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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 878 of 2007

Friday, this the 11th day of April 2008

Hon'ble Mr. K.S. Menon, Member (A)

Vijay Kumar Khare, Son of Late Shri Banmali Lal Khare, R/o Bungalow No. D-384, West Railway Colony, Store Road, Jhansi. Presently working as Chief Law Assistant, North Central Railway, Jhansi.

By Advocate Sri S.K. Om

Applicant

Versus

1. Union of India through General Manager North Central Railway, Allahabad.
2. Assistant Law Officer, North Central Railway, Jhansi.
3. Chairman, Railway Board, Rail Bhavan, New Delhi.

By Advocate Sri Avnish Tripathi

Respondents

O R D E R

By K.S. Menon, Member (A)

The present O.A. has been filed against the impugned order dated 17.04.2007 passed by the Senior Personnel Officer, Headquarters Office, North Central Railway, Allahabad whereby the applicant who is working as Chief Law Assistant, North Central Railway, Jhansi Division has been transferred to Allahabad Division in the same grade. The aforesaid Order was served on him vide Divisional Railway Manager (P), North Central Railway, Jhansi letter dated 29.08.2007.

2. The applicant was working as Chief Law Assistant, since 1992 and was promoted as Chief Law Assistant in the year 1993 under the Central Railway, Jhansi Division. Jhansi Division was subsequently merged with North Central Railway, Allahabad w.e.f. 01.04.2003. Railway Board has not framed any policy with regard to its Ministerial staff working in non-sensitive posts and such staff are liable for transfer only on the basis of urgent or mutual exchange or on a complaint against them. The post of Chief Law Assistant has not been categorized as sensitive and does not involve public dealing, as such as per the policy of Railway Board, Law

Assistant and Chief Law Assistants are not liable for transfers. Besides, it appears the respondents carried out a review of the cadre of Law Assistant/Chief Law Assistants as a result the cadre strength was reduced warranting readjustment of postings of Law Assistants/Chief Law Assistants. Whenever a cadre review conducted results in surplus staff, the junior most officers are to be deployed outside/away from their existing stations. In this case the applicant was not the junior most as there were many officers junior to him hence he should not have been transferred from Jhansi to Allahabad. His transfer order is, therefore, illegal and in violation of Railway Board's statutory circular dated 27.07.1966. In addition to the above, the other grounds taken are: -

- i) *There has been no public interest on administrative exigency therefore there is no reason for transferring the applicant from Jhansi to Allahabad.*
- ii) *Transfer was ordered during the mid academic session.*
- iii) *Applicant's personal problems.*
- iv) *The transfer order was passed because the respondents were annoyed with the applicant for filing a case/contempt petition against the respondents.*

They have therefore prayed that the impugned orders be quashed and set aside and directions be given to the respondents not to transfer the applicants from Jhansi to Allahabad.

3. The respondents on the other have contested the O.A. and have filed a detailed counter affidavit. They have contested the claim of the applicant that there has been a curtailment in the cadre strength and therefore the junior most person in the cadre should be posted out as per provisions of the Railway Board circular dated 27.07.1966. They submit that the post of Chief Law Assistants is Headquarter controlled post and their seniority and lien are maintained in the Headquarter of North Central Railway, Allahabad. The transfer has been done on administrative grounds. The applicants have been in Jhansi for a very long period besides the pendency of Court cases in Jhansi is much less in comparison to Allahabad division. The respondents therefore merely carried out a readjustment to fully utilize the services of Chief Law Assistants and Law Assistants as per administration's requirement on the basis of workload in different divisions. There is therefore no curtailment of the cadre strength as the sanctioned strength of the cadre remains at 34 even after the adjustment carried out and consequently there is no merit in the applicant's contention that only the junior most person in the cadre should have been posted from

Jhansi to Allahabad. Besides the said circular of Railway Board dated 27.07.1966 relied upon by the applicants is not applicable to headquarter controlled posts as in this case.

4. In response to the applicant counsel's statement that the applicant was not relieved from his post on 31.08.2007 the respondents submit that the relieving order dated 31.08.2007 was sent to be served on the applicant but he had left office early after which he reported sick from 01.09.2007. Copy of the relieving order and the attendance sheet for the month of August and September 2007 in support of their submission has been annexed as annexure-1 and 2 to the counter affidavit. In view of this the respondents contend that none of the grounds taken by the applicant has any legal force and the O.A. being devoid of merit is liable to be dismissed.

5. I have heard the learned counsel for either side and perused the pleadings very carefully.

6. The counsel for the applicant reiterated the facts and the legal provisions during the course of arguments. He has also relied on the following decisions: -

1. *N.K. Singh Vs. Union of India and others (1994) 6 SCC 48*
2. *Smt. Deepa Vashishtha Vs. State of U.P. & Others [1996 (1) ESC 148 {All.}]*
3. *Dr. Ravi Shanker Vs. U.O.I. and others CAT Lucknow Bench O.A. 137 of 2004.*

I have perused the above citations and find that the facts and circumstances of each of the above cases are different from the facts and circumstances in the present Original Application and do not come to the help of the applicant.

7. On the issue of cadre curtailment and transfer of junior most employee first, the relevant extract of the Railway Board Circular dated 27.07.1966 is as under: -

"With a view to bring about uniformity in the matter, the Board desire that, as a general rule, the junior most employee should be transferred first, whenever any curtailment in a cadre takes place.

The applicant's contention is that the posts of Chief Law Assistant/Law Assistants in Jhansi Division was curtailed from 12 to 9 as a result of the review carried out by the respondents. Therefore as per

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the aforesaid circular, the junior most employees in the cadre in Jhansi division should have been transferred to Allahabad instead of the applicant. Hence the transfer of the applicant to Allahabad is illegal as it violates the Railway Board circular dated 27.07.1966. The work load of legal cases in the divisions of the newly created North Central Railway, were reviewed on the basis of which the posts of Chief Law Assistants/Law Assistants which are Headquarter controlled posts were redistributed by the competent authority. As a result three posts of Chief Law Assistants were transferred to Allahabad division from Jhansi Division, however, the over all sanctioned cadre strength of Chief Law Assistants/Law Assistants, continued to be the same i.e. 34, therefore, there is no reduction or curtailment in the cadre of Chief Law Assistants/Law Assistants. The Railway Board circular dated 27.07.1966 referred to by the applicant pertains to divisional controlled posts and not Headquarter controlled posts and consequently is not applicable in this case. Administration is the best judge to decide who should be posted when and where depending upon the need of the administration and the organization. In pursuance of the above, if the respondents have redistributed legal personnel in the Personnel, Commercial, and Headquarter departments, they are well within their right to do so. The arguments of the applicant on this account have therefore no merit and cannot therefore be accepted.

8. Connected with the above issue is the applicant's contention that the transfer is not justified as the applicants have not made any request for a transfer and the respondents have also not made out a case of Administrative exigency or Public Interest warranting the transfer and the transfer has been passed in a colourable exercise of power. This stand of the applicant is also not tenable as it has been established in the previous paragraphs that there has been no curtailment in the cadre of Law Assistants/Chief Law Assistants so the question of transferring the junior most employee in the cadre does not arise. The circular of General Manager, N.E. Railway dated 08.07.2004 relied upon by the applicant is also not applicable in this case. It is admitted that the applicant has not requested for a transfer but it is also pertinent to point out that respondents are not required to indicate in the transfer order whether it is on account of administrative exigency or public interest. In this connection, Calcutta High Court in the case of Shyam Sunder Chakraborty Vs. U.O.I. (CR 7848-W/75) has held that "There is no statutory obligation to record in writing the very special reasons. If reasons are recorded, obviously it would be disputed in every case

it would be impossible for the administration to pass any order of transfer. Powers conferred under rule 37 are to be exercised in the interest of service and the authority who exercises such powers is the best judge to consider administrative convenience and also the convenience of the transferees. Unless the Court is satisfied that the Order is made for collateral purposes or it is passed malafide, a Writ Court should not ordinarily interfere with such administrative order passed in the interest of service."

In view of the above, the respondents' action of not indicating a reason for the transfer in the transfer order cannot be faulted. The applicant's contention on this ground cannot therefore be accepted.

9. Applicant alleges that he was on the rolls of Jhansi Division till 5.9.2007 when this Tribunal passed the status quo order and only when the said status quo order was passed the respondents made an endorsement in the attendance register regarding his relief. He therefore claims that the relieving order dated 31.08.2007 was issued after the status quo order was passed. He further states that he was on duty on 31.08.2007 and the relieving order could have been served on him on that day. Thereafter he proceeded on leave from 01.09.2007 to 14.09.2007. He submits that since he was not relieved up to 05.09.2007 when the status quo order was passed, he is deemed to be on the strength of Jhansi Division and should be paid his salary accordingly. Attendance registers are usually handwritten and there is a possibility that the person assigned the task of maintaining this register could have written the names of the employees ^{for one or two subsequent months} ~~a month or two~~ in advance. The register for the month of September 2007 shows that the applicant has been shown as absent (x) for the first five days and thereafter has been shown as relieved. This could be purely coincidental and cannot be taken as conclusive proof that the applicant was on duty in Jhansi division upto 05.09.2007. The only conclusive proof that can be drawn about the duty performed by the applicant in the month of September 2007 is from the pay bill for that month. The copy of the pay bill for the month of September 2007 annexed as annexure-4 of the Rejoinder Affidavit shows the column "Duty Din" as "00" and the total amount payable for that month as NIL. This would indicate that the applicant was struck off strength under Jhansi division on 31.08.2007. Consequently he has not been paid his salary from September 2007 onwards. This argument also of the applicant cannot therefore be accepted.

10. The applicant has raised several other points in support of his stand. He has pointed out that the workload in terms of pending cases under Jhansi Division has been shown as about 241 cases less by the respondents. Even if this statement is taken to be correct the applicant has not confirmed the workload in Allahabad division, besides this is a matter of detail and the respondents' department would be the best judge to decide who and where an officer is required to be posted to meet the requirements of work. The allegation that Shri S.S. Bundela whose name was in the transfer order dated 17.04.2007 was subsequently left out when the applicant's transfer order was issued on 29.08.2007 may be correct and as mentioned by the respondents in paragraph 35 of their counter was because of some delay in redistribution of Shri Bundela's existing workload of cases. This in any case cannot be a reason to challenge the validity of the applicant's transfer order which has been issued by the respondents in accordance with rules and exigencies of service.

11. The applicant Sri Khare has raised the issue of certain personal problems and cited D.O.P.T. circular dated 15.02.1991 (annexure RA-7) which lays down that while deciding the choice of postings of parents whose children are mentally retarded (as in the case of the applicant) care should be taken to ensure availability of appropriate medical facilities at the station of posting to the extent possible. It certainly cannot be said that appropriate medical facilities are not available in Allahabad where North Central Railway is headquartered. Besides the applicant has not conclusively shown how Allahabad is inferior to Jhansi in terms of appropriate medical facilities. Keeping in view the personal problems of the applicant and the requirement of the department the transfer orders cannot be said to be bad in law.

12. There are certain other minor procedural points and allegations that have been raised by the applicant and have been answered by the respondents in their short and main counter reply. The point regarding issue of the transfer order during mid academic session, has during the pendency of this O.A. lost its relevance. The aforesaid points/allegations in any case do not merit any detailed analysis in this Judgment as they are merely conjectures and have not been substantiated, besides they do not impact the main issues/grounds raised in the O.A.

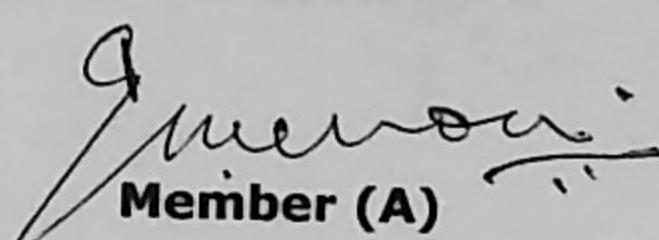
13. While passing this Judgment, I respectfully acknowledge the Apex Court's Judgment (2006 SCC (L&S) 1890) in S.C. Saxena Vs. U.O.I. and others where it was held that: -

"A government servant cannot disobey a transfer order by not reporting at the place of posting and then go to court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

In this case review of workload of cases in different divisions and consequent redistribution of Law Assistants/Chief Law Assistants, by the respondents appears to have been deliberately misconstrued by the applicant as curtailment of cadre and hence violation of Railway Board's circular dated 27.07.1966 resulting in this litigation.

14. In view of the above, I find that the O.A. is without merits and find no grounds to interfere with the transfer order dated 17.04.2007 and 29.08.2007.

15. The O.A. is accordingly dismissed. No costs.


Member (A)

/M.M./