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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO. 26/2010

Date of order: 2.3.2010

HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.

Bhupendra Singh S/o Shri Tej Singh Ji, aged 52 years, R/o 142-A, Railway Colony, Rana Pratap Nagar, Udaipur, Official Address: Loco Pilot (shunting) C/o CCCR, Udaipur City (North West Railway)

: Applicant.

Rep. By Mr.R.K. Mishra, proxy counsel for
Mr. R.S. Saluja, Counsel for the applicant.

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager (Establishment), N.W. Railway. Ajmer
3. Senior Divisional Mechanical Engineer, N.W. Railway, Ajmer.
4. The CCCR, North West Railway Udaipur City
5. Shri Shobha Lal, s/o Shri Ghashi Ram, C/o the CCCR, North West Railway, Udaipur City.

: Respondents.

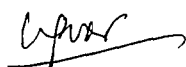
Rep. By Mr. Salil Trivedi : Counsel for respondents 1 to 4.
None present for respondent No. 5.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Shri Bhupendra Singh has filed the present O.A against the order of respondent 2 dated 19.01.2010 (Ann.A-1). The applicant has sought reliefs that are as follows:

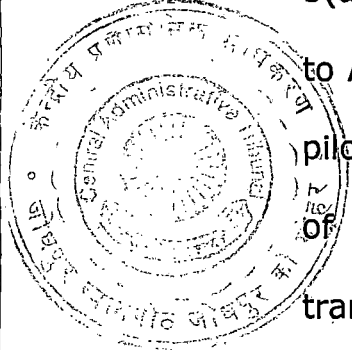
- i) The order Annexure A/1 dated 19.01.2010 transferring the applicant to Abu Road so as to accommodate respondent No.5 in his place may kindly be quashed and set aside.
- ii) That, if for any reason stay sought is not granted then Annexure A/1 may kindly be declared illegal and the respondents may be directed to post applicant back at Udaipur city.
- iii) Any other favourable order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- iv) Original Application filed by the applicant may kindly be allowed with costs."





2. The brief facts of the case are that the applicant was initially appointed as substitute on 24.11.1978; later he was promoted as loco pilot at Udaipur. Vide order dt 5 Oct 2009, he was transferred to Abu Road; he being quite senior was not relieved from Udaipur. By order dt 08.01.2010 (Ann.A-2) issued by respondent 2, the transfer of the applicant was withheld. As the applicant was unwell he took leave, submitted fitness certificate on 10.01.2010 (Ann.A-3); he retained railway quarter at Udaipur (Ann.A-4). The respondent 2 transferred the applicant to Abu Road, vide order dated 19.01.2010, respondent 5 was posted in his place. The applicant contended that in order to accommodate respondent 5, he was transferred vide order dt 19.01.2010 (Ann.A-1). The applicant has prayed that the order dt 19.01.2010 (Ann.A-1) be quashed and declared illegal. The applicant has also submitted an order dt 05.10.2009, in which this is clarified that the sanctioned strength at CCR Udaipur is 08 but presently 14 loco pilots (shunting) are working there, thus 06 surplus loco pilots including applicant stand transferred from Udaipur.

3(a). The applicant and 05 others were transferred from Udaipur City to Abu Road vide order dt 05.10.2009 (Ann.R-1); there were 14 loco pilots (shunting) working at Udaipur against the sanctioned strength of 08 posts; thus 06 loco pilots being in excess (surplus) were transferred from Udaipur to Abu Road. The respondent 5 joined his duties at Abu Road in compliance of order dt 05.10.2009, but the applicant reported sick from 26.10.2009 to 10.01.2010 and took leave to avoid his relieving from Udaipur city. After issuance of this order dt 05.10.2009, one vacancy became available at Udaipur city



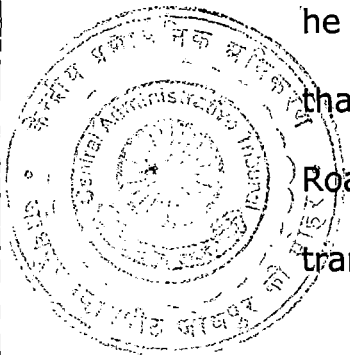
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on 31.12.2009. The applicant did not get himself relieved by that time; an order dt 08.01.2010 was issued whereby he was retained at Udaipur city as one vacancy became available on 31.12.2009. It is wrong to say that in view of applicant's seniority, the transfer order was cancelled on 08.01.2010. Infact, the order dt 05.10.2009 was not cancelled; but it was wrongly modified. After issuance of order dt 08.01.2010, applicant reported fit on 10.01.2010. The respondent 5 joined his duties at Abu Road on 21.10.2009, whereas the applicant reported sick and did not join at his new place of posting. The competent authority of the answering official respondents is well within their powers to issue the impugned transfer order.

3.(b) Learned counsel for applicant in rejoinder has submitted that at the time of filing this O.A, the order dt 05.10.2009 was not available, there was no ill-intention on applicant's part. From this order, it is apparent that the applicant was transferred on seniority basis; applicant being senior most, his seniority was not taken into account while transferring him vide order dt 05.10.2009; this mistake was rectified by order dt 08.01.2010. He was sick during this period, he took leave. The applicant was assured on giving representation that looking to his seniority, his transfer from Udaipur city to Abu Road would be corrected. Applicant being senior most was not to be transferred, the impugned order is made to accommodate respdt 5.

4(a). Learned counsel for applicant has stated that he was transferred from Udaipur to Abu Road as per order dt 19.01.2010 (Ann.A-1) on getting victimized. Applicant was a senior most loco pilot at Udaipur from where he was shifted vide order dt 05.10.2009 Ann.A-

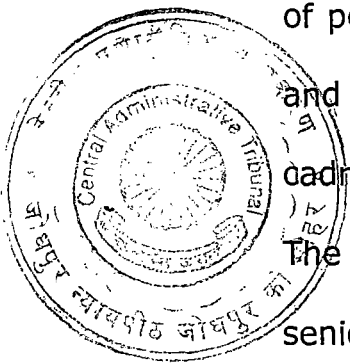
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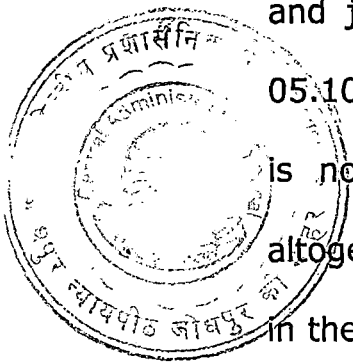
5. He was retained there itself vide order dt 08.01.2010 and was not relieved. Instead of retaining him at Udaipur, Shri Shobhalal respd 5 was posted at Udaipur vide order dt 19.01.2010. The cadre strength of loco pilots was earlier 14, reduced to 08; thus surplus loco staff was shifted from there. This method of transfer is not proper; the respondents have avoided procedure as mentioned in Ann.R-1. The applicant is senior enough amongst loco pilots, which is explicit from the order dt 08.01.2010 itself. The order dt 05.10.2009 & 19.01.2010 are not a speaking, which shows malice on respondents' part. The procedure of absorption for making these loco pilots as surplus is not explicit on this point. The applicant has relied upon Dr. Ajay Kumar Sharma vs. State of Rajasthan 2003 (10 WLC 438; Dr. Arun Chauhan vs. State of Rajasthan 2005 (2) CDR 897 (Raj.); the transfer is malafide; there was no complaint against him. Hon'ble High Court's judgement dt 1/2 March 2005 speaks that transfer is not complete in itself; the likely hardships to employees concerned should also be seen, the compelling circumstances and convenience of people at large is to be looked into. In this episode, the seniority and criteria for transfer are not considered; on the name of surplus cadre strength, respdts adopted via media of transferring applicant. The transfer is made in order to adjust respd 5. Applicant being senior most was not relieved from Udaipur, there are no complaints against him. The surplus loco pilots are not clearly specified; if they are more than cadre strength, this should be notified.

4(b). Learned counsel for respondents in his arguments has stated that the applicant has come with wrong intent, he did not submit the order dt 05.10.2009; he is not entitled to seek relief. It is a clear

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case of transfer, this has nothing to do with seniority; the Tribunal should confine itself to pleadings. In transfer order of 05.10.2009, the cadre strength of loco pilot is shown; it was reduced from 14 to 08. The loco pilots at Udaipur were surplus; there is no ground for absorption and no post is scrapped. The transfer order is made by respondents after going through the overall purview. After the orders of 05 Oct 2009 and 19 Jan 2010, the applicant himself went on leave, thereafter reported sick; after these orders, he never turned up before 31.12.2009. In fact one vacancy of loco pilot was available on 31 Dec. 2009; all others barring the applicant did not report at new posting place. No employee has indefeasible right to be retained at a particular place, respondent 5 joined before 31.12.2009; applicant did not join by then. The order dt 08.01.2010 was wrongly issued; applicant's transfer was stayed wrongly. The applicant reported sick; after issuance of order dt 08.01.2010, the applicant gave fitness certificate on 10.01.2010 and joined duties at Udaipur. The applicant had a malafide intent; whereas respondent 5 showed good conduct and joined early after receiving the transfer order. The order dt 05.10.2009 does not suffer from any illegality. Applicant's rejoinder is not on record, he cannot be allowed to plead a new case altogether. The respondents have quoted a good number of citations in the case i.e. State of UP & Ors. vs. Gobardhan Lal & D.B. Singh vs. D.K. Shukla & Ors. 2004 (3) SLJ 244=2005 SCC (L&S) 55; Shilpi bose (Mrs) vs. State of Bihar 1991 Supp (2)SCC 659; Union of India vs. S.L. Abbas (1993) 4 SCC 357; National Hydroelectric Power Corporation Ltd.vs. Shri Bhagwan 2001 (8) SCC 574; State of M.P. & Anr. Vs. S.S. Kourav & Ors. (1995) 3 SCC 270 etc.

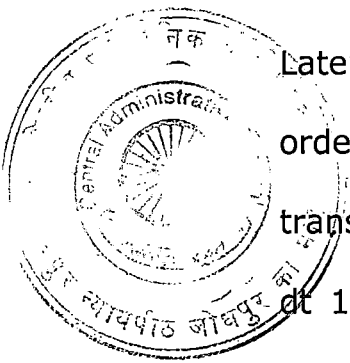


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5. The applicant was posted as loco pilot at Udaipur city for quite sometime. On 5 Oct 2009, an order was passed by which 04 loco pilots (shunting) were transferred; it is specified in this order that the cadre strength of loco pilot at CCR Udaipur city was 08; against this 14 loco pilots were posted there. As a result, all these excess 06 loco pilots were transferred to Abu Road; this included applicant as well. The applicant did not hand over charge at Udaipur or joined at new place Abu Road, he reported sick from 26.10.2009 to 09.01.2010, he gave fitness certificate on 10.01.2010. On the contrary, respdt 5 Shri Shobhalal joined on 21.10.2009 at Udaipur City. Applicant's version is that he was the senior most loco pilot, his transfer was made only to accommodate respondent 5. On 08.01.2010, the respdt 2 issued an order; as per para 3 of this order, applicant was not relieved from Udaipur city being senior most loco pilot. One vacancy was available as loco pilot (shunting) Udaipur city, thus he was retained there itself. The applicant was reported sick for more than 02 months, he gave his fitness certificate on 10.01.2010 and joining at Udaipur city. Later, the applicant's order of retention at Udaipur was revoked by order dt 19.01.2010 of respdt 2; it was clarified that his orders of transfer dt 05.10.2009 would remain in existence as such. Vide order dt 19.01.2010, the order of transfer of the applicant was revived; thus he was supposed to give his joining at Abu Road itself.

6. The applicant has given much stress on the point that the applicant was senior most loco pilot at Udaipur city at that time during Oct 2009. It was not clarified that for how much time he was posted at Udaipur city. Learned counsel for applicant has contended

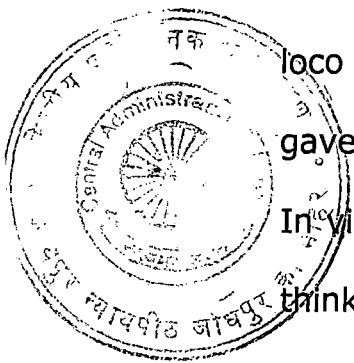
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that he being a senior most loco pilot at Udaipur city, he should not have been shifted from there. This was also argued that applicant's transfer was made to accommodate respdt 5 at Udaipur city; but no such evidence is on record. Moreover, being senior most loco pilot does not confer right on the applicant to continue at a particular place, there are no such executive instructions on record. The transfer of the applicant and 05 other loco pilots were made in view of their surplus cadre strength at Udaipur, no arbitrary action or colourable exercise of power is manifest on official respondents' part.

7. This is worth mentioning that the applicant did not submit order dt 05.10.2009 as on 01.02.2010 when arguments for retaining him at Udaipur were heard in this case for first time, he produced the order with additional affidavit filed on 22.02.2010. In absence of the order dt 05.10.2009, stay as prayed was not granted to the applicant. The applicant concealed the order dt 05.10.2009; on being asked he submitted this before Tribunal. After this order, he was continuously on leave by reporting sick on duty till 09.01.2010. One vacancy of loco pilot was available on 31.12.2009, after order dt 08.01.2010, he gave fitness certificate on 10.01.2010 & joined his duties at Udaipur. In view of his dubious conduct, the railway authorities were forced to think once again, they issued an order on 19.01.2010; by which applicant's retention at Udaipur city was scrapped. The order dated 05.10.2009 was revived to the extent that the applicant was to report at Abu Road on transfer. The transfer of applicant and 05 others was made on administrative exigencies, there were no malafides on respondents' part. Applicant has given much stress on procedure to


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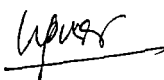


be adopted properly effecting these transfers. It is clarified that 06 loco pilots were surplus, thus all of them were transferred from Udaipur city to Abu Road. Out of these 06 excess loco pilots, vide order dt.19.01.2010 respondent 5 was transferred from Abu Road to Udaipur where he gave his joining shortly.

8. The applicant mentioned above O.A. 16/2010 filed in the Tribunal on 22.01.2010, in which 04 official respdts were impleaded; applicant was heard on 28.01.2010. The learned counsel for applicant wanted to withdraw this O.A, so he was permitted to withdraw this O.A with liberty to file fresh OA. In this O.A.16/2010, applicant did not submit the orders of respondent 2 dt 05.10.2009 and 19.01.2010. The applicant filed present O.A 26/2010 impleading all 04 official respondents and Shri Shobhalal as respondent 5.

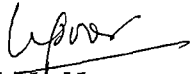
9. The applicant has put forth citations of Rajasthan High Court in SB Civil Writ Petition no.2676/2000 - Dr. Ajay Kumar Sharma vs. State of Rajasthan 2003 10 WLC 438, in which in malafide transfers, the Court has powers to interfere. He has further relied on DB Civil Special Appeal no.818/2004 filed before Rajasthan High Court - Dr. Arun Chauhan vs. State of Rajasthan 2005 (2) CDR 897 (Raj.) that speaks of likely hardships to transferred junior doctor (Gynaecology) and the convenience of people at large. As regards inconvenience caused to people because of applicant's transfer, it is not applicable here; applicant was transferred along with 05 others; thus no personal hardship to a single person is to be considered. There is no arbitrary action or malafide on respondent's part in this case. Thus, no interference by the Tribunal is required at this stage. Learned





counsel for respondents has relied on **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; **Shilpi Bose (Mrs) v. State of Bihar** reported in 1991 Supp (2) SCC 659; **Union of India vs. S.L. Abbas** (1993) 4 SCC 357. Further more in **National Hydroelectric Power Corporation Limited vs. Shri Bhagwan** 2001 (8) SCC 574; and **State of M.P. and another vs. S.S. Kourav and others** (1995) 3 SCC 270, the cardinal principle adopted is that the Courts or Tribunal are not the appellate forums to decide on transfers of officers on administrative grounds; An action of the transferring authority can be challenged only if the same is vitiated by malafide or extraneous considerations. As there are no malafide or arbitrary action on behalf of respondents in the present case, this Tribunal is not supposed to intervene in the administrative matters transfer, posting. The orders dt 05.10.2009 & 19.01.2010 do not suffer from illegality or impropriety from official respondents' side, leaving practically no ground for this Tribunal for action.

10. In view of observations made above, no interference is called for in the present O.A. As a result, the present O.A is dismissed with no order as to costs. The interim order passed/stay granted on 08.02.2010 and extended till further date are hereby vacated.


[V.K. Kapoor]
Administrative Member.

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दिनांक 17-12-15
मेरी उपस्थिति में 10/2/18
को भाग-II में जोड़ा गया है।

अनुपाय अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपोठ, जोधपुर