

(12)

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.378 of 2007

Allahabad, this the 22nd day of August, 2008

Hon'ble Mr. Ashok S. Karamadi, Member-J

Changur Ram, S/o Late Shri Sahipat Ram,
Aged about 40 years, presently working
As Station Master, N.C. Railway,
Ahraura Road R/o Railway Quarter No.II-A,
Ahraura Road, District Mirzapur.

...Applicant.

(By Advocate : Shri Sudama Ram)

Versus

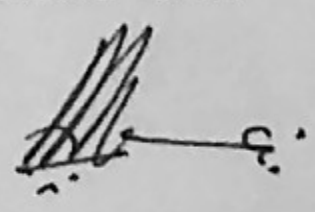
1. Union of India, through the General Manager,
North Central Railway, Headquarter,
Allahabad.
2. Divisional Railway Manager, North Central
Railway, Allahabad.
3. Sr. Divisional Operating Manager, North
Central Railway, Allahabad Division,
Allahabad.
4. Shri D.K. Pandey, Divisional Operating
Manager, North Central Railway, Allahabad
(in person).

....Respondents.

(By Advocate : Shri P.N. Rai)

ORDER

This application is filed challenging the transfer order dated 22.3.2007, which is produced as Annexure-A-1. The main grievance of the applicant is that he belongs to SC and having regard to the guidelines issued in respect of the transfer of SC/ST, in which it is stated that as far as possible the posting order of the employee shall be confined to their native or adjoining districts or place where the Administration can provide the quarters. Learned counsel for the applicant states that the place of posting of the applicant has no quarter and



the same is not available or respondents are unable to provide the quarter to the applicant. Therefore, the order of transfer is liable to be set aside. Learned counsel for the respondents submits that this OA, in which the applicant has challenged the order of transfer, should be dismissed on the ground that the respondent authority had taken a decision based on the exigency of service in the interest of administration as the respondents authority have not changed any service condition, which are affecting the service of the applicant by transfer order. Therefore, the applicant cannot maintain this OA and for setting aside the same. Learned counsel for the applicant has also drawn my attention to the decision of C.A.T. Jodhpur Bench in the case of B.S. Verma Vs. Union of India and others (1994) 26 ATC 313 and C.A.T. Jaipur Bench in the case of S.S. Verma Vs. Union of India and others (1993) 23 ATC 596.

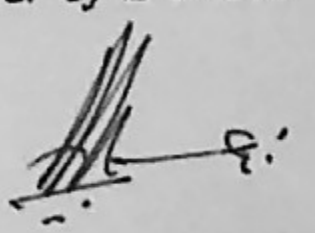
2. I have heard Shri Sudama Ram, counsel for the applicant and Shri P.N. Rai, counsel for the respondents and perused the pleadings and material available on record.

3. The sole ground taken by the learned counsel for the applicant is that the transfer of the applicant in which he posted, the administration is unable to provide the accommodation, therefore, in pursuance of the guidelines in respect of transfer of employee belonging to SC/ST category. As per Annexure-A-3 dated 14.1.1975, which reads as follows:

"Subject : Hardship caused to S/C and S/t who are transferred

[No. E(SCT) 74 CM 15/58 dated 14.1.1975]

Attention is invited to Board's letter No.E (SCT) 70 CM< 15/15/3 dated 19.11.1970 wherein it was desired that the transfer of S/C and



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S/T 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.

2. *It has been represented that the S/C and S/T are being transferred from one place to other quite frequently. The Board have, therefore, decided that the employees belonging to S/C and S/T should be transferred very rarely and for very strong reasons only."*

Having regard to the same, which clear states that 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. In the instant case, since the respondents have stated that the order of transfer has not affected the service condition of the applicant and there is no action punitive in nature of the applicant and as such the impugned order cannot be set aside. Learned counsel for the respondents stated that they are followed the instructions but they are not taken into consideration of Annexure-A-3 due to administrative reasons while passing the impugned order. The decisions relied upon by learned counsel for the applicant are applicable to the facts of the case.

(1) In the case of B.S. Verma Vs. Union of India & ors., held as follows :-

"The contents of circular dated 14.1.1975 are different from those of the circular considered by the Supreme Court in Union of India Vs. S.L. Abbas, which related to transfer of couples. These are two ingredients of directions contained in circular dated 14.1.1975. One is "very rarely" and the second important ingredient prohibiting the transfer is "for very strong reasons only". Further the word "only" connotes that no transfer should be effected in any case if both the ingredients are not fulfilled. The circular is not only prohibitory in nature but it also issues a mandate to the subordinate officers not to transfer any SC/ST employee against these directions. It is not like an ordinary guideline where 'ifs' and 'buts' are there. The circular gives effect to the Directive Principles of State Policy and the constitutional policy of making special provisions for SCs/STs."

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II. In the case of S.S. Verma Vs. Union of India and others, held as follows :

"The SC/ST employees enjoy special protection under the Constitution. Their transfers stand on different footing. It is for this reason that general principles regarding limited scope of judicial interference in the matter of transfer cannot be applied in this case. Very strong reasons as envisaged in OM dated 14.1.1975 stand on a higher pedestal than the sufficient reasons or administrative exigencies. There should be compelling circumstances for the administration to transfer SC/ST employees. By virtue of doctrine of estoppel, Government is bound by its own guidelines, though Tribunal is not. The respondents in this case have not been able to bring their case within the ambit of OM dated 14.1.1975."

4. In view of the above, the order under transfer which is against the guideline cannot be sustained and accordingly the same is quashed. However, the liberty is given to the respondents for passing the appropriate order if necessary in the exigency of administration keeping in view of the guidelines issued in respect of the same.

5. With the above observation, the OA is allowed.

6. No order as to costs.


Member-J

RKM/