

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

Review No.36/2006

In

Original Application No.368/2006

This the 1st of October 2006

HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

Kamini Prasad , aged about 46 years, son of Shri Ram Naresh,
Resident of Village & Post-Belbheria, District-Gonda.

...Applicant.

By Advocate: Shri Praveen Kumar.

Versus.

Union of India, through

1. Secretary, Ministry of Railways, New Delhi.
2. Divisional Railways Manager (Personnel) , North Eastern Railway,
Lucknow.
3. Chief Section Engineer, C&W Depot, Gonda.

...Respondents.

By Advocate: Shri N.K. Agrawal.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

This Review application filed by the applicant of the O.A.,
against the order of the Tribunal in O.A.No.367/2006 dated 30.8.2006
on the following grounds.



(i). The applicant has not brought all the material facts to the knowledge of the Tribunal at the time of filing of the O.A. and as such he wants to place them to prove malice attitude of the respondents for issuing transfer order dated 26.7.2006.

(ii). The respondents had not filed their Counter-Affidavit and their counsel filed objections which is not at all maintainable.

2. The respondents have opposed the claim of the applicant for review and filed objections opposing the claim of the review petitioner.

3. Heard both sides.

4. The admitted facts of the case are that the review petitioner is the applicant in the O.A., filed with a prayer to quash the impugned transfer order (Annexure-1) transferring him from C&W Depot., Gonda to C&W Depot., Mailani. At the admission stage the O.A. was disposed of by its order dated 30.8.2006, dismissing the claim of the applicant. Thereafter, the applicant has preferred the present review application.

5. The Learned counsel for the respondents argued that the pleas taken in the review application are beyond the scope of review jurisdiction and reappraisal of entire evidence and bringing new facts would amount to exercise of appellate jurisdiction which is not permissible.

6. It is the arguments of the learned counsel for the review applicant that in the review jurisdiction, subsequent events which are not within the knowledge of the party can be taken and relied on the

following decision which is supporting his contention reported in AIR 2005 (SC)-592 Board of Control for Cricket, India Vs. Netaji Cricket Club.

7. It is the main arguments of the learned counsel for the review applicant that some new facts have brought to the notice of the petitioner after dismissal of the main application and some of the facts were also not mentioned at the time of hearing of the O.A. and as such, he wants to bring them by way of review to show malafide intention of the respondents in transferring him from C&W Depot., Gonda to C&W Depot, Mallani, attributed malafides on the part of the respondents. He stated that he has been transferred by the respondents at the instance of his superior officer Shri Raj Kapoor, TXR and Shri Rati Ram CWS, against whom he filed a complain before the higher authority and also before the Police for their high handed action against him. Thus, he attributed that at the instance of said officers he has been transferred. The said allegations are taken in the main application and this Tribunal also gave findings upon which and as such, further going into the discussions by way of review does not arise.

8. It is also one of the ground attributed that the respondents are biased against him ~~that~~ though he was entitled for promotion for the post of Fitter Grade-I, but the respondents have denied such promotion which shows the malafide intention of the respondents. He filed a copy of the result dated 01.08.2006, when the transfer order of the applicant Annexure- 1 has been issued on 26.07.2006, attributing motives for not being selected for the promotion in the



result published on 01.08.2006 is not at all justified grounds to say that the respondents are biased against the applicant and as such they did not consider him for his promotion.

9. It is also the contention of the review applicant that an inquiry was pending against him alongwith with another person namely Shri ^{Reg Behadur S.Y.L} ~~Kamini Prasad~~, the applicant in the O.A.368/2006 and during the pendency of the such inquiry, transferring them is against service rules and in support of it, he relied on the following decisions:-

- (1). In O.A.No.350/2006 dated 6.9.2006.
- (2). O.A.No.459/1999 dated 31.12.2002.
- (3). In O.A.No.581/2001 dated 4.1.2002.
- (4). Pradeep Goel Vs. Regional Manager, Region-II , State Bank of India, Zonal Office Meerut and Others reported in 1992 (10) LCD-84.
- (5). In 1989 (2) ATC-326 Central Administrative Tribunal, Calcutta in the case of Debendra Nath Bag Vs. U.O.I. & Others.

10. The impugned transfer order (Annexure-1) dated 26.7.2006 has been issued effecting the transfer of the applicant on administrative grounds. When there is such specific reasons are mentioned, it is not open to the applicant to say that he has been transferred because of pendency of any inquiry proceedings or on the ground of issuance of any charge-sheet against him and other ^{Reg Behadur S.Y.L} person namely Shri ~~Kamini Prasad~~. All these judgments are in respect of the transfer of the employees by way of punishment or on the ground of alleged misconduct by issuing charge-sheet and in those circumstances, the impugned transfer orders have been quashed. But

In the instant case, it is not at all the case of the respondents that the applicant has been transferred on the ground of issuance of any charge-sheet or pendency of any inquiry proceedings against him on the ground of misconduct. Further, the transfer of the applicant is not from one Division to another Division to attribute violation of Rule-10 of the Railway Servants (Discipline & Appeals) Rules, 1960. Thus, the applicant is not entitled for any relief's on the ground of pending enquiry against him.

In view of the above circumstances, the applicant ~~is~~ ^{has} not made out any case against the respondents for his transfer on the ground of malafides on the part of the respondents to review the order.

11. It is also one of the ground taken by the applicant that in the main application, respondents counsel filed objections denying the averments made in the O.A. which cannot be taken into account. Admittedly, the respondents have not filed any of the counters or counter affidavits but their counsel filed a Preliminary objections for admission of the O.A. and also for grant of interim relief staying the operation of the transfer order, in which they have disputed the claim of the applicant. The O.A. was dismissed on the ground that the applicant has not made out any case for quashing the impugned transfer order dated 26.7.2006 and not basing on the pleadings of the respondents, as such taking objections for filing the objections by the counsel on behalf of their parties after taking instructions is not at all a justified ground to seek review of the order of the Tribunal dated 30.08.2006.

12. It is also one of the argument of the learned counsel for the applicant that the respondents filed Caveat on the file of the Hon'ble High Court , which itself shows that the respondents are intentionally acting against the interest of the applicant, which also shows malafide intention on their part. When there are such options are open to the parties preferring Caveat or Appeal, it is the discretion of the concerned party to prefer them and also choosing their Advocate. It is the will and pleasure of the parties and, as such respondents preferred a Caveat or engaged their own Advocate other than the Standing counsel is not at all a ground to attribute malafides on the part of the respondents as it is their look-out to discharge their responsibility. Thus, there is no weight in such objections of the applicant.

In view of the above circumstances, the applicant failed to prove his claim for review of the order and judgment of this Tribunal dated 30.08.2006 and thus, liable for dismissal. In the result, the Review application is dismissed. In view of disposal of main application for review, M.P.No.2263/2006 for stay is dismissed. No costs.


(M. KANTHAIAH)
MEMBER (J)

19.10.08

/amit/.