

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

O. A. Nos. 127/2007

Date of order: 17.08.2007

Hon'ble Mr. Tarsem Lal, Administrative Member

Shri Sudama Prasad, S/o Shri Sugreev Prasad, aged about 50 years at present working as Cabin Man under the Station Superintendent, North Western Railway Bikaner R/o 228 D Behind Railway hospital New Colony, Lalgarh, Bikaner (Rajasthan)

: applicant.

Rep. By Mr. Y K Sharma : Counsel for the applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Personnel Officer, North Western Railway, Bikaner.
3. Assistant Operating Manager, North Western Railway, Bikaner.
4. Senior Operating Manager, North Western Railway, Bikaner.

: Respondents.

Mr. Vinay Jain ; Counsel for the respondents.

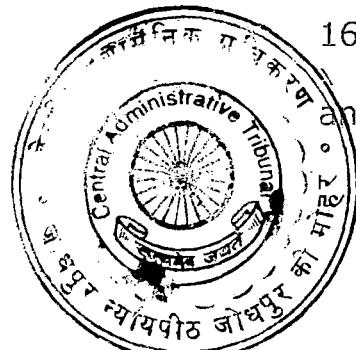
ORDER

Per Mr. Tarsem Lal, Administrative Member.

The applicant has filed this O.A, against the order dated 16.04.2007 (Annex A/1) transferring him from Bikaner to Sarupsar and seeking the following relief:

" (i) That this Hon'ble Tribunal may kindly be pleased to quash and set aside the impugned order dated 16.04.2007 vide (Annex. A/1)"

2. The applicant has submitted that he is presently working as Cabin man at Bikaner Station. He has been transferred from Bikaner to Sarupsar on the basis of a report submitted by respondent No. 3. But neither a copy of the report nor its contents



(Signature)

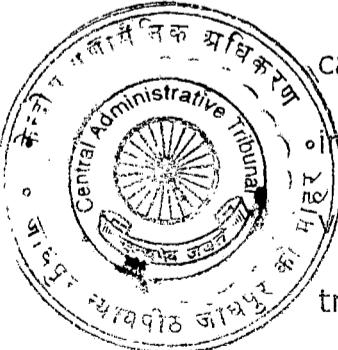
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were indicated in the transfer order. The applicant submitted a representation dated 09.05.2007 (Annex. A/2) to the 4th respondent. This was followed by another representation dated 28.05.2007 (Annex. A/3). The applicant has further submitted that his transfer is not on administrative ground but it has been issued due to bias attitude of the authority and he invited the attention of this Tribunal to para 5 & 6 of the representation dated 09.05.2007 (Annex. A/2).

3. He was suspended on 02.02.2007 and a minor penalty charge sheet was issued. The applicant has submitted his defence statement to the charge sheet but no reply has been received so far. The applicant has also claimed that his colleagues have submitted a representation in the month of May 2007 (Annex. A/4) against the transfer order dated 16.04.2007, transferring the applicant from Bikaner to Sarupsar.

4. The applicant has further submitted that it is an admitted fact that normally the Courts/Tribunals would not like to interfere in the transfer matters. But the Apex Court has held in various cases, that if the transfer is made under bias attitude or mala fide intention and against service rules then the Courts/Tribunals can very well interfere with the transfer orders. The impugned order of transfer says that the transfer of the applicant has been made on the basis of a complaint, but no copy of the same has been supplied to him and no inquiry was conducted in this regard. If at all any inquiry has been conducted, that would have been

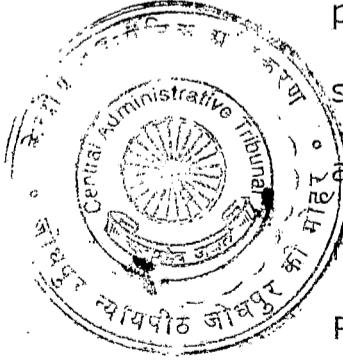


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conducted behind the applicant and the respondents are adopting bias attitude towards him and therefore the impugned transfer order is liable to be quashed and set aside.

5. The respondents are contesting the application by filing a detailed reply. The respondents have explained that the applicant has been transferred from Bikaner to Sarupsar by order dated 16.04.2007 and the same has been issued due to administrative exigencies. It is always under the domain of the employer to transfer employees in the administrative exigencies and in the interest of department. As far as showing the reasons in the transfer order is concerned, it is not required to be disclosed in the transfer orders. The respondents have categorically stated that the applicant is not honouring the official duty orders of his supervisors and also creating problem in the working system. He had remained absent from duty unauthorisedly without sanction of any leave. He created hindrance in the working and also disturbs other employees who are working in the department. As the applicant was not working properly and also works as per his sweet will and pleasure, the Assistant Operation Manager (M) submitted a note stating that the applicant is not working properly and polluting the atmosphere and therefore he should be transferred. A copy of the note dated 07.03.2007 has been annexed with the Reply (Annex. R/1). It is further stated that after the issuance of the transfer order dated 16.04.2007, the applicant has submitted a complaint to the higher authorities against the Assistant Operation Manager stating that he misbehaved with him. On this complaint, the



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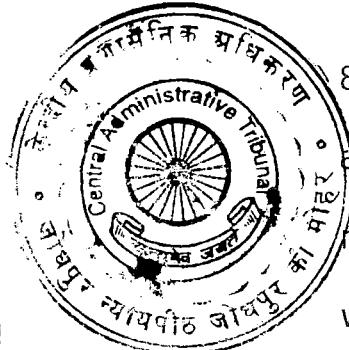
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higher authorities conducted a fact finding inquiry by one Shri Ratan Singh TI Bikaner, who submitted his report and in the report of the inquiry officer it was found that the complaint given by the applicant was false and baseless. This shows that the applicant is not a good worker and vitiated the atmosphere by leveling the false complaints against superior officers.

6. The applicant was on sick leave from 28.04.2007 to 18.05.2007 and after recovery from the illness, the Senior DMO issued a fitness certificate but despite that he did not attend his duties till today and is absent from his duty without sanction of any leave.

7. The representation submitted by the applicant was marked to Assistant Operation Manager (C) Bikaner to investigate in the matter and he submitted his report after investigation and found that the transfer order dated 16.04.2007 has been issued under administrative exigency and there was nothing unlawful or mala fide in the transfer of the applicant.

8. The contention of the applicant that the respondents are bias against him has been rejected by respondents stating that he neither alleged any mala fide nor impleaded any officer against whom he is alleging mala fide and hence in the absence of proper and necessary party, the applicant is estopped from raising such vague allegations.



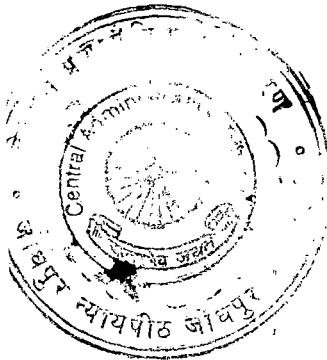
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9. The respondents have also stated that the applicant was suspended on 02.02.2007 so that no hindrance is caused and he was also issued a charge sheet for imposing minor penalty and after inquiry an order dated 02.05.2007, withholding of an increment for three years has been issued and since the applicant was absent the same was not served on him. It would be served on him as when he resumes duty at the transferred place.

10. The respondents have also stated that since the applicant is not working properly from the date of his joining the department, he has been punished for 14 times for his negligence, misbehaving, disobeying the orders of his superiors, absence from duty without leave and creating hindrance in the operation of railways and the details of the same has been mentioned in para 13 of the reply to the Original Application.

11. The respondents have further submitted that the Hon'ble Supreme Court and various High Courts have repeatedly held that to run the department smoothly and to keep the atmosphere in a healthier condition, it is always in the domain of the employer to transfer an employee and in this case in order to have smooth functioning of the railways, the applicant has been transferred from Bikaner to Sarupsar vide the impugned transfer order dated 16.04.2007. In view of this the respondents have prayed for the dismissal of the O.A.

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12. Heard the learned counsel appearing for both the parties. I have also carefully perused the documents submitted by both sides.

13. The learned counsel for the applicant has reiterated the pleadings and contentions raised in the O.A. The learned counsel submitted that the applicant has been working according to the roster and his transfer has been ordered with mala fide intention. He submitted a representation against the said transfer order. His colleagues have also given in writing against the transfer. Therefore he pleaded that the impugned transfer order dated 16.04.2007 be set aside and the O.A be allowed.

14. The learned counsel for the respondents submitted that though the applicant has alleged mala fide he has not impleaded any person against whom he is alleging mala fide and the transfer order has been issued in administrative exigencies and no statutory order has been violated. The applicant has been punished for 14 times as per the details given in para 13 of the reply to the O.A.

15. In support of their contention the learned counsel for the respondents have relied on the following judgements:

(i) **State of UP and Others vs. Gobardhan Lal and D.B. Singh vs. D.K. Shukla and others** reported in 2004 (3) SLJ 244 = 2005 SCC (L&S) 55, wherein the Hon'ble Supreme Court has held as under:-

"6. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer

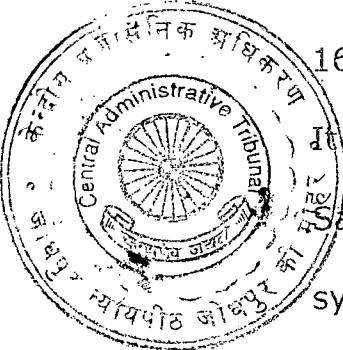


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is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

The learned counsel for the respondents also drew my attention to a judgement rendered by the Hon'ble Punjab and Haryana High Court in the case of **Rakesh Kumar vs. The Central Administrative Tribunal, Chandigarh and ors.** [D.B. Civil Writ Petition No. 5044/CAT of 2000 decided on 18.07.2000] in support of the contention that if an employee has been creating indiscipline involving other co-workers also to disrupt the working of the Government department, the competent authority has every right to transfer him in the interest of the administration and discipline and even if there is some deviation from the policy for transfers in the interest of the administration, the Court cannot interfere and such transfer cannot be termed to be arbitrary or mala fide.



16. I have carefully considered this case and documents perused. It is seen that the applicant has been transferred from Bikaner to Sarupsar since he has been creating problems in the working system of the railways and has also remained absent without proper sanction of leave. He also does not allow other employees to work according to the roster. He has also been punished for 14

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times due to negligence, misbehaviour and disobeying the orders of his superiors. The Hon'ble Supreme Court has held in number of cases that Courts and Tribunals may not interfere in the transfers ordered in the exigencies of services. In the case of **Shilpi Bose (Mrs) v. State of Bihar** reported in 1991 Supp (2) SCC 659, their Lordships of the Hon'ble Apex Court held as under:

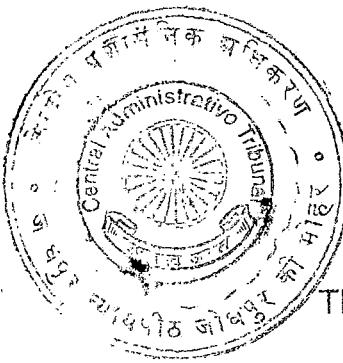
"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest."

16. Similarly in case of **Union of India vs. S.L. Abbas** [(1993) 4 SCC 357 at page 359 para -7, the Supreme Court observed that

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

The case quoted by the learned counsel for the respondents is relevant and appropriate in this case.

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17. In this case, the applicant has not been working properly and has been creating indiscipline by not allowing others to work properly. Therefore, his transfer orders have been issued.

18. In view of the above discussion and settled case law, I am of the view that there is no merit in this O.A and the transfer order dated 16.04.2007 has been rightly issued by the respondents and the impugned transfer order need not be interfered with by this Bench of the Tribunal. The O.A is therefore dismissed. No costs.


 Tarseem Lal
 (Tarseem Lal)
 Administrative Member.

Jsv.

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Recd. by
23/3/07

Q11084
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Section Officer

Part II and III destroyed
in my presence on 26-6-07
under the supervision of
section officer () as per
order dated 26-6-07
Section officer (Record)

One copy of order delivered to nonie member for which requisition recd from PA-H-40
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