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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1381 of 2006.

Allahabad, this the 15th day of December, 2006.

Hon'ble Mr. P.K. Chatterji, Member (A)

M.S.Saxena, aged about 58 years,
Son of late Shri H.S. Saxena,
Resident of 1154/1,
Issai Toal, Khati Babai,
Jhansi.

...Applicant.

(By Advocate : Shri R.K. Nigam)

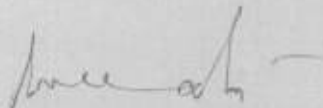
Versus

1. Union of India through General Manager,
North Central Railway, Allahabad.
2. Chief Personnel Officer, North Central
Railway, Allahabad.
3. Divisional Railway Manager, North Central
Railway, Jhansi.
4. A. Thanudurai, Personal Secretary (II) under
Divisional Railway Manager, Jhansi through
Divisional Railway Manager, North Central
Railway, Jhansi.

...Respondents.

ORDER

This OA has been filed challenging the order of respondent No.1 i.e. General Manager, North Central Railway, Allahabad dated 6.12.2006 (Annexure-1). The aforesaid order was issued by him in compliance with the direction of this Tribunal in OA No.1269/06 which is also annexed with this OA (Annexure-4). The operative portion of the direction reads as under:-



"Considering the facts, the representation of the applicant which contains above ground has not so far been disposed of, we are of the opinion that this original application may be disposed of at the threshold stage itself, with a direction to the respondents, especially respondent No.1, to consider the representation of the applicant alongwith the grounds raised in this original application, which may be treated as supplemental to the representation and dispose of the same as early as possible, preferably within fortnight. Till then in so far as the applicant is concerned, transfer order dated 10.11.2006 shall not be given effect to, if the same has not already been given effect."

2. The applicant is presently working as PS-I under the Divisional Railway Manager, Jhansi. The wife of the applicant is also working at Jhansi in a different Unit under Chief Workshop Manager, North Central Railway as Office Superintendent. The applicant does not have a long time to go before retirement. These were the grounds for his representation against the order of transfer. However, the applicant alleged that in disposing of the representation as per direction by the Tribunal, respondent No.1 did not take into account these circumstances. The applicant has further alleged that no ground whatsoever i.e. neither administrative nor public interest has been shown in the impugned order.

3. It has further been alleged by the applicant that the ground of rejection of the representation was baseless and malafide and was to favour to respondent No.4 by posting him in Jhansi on the plea that he was senior to the applicant whereas this matter of seniority itself was under dispute.

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4. Learned counsel for the applicant has referred to two cases namely R. Jambokeshwaran's case (Full Bench Judgment 2002-2003 page 2001) and the case of Mohinder Singh Gill Vs. Chief election Commission - reported in AIR 1978 SC 851. By citing the first one the learned counsel for the applicant has argued that the binding affect of judicial pronouncement cannot be neautrilised by an executive order. Secondly, by citing the judgment in the case of M. S. Gill has argued that when statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

5. Learned counsel has not explained as to which administrative order, while citing the ~~further~~ ^{former}. He also refers the direction of this Tribunal dated 21.11.2006 in OA No.1269/06. It is presumed he is meaning that the respondent's order in compliance with the direction has to be conformity with the direction and cannot be contradictory to it. I am of the view that in issuing the order dated 21.11.2006 the Tribunal decided not to look into substantive issue in the OA i.e. not to look into the merits of the case and left it to be decided by the respondents by proper application of mind through a reasoned order. I have gone through the impugned order and I do not find any contradiction between the direction of the Tribunal and the same.

6. I have also applied my mind to see in what context the case of the M.S. Gill has been referred to but I have not be able to make out by perusal of the submissions in what way it is

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relevant to this case. Learned counsel for the applicant has also referred to Apex Court decision reported in (1993) 24 ATC 460 to argue that the applicant is on the verge of retirement and, therefore, as per the decision of a similar case by Principal Bench his transfer order should be declared void. The extract of the relevant judgment is below:-

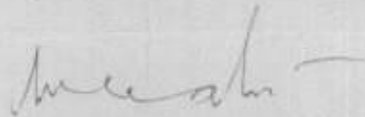
Transfer-Circumstances warranting relief against-Senior Administrative Grade Officer-Tribunal setting aside compulsory retirement and, without insisting on reinstatement, directing to pay salary every month and to continue government accommodation and telephone facilities-Only two years left to reach superannuation, a number of judicial proceedings in service matters pending at the existing place of posting and a number of posts of requisite rank and government accommodation also available there-The authorities, however, passing an order of transfer to another Zone-Propriety-In the circumstances of the case, particularly in view of imminent retirement, authorities directed to consider him for accommodating him at the old place itself-In case the exigencies of service required otherwise, the authorities directed to consider sympathetically his request for retention of the Government accommodation and telephone facilities-Retirement-Railways"

7. I have gone through the submissions made in the OA and in the argument put-fourth by the learned counsel in my view there is only one point to be decided in this case i.e. whether the impugned order is proper compliance of the direction of this Tribunal dated 21.11.2006.I have perused the impugned order it would be apparent from the direction of this Tribunal that the Tribunal left it to the respondent No.1 to examine the merit of the applicant's case and decide it as admissible under the rules.

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Therefore, it is not for the Tribunal to go into the merit as per OA No.1269/06.

8. A perusal of the present OA No.1381/06 shows that the same arguments against the order of transfer as contained in the previous OA, have been cited. As this issue stands settle on the basis of the earlier direction of this Tribunal and the subsequent order of respondent No.1 passed in compliance thereof, it is not required to go into the same once again. Moreover, after going through the impugned order, I find that it is a detailed, reasoned and speaking order and is, therefore, adequate. For these reasons I am unable to find any merit in the OA which is dismissed. No order as to costs.



Member (A)

RKM/