

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No OA 649 of 1997

Date of Order: 1.12.2004

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member

SWAPAN KUMAR DE & OTHERS

VS.

UNION OF INDIA (S.E. RAILWAY)

For the applicant : None

For the respondents : Ms. U. Dutta (Sen), Counsel

O R D E R (ORAL)

Mr. Mukesh Kumar Gupta, JM:

None appears for the applicant despite notice issued to him dated 21.9.2004. Therefore, we are compelled to proceed with the matter after invoking Rule 15 (1) of CAT (Procedure) Rule 1987.

2. In this application, a challenge has been made to order of promotion and transfer dated 27.3.97 with consequential relief.

3 applicants in this case who initially joined as Skilled Artisan Trainee, were directed to appear for test and interview for promotion to Fitter Grade II vide memorandum dated 28.10.95 and after they were declared successful they were asked to submit their willingness to posting and promotion to Bokaro/ Hatia but they opted for Adra/ Anava/ Bhojudih/ Burnpur. Immediately, thereafter, promotion and transfer order was issued vide memorandum dated 8.12.95 to the post of Fitter Grade II, posting the applicant No.1 to Bokaro, while the applicants 2 & 3 were posted to Hatia. As the applicant No. 1 had not exercised his option he joined the post of Fitter Grade II at Bokaro but the applicants 2 & 3 did not accept the said posting particularly in view of the option submitted by them. It is contended that though the vacancies were available in the said cadre of Fitter Grade II in the stations opted by them at relevant point of time, but

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the applicants were not considered for their posting to such place. Some of the juniors who were directed to take trade test in the year 1996 were declared passed on 3.7.96 and posted to different places. In January 1997 the respondent No.8 was again directed to appear for trade test for promotion to the Fitter Grade II and after his passing the trade test successfully, the promotion order dated 27.3.97 was issued. In this order also the applicants No.2 & 3 were again posted to Bokaro while respondent No.8, junior to the applicants was posted to Adra. It is contended that the said impugned promotion and posting on 27.3.97 is bad in law and without jurisdiction; that the said transfer and promotion order dated 27.3.97 was cancelled on 14.5.97 & fresh posting order was issued but the applicants' postings remained the same. It is contended that it was incumbent on the part of the competent authority to change the applicants' posting in terms of their option. General allegations of malice in law as well mala fides were also alleged.

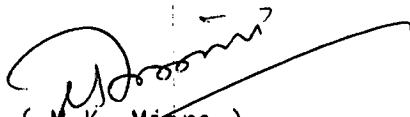
3. The respondents filed their reply and contested the applicants' claim. It is contended that due to administrative exigencies the applicants were posted as per orders of the competent authority. Seniority of the Railway Servants is not the main criteria, as far as transfer from one station to other station is concerned.

4. We have perused the application and heard learned counsel for the respondents. It is well settled by the Hon'ble Supreme Court in 1993 (4) 357 - Union of India and others Vs. S.L. Abbas, who should be posted where, is the prerogative of the administration and the Court/ Tribunal cannot interfere with it unless the order of transfer and posting is either malafide or has been issued in violation of the

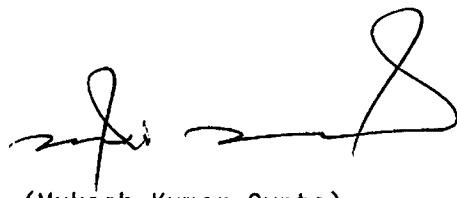
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statutory rules. As far as the present case is concerned, we do not find that the allegations of malafide have been established by the applicant. On the other hand, we find that the allegations made on the said aspect are general in nature, without establishing the facts and documents produced in support of them. It is not a case of the applicant that the transfer order was issued in breach of statutory rules.

This being the case, we do not see any merit in the application and accordingly the same is dismissed. No costs.



(M.K. Misra)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

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