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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.126 of 2007

Allahabad, this the 29<sup>th</sup> day of April, 2008

Hon'ble Mr. Justice Khem Karan, Vice-Chairman

Kuanwar Pal Singh Swarn,  
Aged about 43 years,  
S/o Late Man Singh Swarn,  
R/o Railway Quarter No.SYT-18,  
Railway Colony, Hathras City,  
District Hathras (UP).

...Applicant.

(By advocate : Shri Vinod Kumar)

**Versus**

1. Union of India, through General Manager, North Central Railway, Gorakhpur.
2. Divisional Railway Manager, (P), North Eastern Railway, Izzatnagar, Division, Bareilly.
3. Senior Divisional Singnal & Tele Communication Engineer, North Eastern Railway, Izzatnagar Division, Bareilly.
4. Sri A.K. Mishra, Assistant Divisional Signal & Telecommunication Engineer, N.E. Railway Fatehgarh, District- Farrukhabad.
5. Sri Krishna Singh, Assistant Divisional Engineer, North Eastern Railway, Mathura Cantt. Mathura-281001.

...Respondents

(By Advocate : Shri P.N. Rai)

**ORDER**

The applicant Kuanwar Pal Singh Swarn, an employee of the respondents, has filed this OA for quashing the transfer order dated 18.1.2007 (Annexure-A-1) by which he has been transferred from Hathras, in State of UP to Tanakpur, in State of Uttranchal.

2. The main grounds taken by the applicants are that no such transfer order could have been passed, during the pendency of ~~the~~ formal disciplinary proceedings at Mathras; that being a Member of S.C., he could not have been shifted to such a distant place like Tanakpur and that the transfer is actuated by malice.

3. The respondents have filed reply narrating the circumstances and stating the reasons for transfer. It has been said that the applicant was used as a tool by certain ~~disgusted~~ <sup>disgruntled</sup> elements and it was at their prompting that he started creating all sort of nuisance and also making uncalled for and false allegations. They say that transfer of the applicant from Mathras to Tanakpur was a routine transfer in exigencies of service. They say, it is true, that the applicant was facing formal disciplinary proceedings. According to them, ~~while~~ the applicant was relieved on 7.2.2007, much before the interim order dated 19.2.2007.

4. I have heard Shri Vinod Kumar, for the applicant and Shri P.N. Rai for the respondents and have also gone through the material on record.

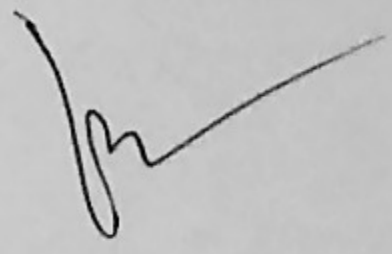
5. Learned counsel for the applicant has contended that the applicant has been punished, for raising genuine grievance in regard to unhealthy atmosphere around his residential quarter and also for the reason that his wife approached the authority for lodging a complaint against respondent No. 5. He says certain post was shifted from one place to Tanakpur for a period of six months, so as to put the applicant on that post at Tanakpur. Learned counsel argues in Railways, there is circular or rule to the effect that an employee, facing disciplinary proceedings, should not be transferred. He has also stated that Railway has issued circular providing



that S.C./S.T. employee should not be posted much away from their native place. According to him, it is also not known as to what was the position of the applicant after expiry of the period of six months, as referred in the impugned order of transfer. Learned counsel goes on to argue that inspite of ~~the~~ the interim order dated 19.2.2007, directing the parties to maintain the status quo, and inspite of the fact that the applicant has not been relieved by them, Respondents have not permitted him to resume his duties nor have paid to him salary, so he is without salary from one year.

6. Learned counsel for the respondents has submitted that circulars/letters referred to by Shri Vinod Kumar do not put a total ban, on transfers pending disciplinary proceedings and these simply say, normally such employees should <sup>not</sup> be transferred, pending such enquiry. He says likewise, circular or instructions regarding the posting and transfer of employee belonging to S.C./S.T. categories, also do not confer <sup>an</sup> enforceable right, to insist for posting at native place or place nearer to the same. He says transfer in question was routine ~~in~~ in exigencies of service and was not for alleged malice or malafides. He has stated that the applicant was relieved on 7.2.2007 and so there was no question for permitting him to continue here at <sup>4</sup> Mathras on the basis of interim order dated 19.2.2007. In reply, learned counsel for the applicant says that the relieving order was not served on the applicant.

7. I have considered the respective submissions. It need not be reiterated that transfer, being incident of service, the courts or tribunal do not interfere unless it is shown that the transfer is penal in nature or is actuated by malice or <sup>is for</sup> extraneous consideration or is patently in breach of



any statutory rule or the transfer policy/guidelines.

8. The grievance of the applicant is that pending disciplinary proceedings, he should not have been transferred in view of the master circular dated 25.3.1967 (Annexure-A-1) to the counter affidavit. It says that "Non-gazetted staff against whom a disciplinary/criminal case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway/Division till finalization of the disciplinary/criminal case." Apparently, it does not put a ban on transfer and for good reasons it can be done. Other circular says as far as possible, the persons belonging to S.C./S.T. categories should be accommodated at native or nearest place.

9. After having considered all aspects, including the events referred to in the counter affidavit, I find no good grounds for interference with the transfer in question.

10. It is true the transfer was apparently for a period of six months as the post was taken from somewhere else to Yanakpur, for a period of six months. Shri P.M. Rai, counsel for the respondents is not in a position to inform as to whether the authority passed any order on expiry of period of six months or the matter is pending without any orders. In case, the requirement of the applicant at Yanakpur is not there, as the period of six months has expired, the situation should have been reviewed and the appropriate orders passed. With the change of time, things could be restored, to the position the same were before transfer in question.

11. So, the OA is disposed of with a direction to the Divisional Railway Manager, respondent No.2 to

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see as to how the transfer for a period of six months is continuing after expiry of one year and pass suitable orders in the light of observation made in the preceding para, within a period of one month from the date a certified copy of this order is produced before him. No order as to costs.

*J. D. S. W.*  
*29.4.08*

Vice-Chairman

RKM/