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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR

Original Application No.280/2003

Date of decision : This the 5th day of March, 2004.

Hon'ble Mr. J.K.Kaushik, Judicial Member

Nemi Chand S/o Shri Mangal Pointsman 'B', North West Railway, Bikaner Station, Resident of Rampura Basti Street No. 18, Near Charan School, Bikaner (Raj).

[By Advocate Mr.M.K.Shrimali, for the applicant]

.....Applicant.

vs.

1. Union of India through General Manager
North West Railway Headquarter (Old Loco Colony Area)
Jaipur.
2. Divisional Railway Manager, North West Railway,
Divisional Office, Bikaner.
3. Divisional Personnel officer, North West Railway,
Divisional office, Bikaner.
4. Assistant Operating Manager,
North West Railway, Bikaner Divisional Office, Bikaner.
5. Shri Raja Ram, Pointsman North West Railway,
Bikaner East Railway Station, Bikaner.

[By Advocate Mr. N.K.Khandelwal, for respondents 1 to 4]

[By Advocate Mr. Y.K. Sharma, for respondent No. 5]

.....Respondents.

ORDER
[BY J.K. KAUSHIK,JUDICIAL MEMBER]

A very short legal question i.e., whether a transfer order which has been executed can be cancelled, is required to be answered in this case. The facts of this case, as succinctly put in are that Shri Nemi Chand while working on the post of Pointsman 'B' at Bikaner East Railway Station applied for mutual

exchange transfer with one Shri Raja Ram, Pointsman 'B' posted at Bikaner Railway Station on dated 6.6.2003. Their controlling authorities gave no objection on their application.

2. The same culminated in issuance with a transfer order vide letter dated 17.7.2003 (A/3). The applicant carried out his transfer and joined at the new place of posting on dated 26.7.2003 and the transfer order was executed in respect of him. Subsequently, the said order of the transfer was ordered to be cancelled vide letter dated 27.8.2003 (A/2). The applicant also protested against the said cancellation but, the same has been turned down vide letter dated 6.11.2003 (A/1), hence, this application for queshment of the orders at Annexure A/1 and A/2 amongst other reliefs. The grounds are intermixed with the facts and shall be dealt with a little later in this order.

3. The respondents have contested the case and have filed their separate replies. The reply of the official respondents has remained in defects. However, an affidavit has been filed on their behalf. It has been averred that applicant had joined at new place on 26.7.2003 itself and Shri Raja Ram, could not be spared to carry out transfer due to his sickness and subsequently, due to operation of stay order. In the reply filed on behalf of the 5th respondent, it has been averred that his consent was obtained by deceit using of false reference of facts. A complaint was made by him immediately and competent authority passed the impugned order after considering the same.



The applicant has been inflicted with the penalty of WIT for six months without future effect.

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4. With consent of learned counsel for the parties, arguments were heard for final disposal at admission stage and I have bestowed my earnest consideration to the pleadings and the records of this case

5. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the Original Application. He has contended that the applicant had already carried out the transfer order and once the transfer order has been executed the same cannot be cancelled. He has also submitted that the applicant has already changed his position and joined at the new place of posting in pursuance with the order passed by the competent authority. The impugned orders are nothing but arbitrary exercise of power.

6. The learned counsel for the respondents have vociferously contended that the applicant has played a fraud and obtained the consent of the 5th respondent by deceitful means. For this purpose the applicant as well as the 5th respondent were subjected to disciplinary proceedings and have been inflicted with minor penalties. The transfer order has been cancelled for cogent reasons. Numerous citations were quoted on behalf of the respondents on the issue relating to transfer order on the



point that transfers made in the interest of administration cannot be interfered.

7. I have anxiously considered the submissions made on behalf of all the parties. I am cautious regarding the powers of the judicial review in the matters of transfers especially in the interest of administration. Unfortunately, I am dealing with a case relating to mutual exchange transfer and not with a case of administrative interest transfer. None of the authorities cited is of any help to the respondents.

8. Here is case where the transfer was on mutual exchange basis and the applicant has already carried out the same. The transfer order stood executed in respect of the applicant. Specific query was made to the learned counsel for the respondents as to whether a transfer order once executed can be cancelled. But no direct and satisfactory reply was forthcoming. Incidentally, similar issues have come up for adjudication in the past and recently the Rajasthan High Court Jodhpur also adjudicated the same in case of Kalu Singh Vs. State of Rajasthan and Ors. [2003 (3) SLR Page 102], wherein their Lordships have held as under :-

"5. This court in the case of Gangaram Bishnoi vs. State and Ors. reported in WLR 1994 Raj. 537 has held that once transfer order stands executed and implemented, it could not be cancelled and the respondents could have passed fresh transfer order transferring the petitioner if in the exigency of administration it was so required."

In this view of the matter, the issue does not remain res integra and stands settled. I have no hesitation to apply the

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ratio of the said judgement to the instant case and decide the same on similar lines.



9. In the premises, the Original Application merits acceptance and stands allowed accordingly. The impugned orders dated 06.11.2003 (Annexure A/1) and 27.08.2003 (Annexure A/2) are hereby quashed and the applicant shall be entitled for all the consequential benefits. It shall be scarcely necessary to mention that this order shall not preclude to issue fresh order in case the same is required in the interest of administration. Costs made easy.

J.K.Kaushik
(J.K.Kaushik)
Judl.Member

jrm

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Part II and III destroyed
in my presence on 23/10/13
under the supervision of
section officer () as per
order dated 18/10/2013

D.R. Shrivastava
Section officer () 23.10.2013