

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR

Original Application No. 311/1997
Jodhpur the 24th day of Dec., 1997

Mahabir Prasad S/o Shri Phool Singh, By Caste Jatav
(SC), R/o A/3, Arvind Nagar, Near Central School No.
1, Air Force, Jodhpur, presently working as Bridge
Inspector Gr. I under Assistant Bridge Engineer,
Northern Railway, Jodhpur.

..... Applicant.

Vs.

1. Union of India through the General Manager, Head-quarters Office, Northern Railway, Baroda House, New Delhi.
2. Chief Bridge Engineer, Headquarters Office, Northern Railway, Baroda House, New Delhi.
3. General Manager (Personnel), Northern Railway, Baroda House, New Delhi.
4. Divisional Railway Manager, Northern Railway, Jodhpur.
5. Assistant Bridge Engineer, Northern Railway, Jodhpur.
6. Ranveer Singh, Bridge Inspector, Gr. II, Working under Dy. Chief Engineer (C), Northern Railway, Jodhpur.

..... Respondents.

Mr. N.K. Khandelwal, counsel for the applicant.

Mr. R.K. Soni, counsel for respondents No. 1 to 5.
None present for respondent No. 6.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.
Hon'ble Mr. Gopal Singh, Administrative Member.

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PER HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER :

The applicant has filed this O.A. with the prayer that the order Annex.A-1 dated 19.09.1997 be quashed and the respondents be directed to allow him to remain at Jodhpur till the end of current academic year. He has further prayed for a direction that the post of Bridge Inspector Grade-I which is lying vacant at Delhi Safdarjung be ordered to be temporarily transferred to Jodhpur.

2. Notice of this O.A. was issued to the respondents. Respondents have not filed their reply inspite of many opportunities.

3. Before we proceed further, it would be advantageous to mention that on 3rd Oct., 1997 when the respondents sought time for filing reply, the learned counsel for applicant insisted that the matter of interim relief be heard and decided. After hearing the counsels for the parties on interim relief, it was held that the transfer order cannot be kept in abeyance and maintenance of status quo cannot be ordered as an interim relief.

4. In this case the respondents authorities have not cared to file their Counter in their defence till 15.12.1997, therefore, it was ordered by the Bench on 15.12.1997 that 'since the respondents have not come-up with their defence, the O.A. will be finally heard on merits on 17.12.1997'.

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5. We have heard the learned counsels for the parties.

6. The applicant has mentioned in the Application that in order to accommodate Shri D.K.Sharma, the permanent post of Bridge Inspector Grade-I on which the applicant was working has been transferred to Shakoor Basti, Delhi and further in order to accommodate Shri B.L.Meena at Jodhpur, a similar post on work charge basis, ^{has} been created at Jodhpur. The applicant has also mentioned that since he has been demanding allotment of the ear-marked accommodation which is in an un-authorised occupation of respondent No. 6 Shri Ranveer Singh, Bridge Inspector-Gr.II who has been transferred to Jalandhar Cantt., he has been picked-up for transfer to Delhi arbitrarily. The transfer is mala fide and is a mid term transfer. The education of his children will be adversely affected by this transfer. He has prayed for quashing the transfer order as mentioned above.

7. The learned counsel for the applicant has advanced arguments elaborating the facts stated above and in the end prayed that till the end of academic session, the applicant may be accommodated at Jodhpur. He has cited the following rulings in support of his contentions :-

1. 1994 (28) ATC Page 99
Director of Schools Vs. Karuppa and Ors.
2. 1993 (23) ATC Page 596
S.S.Verma Vs. U.O.I.
3. 1997 (2) ATC Page 608
U.C.Chaturvedi Vs. U.O.I.

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4. AIR 1997 SC Page 3067
Arvind Dutta Vs. State of Maharashtra.

8. During the course of arguments, it was admitted by the learned counsel for the applicant after consultation with the applicant that applicant has not received the transfer order as yet and he is on leave since 27.9.1997 till date. Besides, this, it was also admitted that applicant has been working on this post since August 1994 and has already completed three years tenure posting at Jodhpur.

9. On the otherhand, the learned counsel for the respondents wanted to argue that applicant is facing a CBI Inquiry and Disciplinary action has also been initiated against him. But in absence of any written submissions, arguments on these lines were not permitted and the ^{Learned} counsel was directed to confine his arguments only on legal issues. He has argued that this is a case of normal transfer. Similar school facilities are available at Delhi, therefore, the ground of mid-term transfer is of no importance. The transfer order can be interfered with only if the same has been made in colourable exercise of powers or done malafidely. But in the instant case, applicant has not been able to bring on record facts relating to mala fide or colourable exercise of power. Hence, he is not entitled to any relief.

10. We have considered the rival arguments. Having refused to put the transfer order in abeyance as a measure of interim relief earlier we were of the opinion that applicant is not entitled to any relief

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in this O.A. But looking to the respondents conduct of not replying the O.A. even after lapse of three months, we are of the opinion that transfer order is required to be put in abeyance till the end of academic session which according to the school certificate (Annex.A-4) comes to an end on 31.3.1998.

Needless to say that in the instant case, the applicant has not been able to make out a case of mala fide transfer or transfer in colourable exercise of powers. The applicant has completed his three years tenure at Jodhpur and he cannot insist to be retained at Jodhpur either on the present post or on the other equal ranking post beyond the educational session.

Appropriate action for eviction and recovery of penal rent is being initiated or taken against the unauthorised occupant Shri Raghuvir Singh (Respondent No. 6) as is revealed by Annexs. A-7 to A-11 by the concerned authorities. Therefore, the applicant cannot be benefitted by arguing that he has been transferred to accommodate Shri Raghuvir Singh. Hence, the arguments based on these facts are not accepted.

11. The applicant has produced certain documents alongwith his additional affidavit dated 15.12.1997. These documents are copies of attendance register and pay role. From a perusal of the copy of attendance register, it appears that applicant has been shown absent through-out October and November, 1997 but from the pay role, it appears that the Pay for the month of November, 1997 was paid to the applicant. It is difficult to understand as to how

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the period of absence during the months of October and November, 1997 was regulated in order to make payment of Pay to the applicant relating to that months. There seems to be some manipulation at some level to be looked into by the concerned authorities. However, looking to his own admission in the Court, applicant is said to be on leave from 27.9.1997 till date. Therefore, we leave this question open for the Railway authorities to decide as to how the period starting from 27.9.1997 till the applicant reports back on duty is to be regulated.

12. It appears from Annex.A-12 that applicant represented against the present transfer and submitted a representation to his immediate superior who in his turn forwarded the same to the Superintending Engineer on 24.9.1997. It is not known as to what decision has been taken on this representation. Needless to say that in the matter of transfers, such representation should be promptly decided but inspite of lapse of more than 2½ months the concerned authorities have not taken any decision on this representation and if any decision has been taken, the same has not been brought on record by the respondents. For this reason also, we think it appropriate to put the transfer order in-operative for the present till the end of the educational session. To this extent, the O.A. deserves to be accepted.

13. The O.A. is, therefore, partly allowed.
The operation of Transfer order dated 19.9.1997

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(Annex.A-1) is put in abeyance qua the applicant for the time being only till 31st March, 1998 i.e. till the end of educational session as per Annex.A-4. The order Annex.A-1 shall be operative on 1.4.1998 and the applicant shall stand relieved in the afternoon of 31st March, 1998. The respondents authorities shall take all necessary steps to relieve the applicant before the appointed day by either posting relieving hand in place of the applicant or pass orders as to who shall relieve the applicant by taking the charge of his post.

14. The Pay of the applicant for the period of absence shall be regulated as per the applicant's application etc. and Rules in force.

15. The Pay of the applicant shall be chargeable against the post transferred to Delhi or against any other equal ranking post lying vacant at the moment at Jodhpur. However, this is made clear, that such adjustment shall not enable the applicant to claim any extra allowance like deputation allowance or allowance of any other kind.

16. The parties are left to bear their costs.

Gopal Singh
24/12/97
(GOPAL SINGH)
Member (Adm)

A.K.Misra
24/12/97
(A.K.MISRA)
Member (Jud)

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