

प्र.प्र. (प्रक्रिया) नियमावली के धारा 22 के अन्तर्गत निःशुल्क प्रतीति

Date of order : 03.06.1997

1. O.A.No. 64/1997

Durbeen Singh S/o Shri Dhani Ram, Working as Clerk under the Dy.CE (C)1, Jodhpur R/o Qtr.No.2162,D.S. New Railway Colony, Jodhpur.

2. O.A.No. 65/1997

Mahesh Chandra S/o Shri Netra Pal, Working as Black Smith under the Permanent Way Inspector (C), Northern Railway, Lini R/o Qtr.No. 2162, New Railway D.S. Colony, Jodhpur.

3. O.A.No. 128/1997

Raja Ram S/o Shri Sadhari Lal, Working as a M.C.C. under Deputy Chief Engineer (Construction) II, Northern Railway, Jodhpur R/o Qtr.No.2176 , New D.S.Railway Colony, Jodhpur.

..... Applicants

Versus

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Administrative Officer (Construction), Northern Railway, Kashmiri Gate, Delhi.
3. Deputy Chief Engineer (Construction) - I/II, Northern Railway, Jodhpur.

..... Respondents

Mr. Y.K.Sharma, Counsel for the Applicants.

Mr.S.S.Vyas, Counsel for the Respondents.

GRAM :


THE HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

P.T.O.


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BY THE COURT :

All these OAs relating to transfer of Casual Railway employees from one Division to another Division, therefore, they are disposed of by single order.



2. In all these cases, the applicants have stated that they are Casual Labours having temporary status and therefore, are not liable to transfer to another Unit/ Division in view of the specific provisions contained in Para 2001 of the Indian Railway Establishment Manual (for short "the Manual"). Further, they have asserted that the transfer order(s) is bad in view of the fact that few junior persons than the applicants have been retained and ~~alleged~~ the applicants have been transferred. It is further alleged that the applicants had not consented to their transfer. The transfer would affect the education of their children also because the pattern of education is different at the places they have been transferred to. Being aggrieved by the said transfer order(s) applicants have prayed in their individual OA that transfer order, Annex.A-1, be quashed.



3. In all these OAs respondents have filed their reply and have admitted that applicants are Casual Labours but have stated that their services were utilised on temporary basison local arrangements in various units as described. It is alleged by the respondents that the applicants were transferred by the competent authority as per the P.S. No. 10886 as their services were needed in different Divisions/Units. The respondents have denied that the persons junior to the applicants have been retained and only the applicants have been picked up for transfer. It is further alleged by them that as per the provisions of Para 2001 of the Manual, the Casual Labours are not ordinarily liable to transfer. This does not mean that they cannot atall be transferred. In view of the exigencies of services and for better utilisation of men power such labourer can be transferred from one unit to another unit. The impugned orders have been made in the fague end of educational session,

therefore, the transfer would not affect the education education of their children. The applicants Shri Durbeen Singh and Shri Mahesh Chandra were spared on 25.2.97 and the applicant of Oa No. 128/97 Shri Raja Ram was spared on 7.4.97 - as per the orders passed by various authorities under whom the applicants were working. The respondents contend that applicants have not been able to make out prima facie case for quashing the transfer order(s), therefore, they are not entitle to any relief from this Tribunal. The OAs deserve to be dismissed.

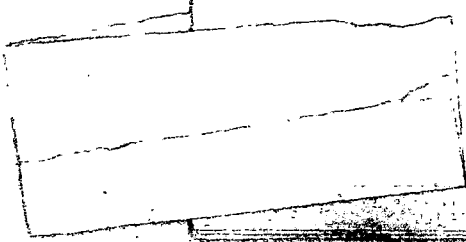
4. I have heard the learned counsel for both the parties and gone through the records.



5. It is argued by the learned counsel for the applicants that the applicants are Casual Labour and temporary status employees and are not liable to transfer from one unit to another unit. He has cited 1990 (3) SLJ 257 Ram Niwas and Ors. Versus Union of India, in support of his argument. He has also argued that transfer would adversely affect the education of their children. As such, in the interest of the children of the applicants, they may not be transferred and the order of transfer should be quashed. In reply, the learned counsel for respondents has argued that the Casual Labours are ordinarily not liable to transfer but such persons can be transferred in view of the exigencies of service and better utilisation of man power. The first two applicants have been transferred to Udhampur where National Target Project is in hand and the project is to be completed within the stipulated time. The learned counsel for the respondents argued that applicants herein, have not alleged any mala fide against the respondents and there are also no allegations of any colourable exercise of power, therefore, the order(s) of transfer dated 24.2.97/22.3.97 (Annex. A-1) is not required to be quashed. He has cited 1994 SCC (L&S) 1304, N.K. Singh Vs. Union of India and Others, in support of his contention.



6. I have given my anxious consideration to the rival arguments. In none of these applications the applicant has specifically stated the details of his children and the education that they are receiving. In absence of any specific detail in this regard, it cannot be inferred that transfer would adversely affect the education of applicants' children. In any case, the educational



session has come to an end and the transfer would not affect the education of the applicants children.

7. The Para 2001 of the Manual clearly mentions that Casual Labours are not ordinarily required to transfer but there is no specific prohibition that Casual Labours cannot at all be transferred. If at one place or point services of such Casual Labour are not properly utilised he may be deployed in other Unit or Division(s). The only restriction envisaged in P.S. No. 10886 is that the Casual Labour should only be transferred from one Unit to another Unit/Division under the orders of Chief Personnel Officer or with his approval. In the instant case, transfers of the applicants have been ordered by the Chief Administrative Officer (Construction), Head Quarters Office, New Delhi. The respondent No.3 has only communicated these orders vide his letter at Annex.A-1. Therefore, it cannot be said that applicants have been transferred by an authority not competent to transfer the applicants.

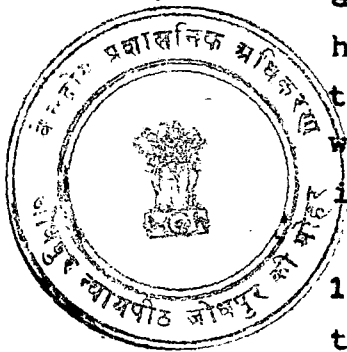
8. The learned counsel for the applicants has also argued that applicants have not been served with transfer order but in view of the endorsement made by the serving authority on Annex.R/3 (O.A.No.64/97), it can be presumed that the applicants are fully aware of their transfer and they have either refused to receive the same or have run away at the time of service of transfer order. In any case, they have approached the Tribunal challenging the transfer, therefore, it is of no importance that the impugned order has actually been served upon them or not. Neither the applicants can derive any advantage on this count in view of the orders passed by their superiors sparing them to carry-out the transfer order.

9. As per the various pronouncements of the Hon'ble Supreme Court, the transfer order can't be challenged otherwise than on the ground of mala fide and colourable exercise of powers. In the instant case, there is no pleading regarding mala fide ~~against~~ or colourable exercise of powers by the concerned authority. Therefore,

in such matters of administration and consequent transfers, the Tribunal will be very slow to interfere. The concerned authorities know it better as to at which place a particular man is to be deputed and where his services can be better utilised. For these reasons also, I would not like to interfere with the transfer orders. In 1994 SCC (L&S) 1304, it has been held that "interference justified only in case of malafides or infraction of any professed norms or principles where career prospects remain unaffected and no detriment is caused, challenge to the transfer must be eschewed". *This rule fully applies in the instant case.*



10. The ruling cited by the learned counsel for the applicants is not applicable in the instant case because of difference of facts. In that case, the Labours were not paid daily allowance by the Railways inspite of facts that they were deputed to work at a place beyond a radius of 8 kms i.e. the Bridge sites. The Railways pleaded that such deputation to work at different sites amounts to transfer. It is in this context, it was held that such casual labours are not liable to transfer and are, therefore, entitled to daily allowance, which is not the case here. Hence, the rule laid down in the ruling does not help the applicants.



11. As discussed above, I do not find any force in these Original Applications. These Original Applications deserve to be dismissed and are hereby dismissed at the stage of admission with no order as to costs.

Sd/
(A.K. Misra)
Judl. Member

प्रमाणित सही प्रतिलिपि

MEHTA

प्रमुख अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

Part II and III destroyed
in my presence on 2/15/03
under the supervision of
section officer () as per
order dated 4/2/03

Section officer (Record)

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