

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION NO: NO: 434/2003 and O.A. NO: 409/2003.

this, the 3rd day of March 2004.

HON'BLE SHRI S.P. ARYA MEMBER(A)

HON'BLE SHRI M.L. SAHNI MEMBER(J)

O.A. NO: 434/2003.

G.B. Srivastava aged about 49 years S/o Late Sri J.B. Srivastava  
R/o F-12, Sheetapuram Rajajipuram Lucknow.

.....Applicant.

BY Advocate Shri A. MOIN.

VERSUS

1. Union of India through General Manager, Northern  
Railway Baroda House, New Delhi.
2. Financial Advisor and Chief Accounts Officer, Northern  
Railway Baroda House New Delhi.
3. Senior Divisional Financial Manager/Senior Divisional  
Accounts Officer, Northern Railway, Hazratganj Lucknow.

.....Respondents.

BY ADVOCATE SHRI N.K. Agarwal.

O.A. NO: 409/2003.

Arun Kumar Tripathi, aged about 44 years, son of late S.D.  
Tripathi resident of 21/336, Indira Nagar, Lucknow.

.....Applicant.

BY ADVOCATE SHRI Y.S. LOHIT.

VERSUS

1. Union of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Finance Advisor and Chief Accounts Officer, Northern Railway Baroda House, New Delhi.
3. Senior Divisional Financial Manager/Senior Divisional Accounts Officer, Northern Railway, Hazratganj, Lucknow.

....Respondents.

BY Advocate Shri N.K. Agarwal.

ORDER

BY SHRI S.P. ARYA MEMBER(A)

The order being challenged in both the O.As is a same almost on the same grounds, both the O.As are taken together.

2. We have heard the counsel for both the applicants and respondents and perused the pleadings.

3. These O.As challenge the order passed by respondents No. 3 posting the applicants on non-sensitive post and seeking for quashing the transfer orders. The case of the applicants is, the Railway Board Circular 10094 issued by letter No. 94-E/O/V (E-4) dated 1.3.1990 enclosing the letter dated 27.9.1999 on the periodical transfer of Railway employees, required the railway employees holding the sensitive post and who frequently come into contact with public and /or contractors/suppliers, to be transferred every 4 years. The circular also encloses the identified list of sensitive posts in different departments. Such rotational transfers are expected to be made in just and fair manner with utmost transparency. Headquarters office circular dated 19.5.2000 also states that priority registers may be updated timely and

2 b

all rotational transfers may be made strictly according to the priority registers (Annexure A-3). The draft policy circulated by the Dy. Chief Accounts Office dated 30.5.2003 (Annexure-A.4) states that no refusal would be considered for posting on sensitive seats prior to posting. The applicant has enclosed the seniority list of the officials who have to be transferred from non-honorarium section to honorarium section on rotation basis (Annexure A-5). Annexure A-6 is the list of those officials who are due for transfer from honorarium section to non-honorarium section, and non honorarium section to honorarium section. Had a proper calculation been made in the rotational transfer, the applicants should have been given a posting on sensitive post.

4. Respondents have contended that there are two types of seats in the officer of Respondent No. 3 and these are honorarium section post and non honorarium section post. In the reply, it is specifically stated that there are no sensitive or non sensitive seats as claimed by the applicant. Honorarium is not paid for sensitive seats but it is paid for extra work in staff bills etc. Posting in the honorarium Section in Accounts Department, is only for the tenure of four years. The present policy is for rotational transfer two times in a year i.e. 30th June and 31st December of every year. As and when vacancy arises in the honorarium section, these are worked out according to the rotational seniority list. One who refuses to join from the non-honorarium post to honorarium post, is placed at the bottom of the seniority list of non honorarium staff. The draft policy circulated by the Deputy Chief Accounts Officer vide his letter dated 30.5.2003 (Annexure-A-4) is not applicable at present since, the same has not been approved thus far. The list enclosed at Annexure A-6 contains the names of officials to be transferred from honorarium to non honorarium section and non honorarium to non honorarium section. It is stated in the reply that applicant was not working for 8 years in non-honorarium seat.

2

5. The learned counsel for the applicant has argued that the aforesaid Railway circular is binding on the Railway Officers. They have to comply the instructions given in the circulars with regard to rotational transfer of railways employees from sensitive post to non sensitive post as identified by the Railway Board letter.

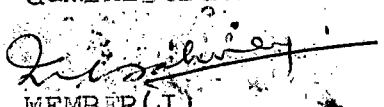
6. The counsel for the respondents on the other hand has argued that those who are working on sensitive post and who frequently come into contact with the public and /or contractors /suppliers are required to be transferred every four years, but it does not necessarily mean that those who are working on non sensitive posts should be posted on sensitive posts without taking into account the suitability of the officials. We find that the Railway Board circular has binding nature even, if these are treated to be guidelines with regard to rotational transfers.

7. Learned counsel for the applicant has argued that the list prepared by the respondents themselves which is Annexure-A-6 cannot be relied upon as applicant alongwith others finding place in the list of persons to be transferred from non-honorarium to honorarium section in order of seniority have also been sanctioned honorarium in the year 2002-2003. The list regarding rotation transfer (Annexure--6) circulated is of 26.5.2003 whereas, the honorarium is for the year ending 31st March 2003. Thus the list enclosed with the R.A. showing that the honorarium has been paid even to the applicant and others is of no avail. The counsel for the applicant has stated that had there been a proper calculation of the sensitive posts, the applicant should have been given sensitive post as serial No. 2,3,4,5,6,7 and 8 in the list of officials of honorarium section and at serial No. 1,2,3 and 8 of non honorarium section were holding sensitive post.

*h* *v*

8. The honorarium as stated by the respondents in their counter reply is only for extra work and labour/done by the officials. This relates mainly to section . The Railway Board circular is specifically with regards to rotation transfer of employees working on sensitive posts as well as on the post where they come frequently in contact with public and contractors. If such a list of sensitive posts is not being maintained, it should have been maintained. The transfer, no doubt is an incident of service and if it has not been made in malafide exercise of power or against the statutory rules, these have not<sup>to</sup> be interfered by the courts. The Apex Court in the case of National Hydroelectric Power Corporation Ltd. Versus Shri Bhagwan and Shive Prakash reported in (2001) 8 Supreme Court Cases 57 held that, the Government employee has no legal right to be posted forever at any one particular place, but it can be shifted in public interest and efficiency in the public administration. We find that Railway Board Circulars are of binding nature, even if these are treated as guidelines regarding rotational transfer . The transfer made in the present case cannot be held to be malafide but the Railway Board Circulars having statutory force have not been followed. We are inclined to hold that the transfer of the applicants without taking into account the Railway Board Circular are bad in the eyes of law.

9. Accordingly, the rotational transfer orders dated 22.8.03 (O.A. NO. 434/2003) and 5.6.2003 (O.A. NO: 409/2003) as far as these relate to the transfer of the applicants are quashed. The competent authority would be at liberty to pass fresh orders in respect of the applicants keeping in view the Railway Board Circular and seniority and suitability of the applicants for a particular post in the public interest or in interest of administration. No costs.

  
MEMBER(J)

  
MEMBER(A)