

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1021 of 2003

Allahabad, this the 15th th day of January 2004.

Hon'ble Mrs. Meera Chhibber, J.M.

Mahesh Prasad,
aged about 45 years,
son of Shri Jurawan Prasad,
Posted as Section Engineer
(Works) East Central Railway,
Mughalsarai, resident of 141 4-B
Manas Nagar, Mughalsarai,
District Chandauli.

....Applicant.

(By Advocate : Shri S. Ram)

Versus

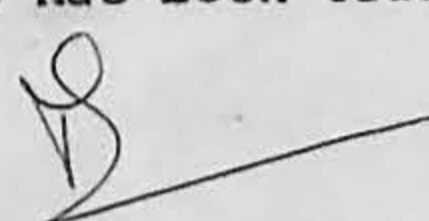
1. Union of India,
through General Manager,
East Central Railway,
Hazipur.
2. Divisional Railway Manager,
East Central Railway,
Mughalsarai.
3. Senior Divisional Personnel Officer
East Central Railway, Mughalsarai.
4. Shri Parvez Alam,
Son of non Known,
Posted as Section
Engineer (Works)
Survey D.R.M. Office,
Mughalsarai.
5. Shri Abdus Sattar,
son of not known,
Junior Engineer-1
working Section Engineer
Works, East Central Railway
Mughalsarai.

... Respondents.

(By Advocate : Shri K.P.Singh)

ORDER

By this O.A., applicant has challenged the order
dated 4.7.2003 whereby he has been transferred from



Mughalsarai to Gaya and the order dated 5.8.2003 whereby his representation for cancelling the transfer has been rejected (page 30). He was, however, given liberty to apply for retention of accommodation at Mughalsarai.

2. Applicant has submitted that he is being harassed because he belongs to Scheduled Caste and the respondents have even violated Railway Board's letter dt. 5.3.99 / 1 guidelines wherein it is clearly stipulated that SC/ST should as far as practicable be confined to their native district. Further it was desired vide Board's letter dated 8.11.1989 that in the matter of postings/placements, SC/ST officers should ^{not be} discriminated against. It is submitted by the applicant that his native place is Dixitauli which is 400 kms away from Gaya, therefore, this transfer is in violation of Railway Board's letter dated 5.3.99. He further submitted that Sri Ram Murat and Mohd. Shahabuddin are retained at Mughalsarai from 1983 and they have not been moved even once, while the applicant has been subjected to frequent transfers as mentioned in para 4.2 and 4.3 of the O.A.

3. He further submitted that in his place one Abdul Sattar has been posted even though he is in lower grade than the applicant which itself shows the transfer is motivated.


4. Counsel for the applicant further submitted that this transfer order is issued in mid academic session, even though there was no urgency to post him out in mid academic session.

5. Last but not the least, he relied on Railway Board's letter dated 26.6.2000 which makes it clear that he could not have been transferred when other persons were retained at the same station for such a long period. Being aggrieved, applicant gave a representation on

11.7.2003, but since no reply was given, he filed O.A. no. 837 of 2003 which was disposed off on 29.7.2003 by giving directions to the respondents to decide his representation (page 38). Thereafter, the respondents decided the representation but without a speaking order. He relied on AIR 1970 SC 1302 and 1989 (11) ATC 310.

6. The respondents on the other hand have opposed the O.A. They have submitted that the transfer is an incidence of service and Hon'ble Supreme Court has repeatedly held that Courts should not interfere in routine transfer matters unless it is shown to have been issued due to malafides. In the instant case, no case for the malafides has been made-out as the applicant had ^{the} longest stay at Mughalsarai and he was posted to Gaya because it was decided to develop Gaya as a model station through the works programme 2003-94 at a cost of Rs.1.85 crores. Since Sri Mahesh Prasad had completed 20 years of service, while respondent no.5 is junior to him with lesser experience, therefore, applicant was selected as per his experience specially to man the post at Gaya. Therefore, it cannot be said that transfer has been issued due to any malafides.

7. They have further explained that the circulars referred to by the applicant are not at all applicable to him and as far as Railway Board's letter dated 5.3.99 is concerned, that was the subject matter in the case of Laxmi Narain Mehar reported in JT 1997 (3) SCC 444 and the Hon'ble Supreme Court after considering everything held that the transfer cannot be said to be arbitrary especially when services of experienced officers were required though convenience of officers for posting near hometown is to be seen yet the transfer on administrative exigencies cannot be ruled out, therefore, it requires no interference.



8. They have also explained that the applicant was posted within Mughalsarai from one unit to other, which cannot be termed as transfer. The first two postings were in the Divisional Office, which is merely changing of seat and three field postings at Mughalsarai itself, therefore, during the period from February '87 to Feb. '2000 applicant remained in Mughalsarai itself responsible for the maintenance, which ~~means as under~~ of following: -


- " (a) 12 Colonies having about 3800 staff quaters.
- (b) Divisional Hospitals.
- (d) Drivers' and Guards Running Room of Loco Colony Housing about 60 crew members.
- (d) Drivers and Guards Running Room of Indian Institute Colony Housing about 100 crew members.
- (d) RRI building and 12 cabins of the yard dealing with Train running.
- (f) Goods shed, transshipment Shed, Down Sick Line, Box 'N' Depot, RPF posts, C & TE Barrack control Tower and a large number of other service buildings."

9. As far as Sri parvez Alam is concerned, they have explained that his posting at Mughalsarai was finalised in the month of March '2003^{1st Feb} against the vacancy which occurred due to transfer of Sri Mahesh Chittranshi Sr. Section Engineer (Survey), DRM office on promotion, therefore, Sri parvez Alam was posted on that post which deals with the office work, whereas applicant was holding the post of Section Engineer (works)/I at Mughalsarai, therefore, it is wrong to suggest that any injustice has been caused to the applicant by posting Sri parvez Alam at Mughalsarai. Both the posts are independent of each other and both transfer orders have been ordered in the administrative exigencies. They have further denied that the applicant has absolutely clean records and have given the details of punishment given to him at page 12 of the Counter. They have further explained that the respondent no.4 had withdrawn his voluntary retirement notice within three months (as permissible) and since it was permissible under Railway Board's letter dated 5.11.2001, therefore, nothing wrong has been done in his case. In any case, that case would have no relevance as far as

the applicant's transfer is concerned. They have also given a chart to show that from July '97 to July 2003 applicant had held all the posts at Mughalsarai itself (page 15). They have further explained that the post which was held by the applicant was not pinpointed for an Engineer of his grade only. In Railways, there are 4 tiers of Engineers in Inspectorial cadre : (i) Senior Section Engineer, (ii) Section Engineer, (iii) Junior Engineer Gr-I and (iv) Jr. Engineer Gr.II, until and unless any post is pinpointed, any Engineer of any grade can be posted on it. Therefore, the contention that a lower grade ~~of~~ officer could not have been posted vice him is not sustainable in law.

10. As far as education of the children of the applicant is concerned, respondents have submitted that he can always retain the Govt. accommodation at Mughalsarai as per the extant rules and regulations of the Railway on the subject and if his wife is sick, there is a full-fledged Railway hospital at Gaya headed by a Medical Supdt., where he can easily avail this facility, therefore, there is no merit in the O.A. filed by the applicant it may, therefore, be dismissed.

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

12. It is well settled by now by the Hon'ble Supreme Court that the court should not interfere lightly in the transfer matters as it upsets the administrative work and ~~whose~~ to be posted where should be left to the discretion of the authorities as they are the best judges as to how the work is ^{to be} taken from an individual as per their requirement and the transfer order can be interfered with only if the applicant is able to prove that his transfer is either contrary to the statutory rules or is issued ^{due to} to the malafides. 

13. In this case, applicant has referred to number of Railway Board's letters. As far as Railway Board's letter dated 19.11.1970 (Annexure R-1)^{is concerned} it was desired that the transfer of SC/ST employees should be confined to their native districts or adjoining districts or places where the administration can provide quarters and that these instructions should be followed to the maximum extent possible, subject of course to the exigencies of service. The respondents have clearly stated in their Counter that at Gaya they can provide a quarter to the applicant, therefore, so long they are in a position to provide a quarter to the applicant, this circular would not vitiate the transfer order. Even otherwise in the case of Laxmi Narain Maher (supra) the apex court^{has} held that the transfer cannot be said to be arbitrary especially when the service of experienced officers were required - though convenience of officers for posting near hometown is to be seen, yet the transfer on administrative exigencies cannot be ruled-out. This judgment was given while dealing with the Railway Board's circular dated 19.11.1970 and 14.1.1975, which has been relied upon by the applicant. Even otherwise since applicant belongs to village of Deoria district, which does not fall within the jurisdiction of East Central Railway, therefore, ^{applicant} nobody can claim as a matter of right^{that he} should always be posted in the same native district as that is not feasible. The circular dated 5.3.86 states that SC/ST should be confined to their native districts, but this letter had already been dealt with by the Hon'ble Supreme Court. Nothing more need be said in this case as the respondents have explained why it was necessary to post the applicant at Gaya. It was due to his long experience and keeping in view that it was decided to make Gaya as a model station, applicant was posted to Gaya. Therefore, this circular relied upon by the applicant does not improve his case

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at all.

14. He has next contended that there were number of other persons who have been posted at Mughalsarai, yet while not touching them, applicant alone has been transferred out. To this, respondents have given a detailed chart at page 7 of the Counter, perusal of which clearly shows that all the persons whose names, he has given, have had a lesser stay at Mughalsarai than the applicant. The chart clearly shows that the applicant have had ~~the~~ longest stay at Mughalsarai, therefore, it is wrong to say that he is being discriminated against. As far as Beer Singh is concerned, they have shown at page 8 of the C.A., that he came to Mughalsarai in Jan '95 Dehri-on-Sonpur and has been at Mughalsarai till date, whereas applicant has been at Mughalsarai since Oct. '88 till July 2003 i.e. about 15 years. As far as Sri A.K. Misra is concerned, the respondents have given his particulars at page 9 of the Counter, which shows that Sri A.K. Misra was posted at Mughalsarai in Nov. '97 after he ^{had R} done his posting at Rafiganj, therefore, it is again wrong to suggest that these persons had longer stay than the applicant at Mughalsarai or they have not been posted out of Mughalsarai. I am, therefore, convinced that it cannot be said to be a case of discrimination.

15. Counsel for the applicant has argued that Sri Abdul Sattar could not have been posted in place of the applicant as he was in the lower grade. This aspect has been well explained by the respondents by stating that the post was not pinpointed by the Section Engineer and it was open to them to post any Engineer on the said post. Even otherwise, as I have stated in the beginning that simply because a person in the lower grade has been posted vice the applicant, it does not vitiate the transfer order because who is to be posted where, ~~it~~ can only be decided by the administration and not by

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the court. If the administration feels that the post can be taken care of by a junior Engineer, it is **their** assessment because they are facing the ground reality. We ~~are~~ sitting here in the court neither know the requirement of the post, nor can assess who is ~~is~~ suitable for the said post, therefore, this contention has to be rejected. As far as applicant's contention that he was posted out to accommodate Sri parvez Alam is concerned, respondents have already explained that Parvez Alam was transferred ^{to} another post, which was meant ~~for~~ the office, whereas the applicant was in the field duty, therefore, both the posts are different. In any case, applicant has not challenged the orders passed in favour of Sri parvez Alam, therefore, we need not look into that aspect of the matter at all as to whether his withdrawal of voluntary retirement ^{was sustainable} in the eyes of law or not.

16. Applicant's counsel next contended that he has been ^{transferred} given frequent transfers. It is seen that he has been / from Mughalsarai from one unit to another unit as per his own averments in para 4.2 of the O.A., which cannot be said to be transfer in the true sense because those units were only at Mughalsarai. As far as his contention that his children were in the mid academic session and wife was suffering from Gastroenteritis, respondents have made it clear that there is a railway hospital at Gaya and the would be providing accommodation to the applicant at Gaya. More-over, while rejecting the representation, they have also stated that if he requires he can always retain the Govt. accommodation at Mughalsarai also till the end of education session, therefore, the respondents have already shown their compassion as far as education of his children is concerned. Apart from all these / ~~this~~ points, it is seen that the conduct of the applicant has not been Very Good inasmuch as he ~~was~~ absented
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himself from duty unauthorisedly w.e.f. 24.7.2003 even though he was Incharge of the Maintenance of many important installations. Counsel for the applicant has submitted that the order passed on his representation is not a speaking order, but I do not accept this contention. The reasoned order does not mean it should run in number of pages, but it should show the application of mind. perusal of the order dated 5.8.2003 shows that the authority who has decided the representation has applied his mind to all the facts including his children's education and the indiscipline on his part. He has further observed that the applicant can request for transfer to Mughalsarai after joining at Gaya, which would be considered as per his turn when there is any vacancy. I, therefore, find that the respondents have given a rather positive reply which is being mis-read by the applicant as non-speaking order.

17. In view of the findings recorded by me, the judgments cited by the applicant would not be applicable in this case. Since I do not find any irregularity in the orders passed by the respondents, this O.A. is dismissed with no order as to costs.



MEMBER (J)

GIRISH/-