

YK

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.

Original Application No. 137/2002

Gopi Lal
S/o Shree Jumma
R/o Ram Nagar
Near Head Post Office
Marwar Junction
Rajasthan. : Applicant

rep. by Mr. S.K. Malik : Counsel for the applicant

-versus-

1. Union of India through
the General Manager
Western Railway,
Church Gate
Mumbai.
2. Senior Divisional Mechanical
Engineer (Sr. DME)
Western Railway
Ajmer (Rajasthan)
3. Divisional Personnel
Officer, Western Railway
Ajmer (Rajasthan)
4. Shri Bansi Lal
S/o Shri Devaji,
Sr. Khalasi
C/o Train Examiner (TXR)
(C & W)
Western Railway
Madar.

rep. by Mr. Salil Trivedi : Counsel for respondents
1 to 3.

CORAM: The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

Date of the order: 11.09.02

Per Mr. Justice G.L. Gupta

ORDER

The challenge in this O.A is the order
of transfer of the applicant from Marwar to Madar



vide order dated 14.5.2002. It is averred that the applicant is Group 'D' employee and is not liable to be transferred. It is further averred that he belongs to S.C. community and as per the Railway Board's orders he is not liable to be transferred. It is also the case for the applicant that he has been transferred in order to accommodate another person which is colourable exercise of power and the order suffers from malafides. The further case for the applicant is that his children are studying in 9th, 10th and 12th classes and High School Education is not available at Madar.

2. In the reply the respondents have resisted the claim of the applicant on the ground that he is liable to be transferred anywhere within the jurisdiction and there are no provisions under which a Scheduled caste member or Class IV employee cannot be transferred. It is averred that respondent No. 4, Mr. Bansilal was waiting in the queue for posting at Marwar Junction on the basis of his claim, but on mistake he was not transferred to Marwar when the promotion order of the applicant was issued.

3. We have heard the learned counsel for the parties and perused the documents placed on record.

4. Mr. Malik, learned counsel for the applicant contended that the applicant could not be transferred from Marwar Junction as he is a member of S.C. community and a Group 'D' employee. He pointed out

Om Singh

that the applicant was given promotion at Marwar Junction itself but subsequently he has been transferred to accommodate R.4. Relying on the cases of Director of School Education Madras and others vs. O. Karuppa Thevan and another (1994 28 ATC 99); S.K. Biswas vs. The General Manager, Vehicle Factory Jabalpur and another (1990 (1) S.L.J. (CAT) 424); D.R. Senchal vs. Chief Post Master General and others (1991 15 ATC 36), he submitted that the order of transfer is liable to be quashed.

5. On the other hand, Mr. Salil Trivedi, learned counsel for the official respondents contended that the transfer is a condition of service and Court should not interfere in such matters. He submitted that R.4, who is senior to the applicant had prior claim for posting at Marwar Junction but by mistake he was not transferred when the applicant was given promotion at Marwar Junction itself.

6. We have given the matter our thoughtful consideration.

7. It is now settled legal position that in the matter of transfer the scope of judicial review is very limited. It has been held in the case of State of Madhya Pradesh and another vs. S.S. Konrav and others (AIR 1995 SC 1056) that Courts/ Tribunals are not appellate forum to decide on transfer made on administrative grounds. It was



observed that unless the transfer is vitiated either by malafides or by extraneous consideration without any factual background foundation, the courts should not interfere.

In the case of State Bank of India vs Anjan Sanyal and others (2001 SCC (L&S) 858)

it was observed that an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be 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 N.K. Singh vs. Union of

India and others (1994 SCC (L&S) 1304) it was observed that interference by the Courts in the matter of transfer is justified only where malafides is established. In that case it was also observed that the element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers.

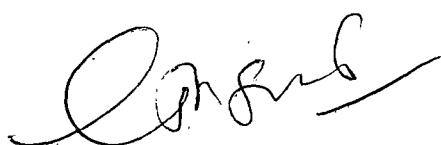
8. Keeping in view the above legal position it has to be held that the scope of judicial review in the matter of transfer is very limited and Courts can be justified in interfering with the transfer



only when it is shown that the order of transfer was issued by an incompetent authority or that the transfer is against the statutory rules or that it suffers from malafides.

9. In the instant case, it is not the case for the applicant that he was transferred by an incompetent authority or that in his transfer, rules have been violated. Of course it is averred in the O.A. that Group 'D' employees or members of SC community cannot be transferred, however, no rule/order or even policy decision in this regard has been brought to our notice.

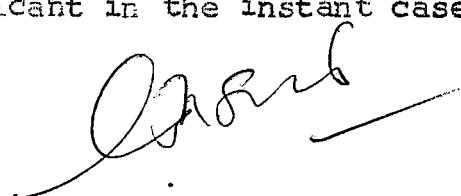
10. The impugned order also cannot be said to be suffering from malafides as it is nowhere stated that somebody wanted to harass the applicant and the transfer order has been issued at his instance. What is stated is that in order to accommodate R.4 the applicant has been transferred. The averments made in the reply are that the name of R.4 who was senior to the applicant had already been noted for his transfer to Marwar Junction but by mistake he was not transferred when the promotion order was issued to the applicant. There is no cause to disbelieve this version of the respondents. The applicant has not refuted the averments made in the reply by filing rejoinder. Since the case of transfer of R.4 was already under the consideration of the respondents and his name had been noted for



transfer to Marwar, it cannot be accepted that there was malafides on the part of the official respondents when the applicant has been transferred to accommodate R.4.

11. As to the cases relied on by the learned counsel for the applicant, it may be stated that in the case of D.R. Sengal (*supra*) which was decided by a Single Member of the Ahmedabad Bench of this Tribunal, transfer was assailed on various grounds including that there was a guideline to the effect that the longest stayee should be transferred first. It was the case of postal employee. There was a policy in the department that a member of SC community should not normally be transferred before completion of his tenure. Keeping in view the facts of that case the transfer order was quashed.

The other relied on by the learned counsel for the applicant is of S.K. Biswas (*supra*). That case was decided by Jabalpur Bench of this Tribunal. There were guidelines in respect of transfer of the employees of the Vehicles Factory. Guidelines were there that ordinarily grade IV employees should not be transferred. Yet it was observed that the employee was under all India liability to serve anywhere in the country. Since reasons were not shown to the Tribunal, the Tribunal directed the respondents to consider the posting of the applicant therein to a near place. The above ruling does not assist the applicant in the instant case.



The case of O. Karuppa Thevan and another (supra) was decided by the Hon'ble Supreme Court and it was decided on 31.1.94. Since the academic year was coming to close, their Lordships directed that the order of transfer may not be given effect till the end of academic year. The order was given by the Apex Court obviously under its inherent plenary powers. It is significant to point out that even in that case it was clearly observed that there is no rule that transfers cannot be made during mid academic year. Keeping in view the ratio of the case, the applicant does not get assistance from this ruling.

12. For the reasons stated above, no case of interference is made out in this matter.

13. Consequently, the application is dismissed. No order as to costs.

anp
(A.P. Nagrath)
Administrative Member

GLG
(G.L.Gupta)
Vice Chairman.

jsv.