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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

DATE OF ORDER : 23.11.1998.

ORIGINAL APPLICATION NO. 124/1998.

Shri V.N.Atrolia S/o Late Shri L.N.Mathur, aged about 56 years,
R/o Qtr. No. E-16, Railway Colony, Samdari, Northern Railway at
present employed on the post of Assistant Engineer, Samdari,
Northern Railway.

.....APPLICANT.

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur Division, Jodhpur.
3. Shri B.S.Kapur, Chief Engineer, Northwest Railway Zone, Jaipur.
4. Shri S.N.Sharma, Assistant Engineer, Northern Railway, Samdari Station.

.....RESPONDENTS.

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Mr. J.K.Kaushik, Counsel for the applicant.

Mr. V.D.Vyas, Counsel for the respondents-No. 1 and 2.
None present for respondents No. 3 and 4.

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CORAM :

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

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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PER MR. A.K.MISRA :

The applicant has filed this O.A. with the prayer that
the impugned order dated 19.2.1998 (Annex.A/1) passed by first
respondent ordering the transfer of applicant from

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Samdari to Delhi and the relieving order dated 4.3.1998 (Annex.A/2) be quashed with all consequential benefits. The applicant had also prayed for staying the operation of the impugned order qua the applicant. After hearing the learned counsel for applicant only notices to the respondents were issued and no interim relief was granted.

2. The applicant has challenged the impugned order on the ground that the transfer order is punitive in nature. The transfer order is mala fide because it has been made to accommodate respondent No. 4 who was manning a post at Jodhpur which was abolished. The respondent No. 4 was adjusted vice the applicant. For all these reasons, the transfer has been challenged.

3. The respondents have filed reply alleging that the transfer of the applicant has been made in administrative exigencies. The applicant was found working in breach of certain rules in respect of many actions. The Administration had posted the respondent No. 4 in place of the applicant in order to manning the post by more capable person than the applicant. It is also alleged by the respondents that it is not necessary that only that person should be transferred whose post stands abolished. The Administration has to see as to who is the fit person to be retained and who deserves to be transferred. For these reasons, the transfer order is perfectly legal and is as per rules.

4. We have heard the learned counsels for the parties and gone through the case file.

5. In absence of any interim order, the applicant is said to have joined at his new place of posting. From the various documents filed by the applicant alongwith the O.A. it appears that applicant who was at that time working on the post of

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Assistant Engineer (Construction), was transferred to Jaisalmer in the same capacity vide order dated 16.9.1996 (Annex.A/3). From Jaisalmer the applicant was transferred along with his post vide order dated 19.5.1997 (Annex.A/4) to Samdari and again he was shifted to Delhi vide order dated 19.2.1998 and was spared by the Divisional Railway Manager vide its order dated 4.3.1998 (Annex.A/2). Thus, it appears that applicant has been subjected to frequent transfers during the past year and a half. It is also borne out from the documents that the respondent No. 4 who was working in January 1998 as Assistant Engineer (Lines), Jodhpur, was transferred as Assistant Bridge Engineer, Jodhpur, in place of Sukhdev Singh who was on leave, vide order dated 7.1.1998 (Annex.A/6). Thereafter, he was adjusted by way of transfer in place of the applicant. The post at Jodhpur on which the respondent No. 4 was working is said to have been abolished. It is not clear from the record as to when Shri S.N.Sharma was posted at Jodhpur but it appears that this is a case in which Shri S.N.Sharma has been adjusted while the applicant was disturbed by way of transfer.

6. There is nothing on record to support that the applicant was found working against the rules in certain respects, therefore, it cannot be gainfully said by the respondents that the applicant has been shifted in order to run the office of the A.E.N. by a more competent person than the applicant. In our opinion, this statement of the respondents amounts to causing stigma on the applicant and his working. There is no material as to when the applicant has been proceeded with departmentally for his not working as per the rules, therefore, this cannot be also said that a more efficient person was required to be posted vice the applicant. If a person is not working as per the rules and is also not efficient in the eye of administration then frequent transfer would hardly improve the situation. In such case something other than transfer was

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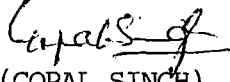
required to be adopted by the department but the department cannot justified frequent transfer of the applicant by bringing on record such statement as they have made in their reply without any supportive documents. In our opinion, this is a case where certainly the applicant has been transferred only to accommodate Shri S.N.Sharma. We are conscious of the legal position that transfer made in administrative exigencies cannot be quashed unless the same has been made malafidely and in colourable exercise of power. In the instant case, frequent transfers of the applicant, adjusting Shri S.N.Sharma once at Jodhpur and then at a nearest point from Jodhpur i.e. Samdari, by alleging in efficiency against the applicant without any supportive document and material and finally alleging working of the applicant in breach of the rules without any material on record, go to show that the action of the respondents No. 1 and 2 is not a bonafide action. It smacks of colourable exercise of power.


7. Shri B.S.Kapur, Chief Engineer, Northern Railway, Jaipur has been made a party respondent against whom there are allegations of malafidely adjusting the respondent No.4 to Jodhpur and then to Samdari has preferred not to file any reply to the allegations of the applicant, therefore, there is no reason to dis-believe the allegations of the applicant as mentioned in the O.A. In absence of reply of respondent No. 3, it can be inferred that the allegations of the applicant against the respondent No. 3 in respect of adjustment of respondent No. 4 by way of transfer in his place, are correct and for the reasons stated above, the same cannot be held to be a transfer on administrative reasons.

8. From the foregoing discussion, we come to the conclusion that the transfer order dated 19.2.1998 (Annex.A/1)

and the consequent order sparing the applicant from his present post dated 4.3.1998 (Annex.A/2) cannot be sustained as legal and bonafide. The O.A. deserves to be accepted and the orders deserve to be quashed.

9. The O.A. is, therefore, accepted and the order of the respondent No. 1 dated 19.2.1998 (Annex.A/1) and consequent relieving order passed by the respondent No. 2 dated 4.3.1998 (Annex.A/2) are hereby quashed with all consequential benefits to the applicant. The parties are left to bear their own costs.


(GOPAL SINGH)
Administrative Member


(A.K.MISRA)
Judicial Member

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Rec'd on 27/11/52

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316

Part II and III destroyed
in my presence on 24/2/56
section the supervision of
order dated 20/12/55

Section Officer (Records)