

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No. 454/2006

TUESDAY DAY THIS THE 25th DAY OF JANUARY, 2007

HON'BLE MR. K. ELANGO

MEMBER J)

Om Prakash Pandey,
S/o Late Sri Hari Shankar Pandey,
R/o C-130/369, Mohalla Shahpur,
New Geeta Vatika,
District Gorakhpur.

Applicant

(By Advocate Shri K.K. Mishra)

Vs.

1. Union of India, through
the General Manager,
North Eastern Railways,
Gorakhpur.
2. Chief Commercial Manager,
North Eastern Railways,
Gorakhpur.
3. Senior Personal Officer (Traffic),
North Eastern Railways,
Gorakhpur.
4. Divisional Railway Manager (Personnel),
North Eastern Railways,
Varanasi.
5. Divisional Commercial Manager-I,
North Eastern Railways,
Varanasi.

Respondents

(By Advocate Shri Anil Kumar,
Standing Counsel for Railways)

ORDER

In this O.A., the applicant has challenged the transfer orders dated 24/25.03.2006, (Annexure-I) and 04.04.2006, (Annexure-II) passed by the respondents transferring him from Varanasi Division to Izzatnagar on administrative grounds.

2. The case of the applicant is that he was appointed as Commercial Clerk with the respondents on 27.02.1987, in the Howrah Division of Eastern Railway. He was posted at Ballia in the same capacity in the year 2001. On 13.02.2003, the applicant was transferred from Ballia to Belthra Road Station, on administrative

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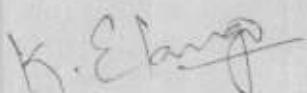
grounds. The applicant was again transferred from Belthra Road, Varanasi Division to Izzatnagar Division. However, the same was not given effect to and the applicant was retained at Belthra Road Station.

3. On 08.08.2005, a departmental inquiry was initiated against the applicant on certain charges. Once again, on 09.01.2006, the respondents again passed an order transferring the applicant to Varanasi Division from Izzatnagar Division in the same capacity on administrative grounds and was directed to be posted in the Divisional Office in deference to the Board's order dated 25.03.1967.

4. In confirmation of the order dated 09.01.2006, the Chief Commercial Manager, North Eastern Railway, passed an order dated 12.01.2006, stating that owing to the pendency of the departmental proceedings against the applicant, it would be in the interest of inquiry as well as the delinquent official, if he is posted in the same division where the inquiry was pending and ordered that the applicant may be posted in the Divisional Office and may not be given the field work.

5. However, on 24.03.2006, in supersession of its own order dated 09.01.2006, the respondents have passed yet another order transferring the applicant from Varanasi Division to Izzatnagar Division on administrative grounds and in compliance with the above said order dated 24.03.2006, the Divisional Railway Manager (Personnel), Varanasi, passed an order relieving the applicant from Varanasi Division. It is this order that the applicant is challenging in this O.A. and has also obtained an interim order of stay of the order dated 24.03.2006.

6. On the other hand, the respondents have contended that the transfer and posting of the applicant has been done in public interest and on administrative grounds, as, while the applicant was posted as Commercial Clerk at Ballia Railway Station earlier, he was caught by the vigilance Department of the Railways for fraud causing heavy loss to the Railways, by issuing short distance tickets and then selling to the passengers. Upon the same, the applicant was



transferred to a less important station at Belthra Road Railway Station. There also he was caught for similar fraud leading to loss to the Railways. For the same fraudulent activities, an inquiry was initiated and the Inquiry Officer also found the fraud committed by the applicant to be true. As such, he was transferred to Izzatnagar Division, where the applicant did not join and remained unauthorisedly absent. He was then re-transferred to Varanasi Division, vide order dated 09.01.2006. Meanwhile, the applicant was issued with a charge memo dated 08.08.2005. They also contended that the Board's letter dated 25.03.1967, upon which the applicant relies, is only an administrative instruction which may be of assistance while ordering transfer and that cannot be enforced in the Court of Law. To substantiate this, they have relied on the judgment of the Mumbai Bench of the Tribunal in the case of B.R. Katakar & Ors. Vs. Union of India - [2002(2)ATJ 377], where the Bench, in that case which related to the Posts & Telegraphs Department, had held instruction No.66 of the Post and Telegraph Manual Vol.III as only administrative instruction which may be of assistance while ordering transfer, but that cannot be enforced in Court of Law. The respondents have also relied upon a number of judgments of various High Courts and the Hon'ble Supreme Court, where the courts have held that Courts/Tribunals should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of malafide.

7. Heard Shri K.K. Mishra, counsel for the applicant and Shri Anil Kumar, the learned counsel for the respondents and also perused the records.

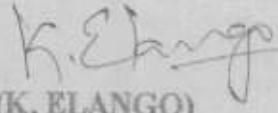
8. Normally, we are not inclined to interfere with the transfer orders and take the administration in our hands. Here is a case, where the respondents have themselves transferred the applicant from Izzatnagar Division to Varanasi Division on administrative grounds vide their order dated 09.01.2006 and subsequently thereafter, they have issued an internal letter dated 12.01.2006, stating that since the preliminary inquiry on the major penalty charge sheet is

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pending against the applicant, transfer of the applicant to other division, the inquiry proceedings will be affected and delayed. Hence, in the interest of the administration, the applicant may be transferred back to Varanasi Division and he may be posted in Division Office, till he is not exonerated and he may not be engaged for performing the duty of booking, etc.

9. This being the position, there was no need for the respondents to issue the impugned transfer order dated 24.03.2006. Instead, they could have adhered to their own internal letter dated 12.01.2006 and kept the applicant away from booking duty, etc., till the completion of the inquiry and proceeded with the disciplinary proceedings. This act of the respondents clearly shows their malafides.

10. Hence, this Tribunal is of the considered view that the impugned order is violative of their instructions and is therefore liable to be set aside. Accordingly, the O.A. is allowed and the impugned orders dated 24.03.2006 (Annexure-I) and 04.04.2006 (Annexure-II) are hereby quashed with no order as to costs.


(K. ELANGO)
MEMBER (J)

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