

(9)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 613 OF 2007

ALLAHABAD THIS THE 6/11 DAY OF NOVEMBER, 2007

HON'BLE MR. SHAILENDRA PANDEY, MEMBER-A

Umesh Kumar Gupta, S/o Sri Devendra Nath Gupta, R/o 158 Muftipur Nakhas Chuak, Qasba and Pargana Haveli, Tehsil Sadar, District Gorakhpur, presently working as Work Efficiency Inspector, Eastern Railways, Gorakhpur.

.....Applicant

(By Advocate Shri K.Ajit)

V E R S U S

1. Union of India through Chairman, Railway Board, New Delhi.
2. General Manager, N.E.R., Gorakhpur.
3. Sr. Deputy General Manager, N.E.R. Gorakhpur.
4. Efficiency Officer, N.E.R., Gorakhpur.

.....Respondents

(By Advocate: Sri P.N. Rai)

O R D E R

In this O.A., the applicant has challenged the order dated 24.5.2007 passed by respondent no.3 repatriating/transferring him to his parent cadre on administrative grounds for posting at Izzatnagar Division. The repatriation order has been challenged by the applicant on the ground that it is malafide and also that the repatriation should have been made to Lucknow Division and not to Izzatnagar Division .

2. The facts of the case are that the applicant, working as Efficiency Inspector, N.E.R., Gorakhpur,

was initially selected as Train Examiner in the year 1993 and worked in the Western Railways till 1997. Thereafter, on his own request the applicant was transferred to North Eastern Railway vide order dated 21.11.1997 against an existing vacancy and on his agreeing to be given "bottom seniority". Thereafter he was given posting at Gonda under Lucknow Division where he worked upto the year 2002 and was again transferred to N.E.R., Gorakhpur on his request. On 16.8.2004, the applicant was appointed on the ex-cadre post of Efficiency Inspector (after his being successful in the concerned Departmental Examination and interview) for a period of four years, with his being eligible for further extension of two years. He stated that he had discharged his duties sincerely and there was no complaint against his work. However, the applicant had been involved in a family dispute with his wife- and had filed a Divorce Petition and was paying maintenance for his wife and two children, after which there was a compromise, but after again falling out with his wife, he filed another suit for Divorce in 2006 before the Family Court, Gorakhpur. This suit is still pending. The applicant's contention is that he had discharged his duties very satisfactorily, but that despite this he has been repatriated/transferred merely on the basis of a false complaint made by his wife and as such his repatriation/transfer is bad in law. In this connection, he has also mentioned that the General

(W)

Manager concerned had obtained advice from the Legal cell, which had advised on 30.3.2007, that since the Divorce Suit of the year 2006 filed by the applicant before the Family Court, was still pending and the matter was subjudice, therefore, "it would be proper that no action should be taken by the department". However, he has alleged that his wife has managed to influence the concerned senior authorities resulting in the applicant being transferred to Izzatnagar Division repatriating him to his parent department, although he has not completed four years, which was the time given to him on deputation. He has further pointed out that the action taken by the respondents in this case on his wife's complaint was without conducting any enquiry or investigation as required under the Rules. He has also mentioned that as a result of his repatriation, he will not be able to look after his ailing father for which purpose he had initially sought transfer to N.E.R. and had foregone his seniority. The applicant's counsel has also argued that the repatriation of the applicant (for posting at Izzatnagar) is actually an inter-divisional transfer made in the name of repatriation and that such a transfer could only have been made by the Sr. Divisional Mechanical Engineer, after assessment of requirement, and not ~~only~~ by Sr. Dy. G.M. of the Hqrs. He has also argued that Railway Board rules provide that pre-mature reversion of deputationists can be made only after giving reasonable notice to the lending department and the

concerned employee - which was not done in the instant case.

3. The respondents' counsel has contended that the applicant's repatriation/transfer is on administrative grounds and is perfectly legal, and that order dated 16.8.2004 by which the applicant was initially sent on deputation for four years clearly provided that "an employee can be repatriated back to his parent cadre without assigning any reason and at any time and also without any notice". He has also stated that the transfer is not in reference to the family dispute. He has also stated that the applicant had already been relieved on 24.5.2007 (A.N.), but that the applicant has not joined his duties at the new place of posting, and the applicant has obtained the interim order of maintaining the status quo. The learned counsel further stated that as per the Government Rules, it is the responsibility of railway employees to look after their families and any negligence in this regard amounts to misconduct and is sufficient reason for action. He has also mentioned that in various judicial rulings it has been held that the Courts/Tribunals should normally not interfere in matters of transfer, unless it is contrary to the rules and malafide. Further, whenever a transfer order is passed by the competent authority, the applicant should join at the new place of posting and then represent. He has also

(12)

added that the applicant should have approached the Railways first and thereafter he should have come to the Court. The respondents' counsel has stated that the applicant has made an appeal on 12.3.2007 to the Sr. DGM, N.E.R., Gorakhpur, but has not received any response.

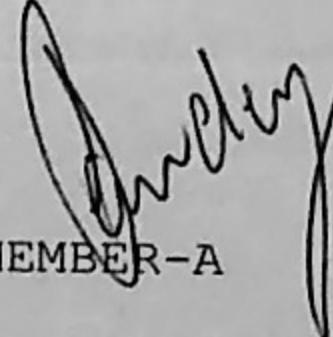
As regards the arguments that the applicant's repatriation is actually an inter-divisional transfer and without notice, the respondents' counsel has stated that this is not so and that the order has been passed by the competent authority and that the initial order of deputation clearly provided for the same.

4. Having heard both the counsels and perused the pleadings and material available on record, it would be just ad proper ~~to direct~~ (although the order of repatriation/ transfer passed in this case is a legal order as the original deputation order for this ~~period~~) in view of the facts and circumstances of the case ~~to direct~~ the next higher authority in the Railways to look into all aspects of the case and finally decide the matter on merits. The applicant is accordingly given two weeks time to make a fresh representation (from the date of receipt of a certified copy of this order) detailing all the facts and arguments which he has brought before this Tribunal to the Railway Board, which is directed to dispose of the same within a period of four weeks from the date of receipt of such representation.

(167)

Till the Railway Board decides the case, status quo with regard to the applicant will continue.

5. With this, the O.A. is disposed of, with no order as to costs.


MEMBER-A

GIRISH/-