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In the Central Administrative Tribunal, Jodhpur Bench,
Jodhpur

Date of order : 31.8.2000

O.A. No. 281/99

Pawan Kumar Upadhyaya S/o Shri Shiv Kumar Upadhyaya aged about 44 years, R/o Vill. Pandoli Tehsil Kapasan Distt. Chittorgarh at present employed on the post of Station Master Pandoli, Western Railway, Distt. Chittorgarh.

..... Applicant.

vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Shri Giriraj Meena, Senior Divisional Operating Manager, Western Railway, Ajmer Division, Ajmer.

..... Respondents.

...

CORAM :

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

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

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

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BY THE COURT :

The applicant has moved this O.A. with the prayer that the impugned transfer order dated 9.9.99 (Annex.A/1) transferring the applicant from Pandoli to Marwar Junction be declared illegal and be quashed with all consequential benefits.

2. Notice of the O.A. was issued to the respondents

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and the respondents sought time to file reply, therefore, an interim order was issued and the applicant is continuing at the old station.

3. We have heard the learned counsel for the parties and have gone through the case file. The applicant has challenged the transfer order on the ground that the applicant was transferred during the mid educational session, he was not allowed to complete his normal tenure of stay of five years and was transferred in about two and a half years posting, the respondent No.3 bears malice against the applicant and applicant's transfer is at his instance and he has been transferred to Marwar Junction by down grading a post at Marwar Junction. Thus, the action of the respondents is a colourable exercise of power and the transfer is as a measure of punishment and not in public interest.

4. The contentions of the respondents are that the transfer is in public interest. Due to certain complaints against the applicant, the applicant has been transferred to new place in administrative exigencies. Respondent No.2 is the transferring authority and male fides of respondent No. 3 are of no consequence. Respondent No.3 is subordinate to respondent No.2, therefore, there is no question of respondent No.3 prevailing over respondent No. 2 for the transfer of applicant. The OA bears no merit.

5. I have considered the facts of the case. The law relating to interference in transfer matters is more than settled. Transfer of a Government employee is a necessary event of service carrier. When a Railway employee has a transfer liability all over the zone then his transfer from

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one place to another cannot be treated due to mala fide actions. If there are complaints against a Government servant at a particular station, it is not necessary that he should be departmentally dealt-with instead of being transferred. Proper working or otherwise of a particular employee at a particular station is a question of consideration by the higher authorities and if due to the working of an individual, it is thought better to transfer him from that station to another station, then no fault can be found in such transfer order.

6. The respondent No. 2 has transferred the applicant and no malafides have been alleged against the respondent No. 2, therefore, allegations of mala fide against respondent No. 3 are of no consequence. It is difficult to apprehend that respondent No. 2 was prevailed-over ^{by} respondent No. 3 to transfer the applicant from Pandoli to Marwar Junction. It may be mentioned here that supervisory authorities have the over-all responsibility of proper working of that section and if somebody is not found properly working then such person can be transferred at the behest of such supervisory authority but that cannot be interpreted as mala fide action of such authority. No doubt, many allegations have been levelled against respondent No. 3 relating to mala fides by the applicant but per se they are difficult to believe. There is nothing on record to establish that respondent No. 3 had borrowed money from the applicant for purchase of a taxi. The notice which the applicant had got issued to respondent No. 3 through his advocate does not speak a word about such money. It only speaks about placing the applicant without charge at Pandoli station and ^{claimed} damages due to mental agony. The action of the respondent No. 3 in this regard cannot be

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considered more than a necessary administrative action and no mala fides can be inferred simply because the applicant was asked to hand-over the charge to his colleague or was placed under suspension.

7. The applicant himself had represented to the authorities for staying the operation of the impugned transfer order till the school session is over vide Annex. A/6. The school session had come to an end by the middle of May, however, the applicant is continuing at the present station due to the stay order of the Court. Therefore, the ground of mid-term transfer of the applicant is no more available to the applicant now.

8. The allegation of the applicant that he has been transferred to Marwar Junction by down grading a higher post at Marwar Junction to the level of the applicant's pay scale, is also of no consequence. The authority competent to transfer the applicant is also competent to up-grade or down-grade a post at a particular station keeping in view the over all cadre strength. This action of the respondent No.2 cannot be viewed otherwise than an administrative action. So long the applicant is not made to suffer financially by the action of the transferring authorities, he cannot have any grudge in respect of his posting at a particular station by down-grading available higher grade post at ~~8~~ transfer the applicant to such station. Therefore, the arguments in this respect are difficult to accept.

9. It was argued by the learned counsel for the applicant that mala fide of the respondents is also evi-

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dent from the fact that the respondents entered a caveat in the Court apprehending action by the applicant for cancellation of such transfer order but in my opinion, this argument is difficult to accept. The law provides for such action by the respondents. Entering a caveat only means that ex parte orders may not be passed in favour of the applicant. It also means that before any order is passed in a particular matter, the other party should also be heard. Demand for hearing is one's right, caveat is an instrument by which such demand is put forward, therefore, no mala fide can be inferred out of the action of the respondents in this regard. In my opinion, the applicant has not been able to establish that the impugned transfer order is in colourable exercise of power and was result of mala fide action of the respondents. The O.A. in my opinion is devoid of merit and deserves to be dismissed.

10. The O.A. is, therefore, dismissed. The parties are left to bear their own costs. The interim stay order issued by this Tribunal on 7th October, 1999, stands vacated.

Jan 31/8/2000

(A.K.MISRA)

Judicial Member

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2012

Part II and III destroyed
in my presence on 07/19/2012
under the supervision of
Section Officer (J) as per
order dated 07/11/2012

Naresh
Section Officer (Records)