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CENTRAL ADMINISTRATIVE TRIBUNAL

Jodhpur Bench : Jodhpur.

Original Application Nos. 79/2002, 80/2002 & 81/2002

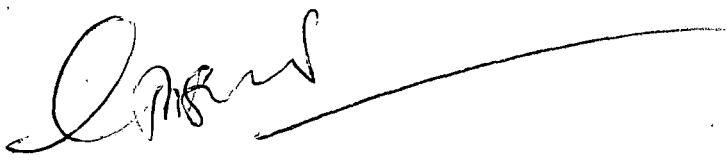
1. Chhotu Ram, S/o Shri Jodha Ram Ji,
r/o Bhagat Ki Kothi, Qr. No. 1073
Loco Diesel Shed Colony, Jodhpur. : Applicant in O.A.No.79/2002
2. Hemant Kumar (a) Hemant Mishra
S/o Shri Narayan Prasadji,
Qr. No. DL/4D Bhagat Ki Kothi
Jodhpur : Applicant in O.A.No.80/2002
3. Om Prakash (a) OM Dave
S/o Shri Parasram Ji,
r/o Brahampuri
Jodhpur : Applicant in O.A.No.81/2002

represented by Mr. R.K. Soni: Counsel for the applicant in
O.A. No. 79/2002

Mr. S.K.Malik: Counsel for the applicants
in O.A. Nos. 80/2002 & 81/2002

-- versus --

1. Union of India, through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Jodhpur.
3. Divisional Personnel Officer,
DRM Office,
Northern Railway,
Jodhpur. : Respondents 1 to 3 in
all the three O.As.



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4. Senior Section. Engineer (Diesel)
Northern Railway
Bhagat Ki Kothi
District Jodhpur.

5. Shri Kailash Panwar,
DPQ, D.R.M.s Office,
Northern Railway,
Jodhpur.

6. Shri S.R. Vyas,
Senior Sec. Engineer (Diesel)
Northern Railway,
Bhagat Ki Kothi
Jodhpur.

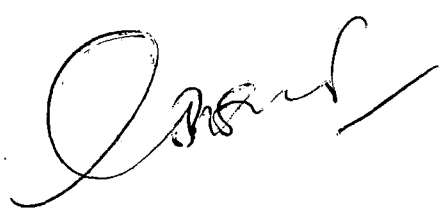
: Respondents 3 to 6
in all the three OAs.

Mr. Salil Trivedi : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

Date of the order: 27.01.03



Per Mr. Justice G.L.Gupta:

Identical questions of law and facts have arisen in all the three cases and therefore they have been heard together and are being disposed of by this common order.

2. Applicants are Technician Gr.II. They have been transferred from Jodhpur to three different places along with the post. Applicant Chhotu Ram has transferred from Bhagat Ki Kothi, Jodhpur to Jenal, Applicant Hemant Kumar to Kavas and applicant Omprakash to Parihara vide separate orders ~~Issued~~ issued on 22.3.2002. They were relieved on 23.3.2002 and they have joined the new places of posting.

3. The grievance of the applicants is that there is no Loco Shed on the places where they have been transferred and as such there would be no work for them. It is alleged that before the transfer orders were issued, charge sheets had been served upon the applicants and they have been transferred as a measure of penalty without affording an opportunity of hearing. It is averred that the applicants are the members of the Trade Union known as Technical Employees Association of Railways. Applicant Chhotu Ram is the General Secretary and the other two applicants are the Vice Presidents. The case for the applicants is that a news item was published in the News Paper on 19.3.2002, that there was collision of two engines in the Loco Shed on 30.1.2002 and for the leaking of the incident, the respondents have suspended the applicants. It is stated that earlier also there was collision of two diesel engines in the Loco Shed causing extensive damage of the engines which were not properly and fully repaired by the officers and used one engine for pulling the Howrah Express Train. The result was that the engine failure at Gotan station causing



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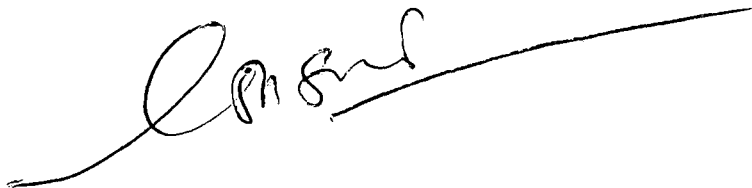
huge loss to the tune of 3 crores to the Railways. It is alleged that the respondent officers had threatened the applicants before the transfer orders were issued. It is further averred that the transfer of the applicants was malafide exercise of power and therefore the transfer orders are liable to be quashed.

4. In the counters filed separately in all the three cases, the respondents have denied that the applicants have been transferred because of the news item published in the news paper. It is also denied that the applicants are the members of the recognised Trade Union. It is stated that the transfer orders have been issued in the exigency of service and the applicants have been transferred to 3 stations of Meter-gauge section, so that they can attend the repair of the engines then and there. It is denied that the respondents were annoyed with the applicants and they had given threatening to the applicants. It is stated that the Office Bearers of the Trade Union are different persons as per the intimation given by the Union in the year 2000.

5. In the rejoinders, the applicants have reiterated that they are the Office Bearers of the Union.

6. we have heard the learned counsel for the parties and perused the documents placed on record.

7. The contention of the learned counsel for the applicants was that the applicants have been victimised by way of transfer because of the news item published in the news paper about the incident of collosion of the engines in the Loco Shed. It was pointed out that the applicants are the Office Bearers of the Union and no elections have been held after 1998. It was canvassed that the applicants ought not have been transferred during the pendency of enquiry. It was also contended that the Divisisonal Railway

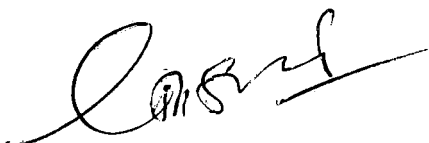


Manager did not have the power to transfer the applicants along — with the posts from Jodhpur to other stations. Reliance was also placed in Dharam Pal Singh vs. Union of India and others (1990 (3) SLR 213); Rajendra Chaubey vs. Union of India and others (1995 31 ATC 237); Kamlesh Trivedi vs. Indian Council of Agricultural Research and another (1988 7 ATC 253); D.K.Gupta vs. Union of India and others (2001 (3) ATJ 49). Reliance was placed on the cases of B.Varadha Rao vs. State of Karnataka and others(AIR 1986 SC 1955); B.K.Katkar and others vs. Union of India and others (2002 (2) ATJ 377).

8. On the other hand, the learned counsel for the respondents contended that the transfer orders of the applicants have been issued by the competent authority keeping in view the exigency of service. It was canvassed that the Court cannot be justified in interfering with the transfer orders. He pointed out that DRM is the competent authority to transfer the applicants from one place to another and also change of headquarter of the posts. It was ~~stressed~~ that it is not correct that the applicants have been transferred because of the publication of the news item or that it is the case of malafide exercise of power.

9. We have given the matter our thoughtful consideration. At the outset, it may be stated that in the O.As it is nowhere stated that the DRM did not have the power to transfer the posts from Jodhpur to elsewhere under his jurisdiction. This point was agitated for the first time during course of argument.

10. The learned counsel for the respondents has placed before us a copy of the order issued by the General Manager, Northern Railway on 22.6.89. The order is on the subject of 'Revised enhanced delegation of powers on Miscellaneous matters'. Annexure appended to the letter indicates that in respect of non gazetted posts, full powers have been given to the DRM for

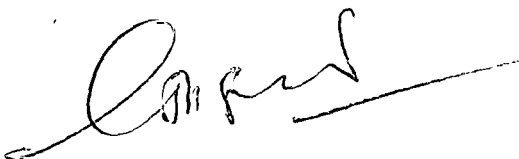


creating or abolition of posts. When the DRM has been empowered even to create or abolish posts it has to be accepted that he has also got powers to transfer posts from one headquarters to another headquarters under his jurisdiction. The Annexure further says that within the same Railways, the DRM enjoys full powers in respect of Class IV and Class III as regards their transfer. So also, it is stated that DRM enjoys full powers in respect of fixation headquarters of non gazetted posts under him. It is obvious that Item Nos. 1, 18 and 25 empower the Divisional Railway Managers to transfer non-gazetted staff working under him to any other station and also to transfer a post from one station to another station.

11. The next question to be considered is whether on the grounds stated in the O.A. impugned transfers can be held to be malafide exercise of power. It is averred that the respondents were under the wrong belief that the news of accident in the loco shed was leaked by the applicants and hence they have been transferred.

It seems that the applicants have presumed that the respondents were labouring under the impression that they had leaked the incident of collision to the press. There is absolutely nothing on record to believe that the respondent No. 2 had ordered the transfer of the applicants on the ground of publication of the news item on 17.3.2002, much less that he had presumed that the news of accident was leaked by the applicants. It may be that the news item was published on 19.3.2002 and the applicants transfer orders were issued on 23.3.2002. But on this ground it cannot be inferred that the applicants have been transferred because of the news item published in the news paper. The respondents have emphatically denied that the respondent No. 2 had a belief that the applicants had leaked the news about the accident. It is stated in the reply that the transfer orders have been issued in public interest and exigency of service.

12. The next contention of the learned counsel for the applicants was

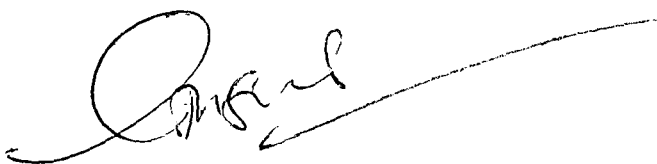


that there are no loco sheds at Jenal, Kavas and Parihara and therefore there would be no work for the applicants. In this connection, our attention was drawn to the letter written by the Station Master, Kavas, to the Divisional Personnel Officer, wherein it was asked as to what would be the duties of Hemant Kumar (applicant in O.A.80/2002).

13. The respondents' case is that all the three stations, where the applicants have been transferred, are in the Metergauge section and as there is no loco shed for the Meter gauge, the applicants have been transferred to carry out the minor and urgent repairs of the engines of the Meter gauge. There is absolutely no cause to disbelieve this statement of the respondents. The administration is the best judge to decide as to how and where the work is to be taken and from whom. The applicants cannot compel the respondents to keep them at Jodhpur Loco Shed on the ground that there is no Loco shed at the stations, where they have been transferred.

It may be that the Station Master, Kavas, did not know, while writing the letter on 5.10.2002 as to what were the duties of Hemant Kumar(applicant) but that does not mean there was no work for Hemant Kumar. It was not argued before us that the Railway authorities did not inform the concerned Station Masters to get the Meter gauge engines repaired by the applicants. The applicants have been sent to various stations for definite purpose. The Court cannot sit over the administrative determination in this regard.

14. It was further contended that the applicants had been charge sheeted and when the enquiries were pending against them the transfer amounted to punishment without finding them guilty.



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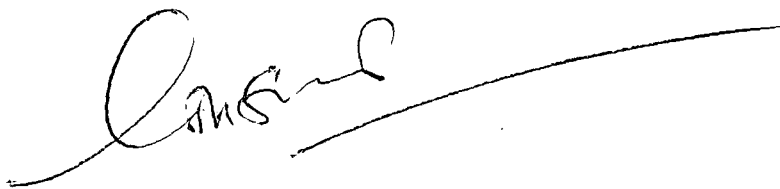
The argument is devoid of substance. Merely giving a charge sheet does not prevent the authorities from transferring the charged employees. It is not the legal position that when the employees are facing disciplinary proceedings, they cannot be transferred. It is true that punishment cannot be imposed without holding proper inquiry. As a matter of fact the transfer is quite different from the initiation of disciplinary proceedings. The transfer is only an administrative action of the respondents. It has nothing to do with the pendency of the disciplinary proceedings which culminate into imposition of penalty.

15. That being so, it cannot be said that when the orders of transfer were issued by the 2nd respondent it was malafide exercise of power. Transfer orders have been issued in public interest. It is not the case for the applicants that the DRM did not have the power to transfer the applicants or that the the transfer orders are against the statutory rules.

The Apex Court has observed time and again that Courts should not interfere in the matters of transfer. The scope of judicial review in the matters of transfer is very limited. Courts can interfere in the transfer orders only when the transfer order is shown to have been issued by an authority, not competent to transfer, or the transfer is against the statutory provision or there was malafides on the part of the transferring authority: See State of Madhya Pradesh and another vs. S.S.Kourav and others (AIR 1995 SC 1056).

In the case of State Bank of India vs. Anjan Sanyal and others (2001 SCC (L&S) 858), their Lordships of the Apex Court have observed as follows:

An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be



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interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is malafide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order....."

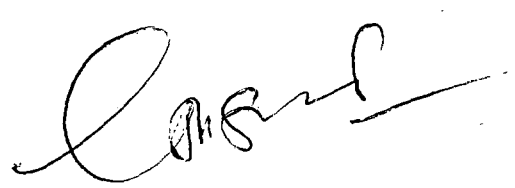
In the case of National Hydroelectric Power Corporation vs. Shri Bhagwan and another (2001 (6) Supreme 883) it was observed as follows:

.....It is now well settled and often reiterated by this Court that no Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of service concerned....."

16. The rulings of C.A.T. relied on behalf of the applicants can hardly assist the applicants in the presence of the authoritative pronouncements of the Apex Court.

Moreover, the cases of D.K.Gupta and Dharam Pal Singh (supra) were decided by a Single Member Bench and the decisions were rendered on the peculiar facts of the cases. In the case of D.K.Gupta(supra) the learned Single Member perused the various departmental files and was satisfied that the foundation of the transfer was complaint which was motivated by the personal prejudice of the respondents. It was also noticed that the applicant was transferred within one year from the place where he had gone at his own request on the ground of health condition of his wife.

In the case of B.K.Katkar (supra) it was noticed by the Bench that there was instruction No. 66 of the P & T Manual Vol.III. It was considered that the applicant could not be transferred pending disciplinary



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proceedings/criminal proceedings. Holding that the instruction No. 66 of the P & T Manual was only administrative instruction, it was held that it could not be enforced through Court of law. It was categorically held that the authorities are not prevented from exercising the power of transfer merely because of the pendency of the criminal proceedings/departmental proceedings.

In the case of Kamlesh Trivedi (supra) it was clearly held by the Principal Bench that transfer is an incident of service and not punitive even if it is found that the transfer was for the reason of the complaint against the delinquent employee. Not only that it was observed that pendency of disciplinary proceedings on receipt of a complaint may itself a valid ground of transfer. Thus this ruling does not held the applicants in any manner.

The fact situation in Rajendra Chaubey (supra) was very different. It was noticed that the applicant therein was suspended. The disciplinary proceedings were initiated against him but the next day the suspension order was revoked and the applicant was transferred to another division. Keeping in view the facts and circumstances noticed, it was held that the transfer was not ordered on administrative exigencies or public interest but on the main consideration of alleged misconduct. There is no thing on record to show that in the instant case the applicants have not been transferred in public interest or that they have been atransferred on account of pendency of the disciplinary proceedings.

As to the case of B.Varadha Rao (supra) it may be stated that this ruling in no way helps the applicants. It was held by their Lordships of the Supreme Court in clear terms that the transfer from one place to another is an ordinary incident of service and does not result in any alteration of the conditions of service to his disadvantage. It was also



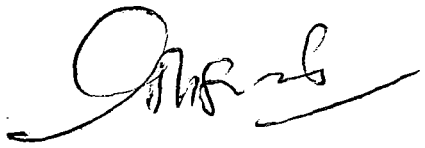
observed that there should not be frequent, unscheduled and unreasonable transfers, which might uproot the family and cause irreparable harm to a Government servant. The instant case does not fall under any such category. The respondents have assigned satisfactory reasons for transferring the applicants from Jodhpur. It is not the case, where the applicants have been frequently transferred.

17. Having considered the entire material on record we do not find merit in these applications and they are liable to be dismissed.

18. Consequently, the applications are dismissed. No order as to costs.


(A.P. Nagrath)

Administrative Member.


(G.L. Gupta)

Vice Chairman

jsv.