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**Central Administrative Tribunal
Lucknow Bench , Lucknow**

Original Application No.187.2007
this the 25th day of July, 2007

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

Shiv Kumar, aged about 53 years, son of Sri Bhagauti Prasad, resident of House No. 217, Rekabganj, Faizabad.

... Applicant.

By Advocate: Shri S. Verma.

Versus.

1. Union of India through the Secretary, Ministry of Railways, Govt. of India, New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager (P), Northern Railway, Lucknow.
4. Divisional Personnel Officer (Engineering), Northern Railway, Lucknow.

... Respondents.

By Advocate: Shri S.M.S. Saxena.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER (J)

The applicant has filed this OA with a prayer to quash the orders of the transfer Dt. 12.2.2007 (Annexure-1) issued by the 4th Respondent, whereby the applicant has been transferred from the post of SSE (P. Way)/ Incharge Rudauli to the post of SE (P Way)/ Special, Faizabad with the following averements:-

2. It is the case of the applicant that he was transferred to Rudauli in the year 2003 and took charge of the post of SSE/PW Incharge in April 2004 and since then he has been working there on the post of SSE/PW In charge at Rudauli. On 11.3.2004, he made representation to the respondents No.2 requesting for his transfer

from Rudauli to Faizabad on priority basis. Annexure-2 is the copy of said representation. But he was not transferred inspite of vacancy of the post of SSC/PW In charge at Faizabad instead, one Shri A.K. Ojha was transferred and posted as SSE/PW at Faizabad. Surprisingly, under the order dated 12.2.2007 issued by the Respondent No.4, whereby he along with others have been transferred and he has been posted in the post of SE (P. Way)/ Special, Faizabad under ADEN and on his post one Kailash Nath, SE (P. Way)/ Sec./SAW has been transferred as SE (P. Way)/ In charge Rudauli. Annexure-1 is the copy of the said order. It is the case of the applicant that issuance of such transfer order covered under Annexure-1 Dt. 12.2.2007 by Respondent No.4 is arbitrary, illegal, discriminatory and also in violation of Article 14 and 16 of the Constitution. It is his case that the pay scale of SE Grade-I is Rs. 6500-10500, whereas the pay scale of SSE (P. Way)/ Incharge is Rs. 7450-11000/- and thus, under the guise of transfer he has been reverted to lower post and pay scale. It is also his case that there is no ground of Public interest or on Administrative ground to effect his transfer. He also made a representation Dt. 7.3.2007 covered under (Annexure-3) but the same is still pending for consideration. He contended that the normal tenure of incumbent at one place is for 4 years and the applicant had joined at Rudauli in April 2004 as such, he is entitled to continue till 2008 and till date he is not relieved from the post of SSE (P. Way) / Incharge from Rudauli.


3. The respondents have filed Counter Affidavit stating that the applicant has been transferred from the post of SSE (PW) / Incharge, Rudauli to the post of SE (P. Way) Special /FB instead of SE (P. Way)/ Special/FD under ADEN/FD. But due to inadvertent topographical mistake SE (P. Way)/ Special/FD was typed in the order Dt. 12.2.2007 (Annexure-1) and after noticing the said



mistake they have corrected it, by way of Corrigendum Dt. 5.7.2007 and as such, the applicant has been transferred in the same pay and grade on Administrative ground. Annexure-CA-1 is the copy of Corrigendum Dt. 5.7.2007. They stated that the applicant has been transferred to Faizabad on Administrative ground and also on his request Dt. 11.3.2003 (Annexure-2). By considering the request of the applicant sympathetically, they have effected such transfer of the applicant. The applicant made his request only choosing the station but not the posting. The request of the wife of the applicant is against the representation of the applicant and further that any representation from others except the applicant is against the provisions of conduct rules. The applicant never cancelled his request for transfer to Faizabad. Further the applicant has been transferred on the same pay and grade and it has not been down graded thus, denied the allegations of the applicant.

4. The applicant has filed Rejoinder Affidavit reiterating his pleas as prayed in the OA.
5. Heard both sides.
6. The point for consideration is whether the applicant is entitled for the relief as prayed for.
7. The applicant has challenged the transfer order on the ground that he has not completed minimum period of 4 years in the present station at Rudauli and also contents that by way of transfer from Rudauli to Faizabad his pay scale has been deduced. He also contents that he is still continuing in the same station of Rudauli and not yet relieved. The respondents contention is that on the request of the applicant they have effected the transfer of the applicant to Faizabad and further stated that in his representation the applicant sought transfer requesting his choice station but not choice posting.



8. Annexure-2 is the copy of request of the applicant dated 11.3.2004, in which he requested for transfer to Faizabad on the ground that his children are studying and his old parents require his assistance there. From this, it is clear that applicant himself made his request for his transfer from Rudauli to Faizabad and he did not opt any choice of posting / seat. After making his representation covered under Annexure-2, he never made any further representation either for cancellation of his request or choosing any other place of posting, which it self reveals that the applicant never felt it necessary to cancel his request for transfer. In such circumstances, issuing of transfer order effecting the transfer of the applicant from SSE Rudauli to Faizabad in the same scale does not affect any of reduction of his pay scale.
9. The claim of the applicant is that he was Incharge posted at Rudauli and on that ground he is seeking cancellation of transfer order is not at all justified. If the applicant was so interested in a particular post, he ought to have mention the same in his representation but made such representation confining to the choice of station only.
10. In view of the above circumstances, questioning the order of transfer of the applicant covered under Annexure-1 on the ground that he has not completed a minimum period of 4 years at Rudauli and also on the ground his request was not considered immediately are not at all sustainable. Further basing on the request of the applicant, when transfer has been effected and further it is not the case of the applicant that his transfer is against the transfer policy of the department or with any malafide intentions and interference of such transfer order by this Tribunal is not at all desirable. In respect of pending representation of the applicant Dt.07.03.2007 through his wife, a direction is given to the respondents to consider his representation sympathetically and except that this Tribunal cannot
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give any direction to the respondent authority, as the applicant approached the Tribunal without waiting till the disposal of such request.

11. In view of the above circumstances, there are no justified grounds to entertain in the claim of the applicant for quashing the order of transfer of the applicant covered under (Annexure-1) hence dismissed. No costs.


(M. KANTHAIYAH)
MEMBER (J)

25.7.07

/Amit/