicant

(By Advocate : Shri T.S. Pandey
Shri A.P. Singh)

V E R S U S

1. Union of India through General
North Central Railway, Allahabad.
2. General Manager (P),
North Central Railway, Allahabad.
3. Chief Engineer, North Central Railway, Allahabad.
4. Mr. P.K. Mishra,
the then Chief Engineer (Bridges) N.C. Rly.
Presently posted at-Central Railway, Mumbai.

.....Respondents

(By Advocate : Shri A. K. Gaur)

O R D E R

By this O.A. applicant has sought the following reliefs:-

- "(i) issue suitable order or direction for setting aside the order dated as 12th Aug 2003 passed by Respondent No.2(shown as Annexure A-I in compilation No.1.)
- (ii) issue suitable order or direction for setting aside the order dated as 17th September 2003 passed by respondent No.3(shown as Annexure A-2 in Compilation No.1)
- (iii) issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. By order dated 12.08.2003 (Annexure A-I) applicant was transferred and posted as AXEN/Const./Alld. under Dy. CE/Const./ALD (Pg.29) and by order dated 17.09.2003 applicant's representation was rejected on the ground that his transfer has been issued in consonance with overall administrative interest including effective and efficient administrative functioning. He was once again directed to carry out the orders of transfer without any further delay.

3. Applicant has challenged his transfer on following ground:-

(I) "The order dated 13.06.2003 is supposed to be as per authority of Railway Board but the said order has neither been served on him nor placed on record, therefore, adverse inference has to be drawn against respondents and non production of main order vitiates the present impugned order. He also submitted that subordinate authority could not have varied the order. In support of this argument counsel for the applicant relied on following judgments:

1. A I R 1957 (SC)1057
2. All India Service Law Journal 1994(1) 104 Para 10,11
Vinod Kumar Srivastava & Ors Vs. U.O.I. & Ors.
3. 1991 (1) UPLBEC (SC)217."

(II) Counsel for the applicant further submitted that transfer is bad in law as it is neither in administrative exigency nor in public interest. On the contrary it has been issued due to malafides of respondent No.4. To substantiate this argument counsel for the applicant submitted that applicant was suspended by respondent No.4 on 08.06.1995 *without any request or reason for having taken safety measures but without issuing any chargesheet ultimately his suspension was revoked on 25.06.1995 which itself shows that respondent No.4 was biased against applicant.* Moreover, applicant was transferred earlier also to Delhi on promotion at the instance of respondent No.4 but later on, he was transferred back to Allahabad when orders were passed by Hon'ble Minister.

4. Respondent No.4 was further biased against applicant as his younger brother was posted under applicant and since his work was not up to mark, applicant had to give him displeasures *for notes* *disobeying the instructions and D.O. letter to improve himself as he started misbehaving and abused the applicant in front of other staff. He was doing all this because he had the*

B

support from his elder brother i.e. respondent No.4. His brother even gave a complaint along-with other persons against the applicant making false and frivolous allegations (Annexure A-14). However, ultimately the complaint was dismissed and Shri R.K. Misra was warned by the authorities.

5. Even respondent No.4 got a complaint filed against applicant through one Shri Pradeep Shukla making wrong and baseless allegations against the applicant but ultimately they were also dropped. He thus, submitted that applicant's transfer from Coast to bridges is a result of respondent No.4 vengeance and is not even in the interest of organisation. Since this transfer is issued as a measure of punishment, it is liable to be quashed.

6. Being aggrieved he filed representation (Annexure A-27) but even that was rejected by respondent No.3 who is under influence of respondent No.4 which is evident from the fact that the order was passed at his door thus, publicising ^{the} whole thing causing him immense mental agony and pain. He further submitted that he has made specific averments that applicant has clean records in para 4.3 but the same has not been controverted by placing any material on record, therefore, it is deemed to have been admitted in law. Respondents have stated that disciplinary case is pending against the applicant but neither there is any chargesheet annexed with the reply therefore, verification said to have been done as per records is not to be relied on. As such counter affidavit cannot be taken into consideration at all. He further submitted since the pleadings in counter are not supported by material, counter affidavit has to be ignored. In support of this next argument he relied on A.I.R. 1995 (SC) 423 Para 14 and 17 N.K. Singh Vs. Union of India. He argued that applicant was posted as Exe. Engineer but after posting him to other place one Shri Hotam Singh has been posted in his place

even though he is only an Assistant Engineer. According to applicant's counsel Hotam Singh could not have been posted against applicant as he was one rank below. He relied on 1991(1)UPLBEC 217 State of West Bengal Vs. Amrit Lal Singh Roy.

7. Respondents counsel on the other hand submitted transfer is an incidence of service and Hon'ble Supreme Court has repeatedly held that transfer orders should not be interfered with unless it is violative of some statutory rules or is based on malafides. In the instant case since there is neither any violation of statutory rules nor the transfer can be said to be due to malafides as respondent No.4 has only communicated the order otherwise transfer orders have been issued under the authority of Railway Board therefore the allegation of malafides is absolutely baseless and not sustainable in law. He relied on number of judgments viz Shilpy Bose, N.K. Singh and S.L. Abbas etc. etc. As far as verification is concerned, counsel for the respondents submitted since there is no merit in the case counsel for the applicant is arguing on technicalities but when justice is to be done, the court can always ~~peruse~~ ^{peruse &} the original records which have been produced by respondents. Even otherwise he submitted that respondents have filed additional affidavit to which applicant's counsel specifically stated that he does not wish to file rejoinder and since applicant has chosen not to controvert the averments made by respondents, they are deemed to have been admitted in law as per applicant's own arguments. Counsel for the respondents therefore, submitted that O.A. may be dismissed.

8. I have heard both the counsel and perused the pleadings as well as original records produced by the respondents. Perusal of the original records clearly show that the decision was taken by the Railway Board to post Shri Hotam Singh a Gr. 'B' officer



8. in nearly - created North Central Zone and respondent No.4 had no role in this transfer at all. Similarly even the decision to post the applicant from Coast to Bridges was taken at the highest level and respondent No.4 had no role at all in this transfer therefore the whole contention of applicant of malafides against respondent No.4 falls flat on nose. The allegations of malafides for issuance of transfer is therefore rejected.

9. In fact applicant's whole case is based on malafides against respondent No.4 and that his transfer is a ~~request~~ ^{result} of his bias against the applicant but since applicant's transfer has been issued at the highest level with the approval of General Manager the main ground of applicant fails.

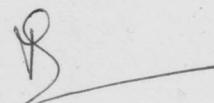
10. Now simply because the order which has been referred to in the impugned order has not been annexed with the reply, it does not make the transfer order bad in law. In fact the very 1st sentence of impugned order states the transfer order has been issued with the approval of the competent authority. Since counsel for the applicant had argued vehemently that the concurrence of competent authority had not been taken, I had directed the respondents to produce the records even though it was not necessary but to satisfy the counsel for the applicant. As stated above the competent authority had approved the posting of applicant to (Bridges) therefore the contention of applicant's counsel that the order of transfer gets vitiated on this ground does not stand to logic. The same is accordingly rejected. The judgment cited by applicant's counsel reported in 1991(1)UPLBEC would have no application in the present facts because that case was decided in the given circumstances. Neither any law was laid down in said judgment nor it can be cited to support any contention as only those judgments have to be cited where some principle or law is laid down by the higher courts.

11. Perusal of the records further show that inspite of transfer order having been issued applicant refused to handover charge therefore vide letter dated 22.08.2003 he was again advised to handover charge by 23.08.2003 failing which Shri Hotam Singh would be asked to resume charge held by him and he would be deemed to have been relieved w.e.f. 23.08.2003 from const organisation. This letter was duly received by applicant on 22.08.2003 yet he did not hand over the charge therefore, charge was taken over by Shri Hotam Singh as advised already.

12. Respondents have also explained that Shri Bhadra did not join at his place of posting as he was absconding and the post of Exe. Engineer(Bridge Line) was sensitive being a safety category post as such it could not have been left vacant for a long time accordingly applicant was posted in North Central Railways Headquarters as Executive Engineer(Planning and Design) while some other officer was posted in his place. They have further explained that NCR being newly formed zone, transfer and posting of officers are bound to be done as and when officers from parent Railways join in newly formed North Central Zone. They have also explained that the field working system of const organisation is in two tiers. In const organisation in field under one Dy. Chief Engineer there are Executive Engineer/Assistant Engineer directly reporting to Dy. Chief Engineer. Difference in schedule of power for Executive Engineer and Assistant Engineer do not effect the administrative functioning as these powers are delegated by General Manager in a Zonal Railway.

13. At this juncture it would be relevant to quote from the Judgment of State of M.P. Vs. S.S. Kaurav & Ors. reported in 1995(3)SCC 270. It was held as follows:

"The courts or Tribunal are not appellate forums to decide on transfer of officers on administrative grounds."



14. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to indict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated either by malafides or extraneous considerations without any factual foundation.

15. Similarly in the case of Shilpy Bose, Hon'ble Supreme Court has held that who is to be posted where and how best the work can be taken from an officer are the matters which should be left to the administration and courts should not interfere in transfer matters lightly in a routine matter.

16. Similarly in the case of N.K. Singh Vs. Union of India & Ors. also Hon'ble Supreme Court held that interference in transfer is justified only in cases of malafides or infraction of any professed norms or principles, where career prospects remain unaffected and no detriment is caused, challenge to the transfer must be eschewed.

17. Keeping in view the above observation made by Hon'ble Supreme Court we cannot decide or interfere in the postings of officers so long it is done in the interest of administration. Now which officer is to be posted where again can best be decided by the administration as they are the best judges in given circumstances. We sitting in the court unaware of ground realities should not even venture to decide the postings. We have already held above that this posting cannot be said to be motivated or biased as the decision has been taken at the highest level. Moreover, applicant has himself given a hierarchical chart wherein he has shown Assistant Engineer or Executive Engineer at the same level. For what purpose, it is not known but I do not think it is necessary to go into that question at all because Shri

Hetam Singh had been transferred to newly created Zone and had to be given some posting. If department felt he could be posted against the post of Executive Engineer, it must have been done after due application of mind. ^{However A} It is not important to see who has been posted in applicant's place but whether the transfer of applicant is valid or gets vitiated due to malafides. Applicant had been transferred to bridges/lines by the impugned order in same pay & post by which no prejudice in career can be said to have been caused to him but since he did not join there respondents have now posted him to head quarters as (Planning & Design) Executive Engineer.

18. It is well settled by now that transfer is an incidence of service and nobody can claim to be posted at a particular place always. He has been transferred in administrative exigency, therefore, he should have reported there and they made representation if there were genuine problems but no body can be allowed to defy the orders and sit at home on his own. After all once orders are issued they are to be obeyed unless stayed by higher authorities or courts. In the instant case no stay was granted by court when he filed the case, therefore, he should have reported at the place of his transfer and then pursued the case. Simply because he had filed the case, it does not give him a license to sit at home and defy the orders.

19. Perusal of the records also shows that chargesheet has been approved by the competent authority therefore disciplinary case is already contemplated against him. Counsel for the applicant argued vehemently that the averments made by him that he has a clean record have not been denied and even other averments made by applicant should be deemed to have been accepted and since the verification clause is defective, the counter should

B

be ignored. This contention has to be rejected firstly because Tribunal is governed by A.T. Act, 1985 and as per Section 22 Tribunal is not to be bound by the procedure laid down in CPC but shall be guided by the principles of natural justice and the provisions of Act and the Rules made by the Government. Moreover, even if pleadings are defective, court can always look into the original records in order to do justice. After looking at the original records, I am satisfied that there is no illegality in the impugned order therefore, this case calls for no interference.

20. The O.A. is dismissed with no order as to costs.



Member-J

shukla/-