

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW
ORIGINAL APPLICATION NO: 98/2005

LUCKNOW, THIS THE ^{18th} DAY OF MARCH, 2005.

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

Narsingh Lal Gupta aged about 51 years Son of Late Chhedi Lal Gupta R/o L-48
Loco Colony Aishbagh Lucknow U.P.

.....Applicant.

By Advocate Shri M.A. Siddqui.

Versus

1. Union of India through the General Manager North Eastern Railway Gorakhpur U.P.
2. The G.M. (p) N.E. Railway Gorakhpur.
3. The Chief Commercial Manager North Eastern Railway Gorakhpur.
4. The General Manager (Commercial) N.E. Rly Gorakhpur.) North Eastern Railway Ashok Marg Lucknow.
5. The D.R.M. North Eastern Railway Ashok Marg Lucknow.
6. The D.R.M. (Commercial) North Eastern Railway Ashok Marg Lucknow.

By Advocate : Shri Azmal Khan

ORDER

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

The applicant by this O.A. seeks for quashing of the order dated 7.2.2005 which transfers him to other division and also for quashing the order of GM(P), Gorakhpur referred in Annexure No.A-3 and to decide the representation dated 8.2.2005 (Annexure A-4) on the grounds that the order has been issued for victimizing the applicant as he has represented against the fixation of target for Ticket Checking Staff ; the applicant made a representation to respondent No.1; TTE post is a divisional post which is transferable only within the Division ; the order is punitive ; he has not been spared and the impugned order has not been served on the applicant.

2. The respondents have filed the objection stating that the transfer order has been passed by the General Manager (Commercial) and as per

para 226 of the Indian Railway Establishment Code Volume I, Group 'C' and Group "D" Railway Servant can be transferred within India by the General, Manager or by a lower authority to whom the power may be re-delegated. The applicant has been relieved w.e.f. 6.3.2005.

3. I have heard the learned counsel for the parties and perused the pleadings in the O.A. and objections filed thereon.

4. In the case of *Union of India Vs. S.L.Abbas* (1994 SCC (L&S) 230), it was observed that an order of transfer is an incidence of government service and a Govt. servant can be transferred from one post to another. It was further observed that who should be transferred where, is a matter for the proper authority to decide. Unless the order of transfer is vitiated by malafides and is made in violation of any statutory provisions, the court cannot interfere with it. It was also observed in *Union of India and others Vs. Janardhan Debanath and another* (2004 SCC (L&S) 631), the transfer to another post in the same cadre on account of inefficiency or misbehavior is not barred and on occasion, the transfer ~~is~~ might be necessary for enforcement of discipline, decency and decorum in public service. The powers of this Tribunal has been amply explained in the judgement of the Hon'ble Supreme Court reported in AIR 2004 SC 2165 *State of U.P. and others Vs. Gobardhan* where it has been observed that:-

"9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or Tribunals as though they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or Tribunals cannot substitute their own decisions in the matter of transfers for that of competent authorities of the State and even allegations of malafides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer." 29

5. The question of transfer of Group 'C' Railway Servant is ~~un-serve~~ dealt ⁱⁿ para 226 of the Indian Railway Establishment Code Volume I, which reads as below:-

"226. Transfers- Ordinarily, a railway servant shall be employed throughout his service on the railways or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the Railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group 'C' and Group 'D' railway servant, the power of the President under this rule in respect of transfer, within India may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."

6. It is further provided in para 227 that a competent authority may transfer a railway servant ^{but who} shall not be transferred substantively from one post to another post except on account of inefficiency or misbehavior ^{or} ~~and~~ on his own request. From the perusal of schedule of power of Establishment matters of non-gazetted staff of Railway filed by the respondents, clearly shows that Senior Administrative Grade Officer under para 226 of the Code have full powers with regards to transfer of staff ^{such} within Railway. In the present case, the applicant has been transferred from one Division to another Division and SAG Officer is competent to pass such transfer order. It, therefore, cannot be said that the orders were passed by an incompetent authority.

7. The issue of fixation of target for monthly earning of the Ticket Checking Staff is not a matter in issue for deciding this O.A. Filing of representation for quashing target of earning and officer moving in car and the applicant with others not being given a car cannot be said to have resulted in the transfer because of the prejudices of the respondents against the applicant. The competent authority after taking relevant factors into account has transferred the applicant, not in a view to victimize the applicant

but on the administrative grounds with all benefits admissible to the applicant on account of transfer such as joining time, traveling allowance, dearness allowance and transfer allowance as per rules. Malafide in transfer is accordingly not proved.

8. As the transfer order has not been passed in violation of mandatory rules or because of malafides or by an incompetent authority, no interference is called for. ^{In view of} The limited scope of interference as discussed above ^{is} available in ^{matter of} the transfer, it is not found necessary to call for the counter reply and O.A. can be disposed of at the admission stage itself.

9. In view of the above discussion, I find no ground for interfering with the impugned transfer order. Accordingly O.A. is dismissed without any order as to costs.

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(S.P.Arya)
Member (A)

HLS/-