

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

Original Application No.88/2009

This the 09th day of March 2009

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

Piyush Kumar Saxena, aged about 45 years, S/o late Dr. S.C. Saxena, working as Enquiry –cum-Reservation Clerk at Daliganj Jn. North Eastern Railway, Lucknow Division Lucknow, R/o E-2664, Rajajipuram, Lucknow

...Applicant.

By Advocate: Sri A.R. Masoodi .

Versus.

1. Union of India, through Divisional Railway Manager, N.E.R., Ashok Marg, Lucknow.
2. D.R.M. (Personnel), N.E.R., Ashok Marg, Lucknow.

...Respondents.

By Advocate: Sri Ajmal Khan.

ORDER

The applicant has filed this O.A. with a prayer to quash the impugned order dated 27.2.2008 (Annexure A-1) in respect of transfer of the applicant from Daliganj Jn. Lucknow to Lakhimpur Jn. on the ground that the authorities have effected his transfer which is tainted by arbitrariness and passed on colourable exercise of power at the behest of his opponent who has unduly been given the benefit of illegal selection and is being continued in spite of the judgment passed by this

Tribunal and interim order passed by Hon'ble High Court by way of interim measure. The applicant sought for stay of his transfer from Daliganj Jn. to Lakhimpur Jn. during the pendency of this O.A.

2. The respondents have not filed CA, but opposed the claim of the applicant stating that there are no merits in the case and also for staying the transfer of the applicant from Daliganj Jn. to Lakhimpur Jn. stating that his transfer has been effected alongwith other 25 employees on administrative grounds and also denied the allegation of arbitrariness coupled with malafide exercise of powers by the respondents.

3. Head both sides.

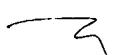
4. The point for consideration is whether the applicant is entitled for interim relief as prayed for.

5. The facts of the case are that the applicant has been working in the present place of posting at Daliganj Jn. N.E.R., Lucknow since April 2008 and when the authorities denied the claim of his promotion on the post of Commercial Inspector in the year 2003, he filed O.A. no. 441 of 2004 claiming his promotion with consequential appointment given to private respondent i.e. respondent no.4 therein. After exchange of pleadings and after hearing both sides, the said O.A. was allowed directing the respondents to consider the case of the applicant for promotion w.e.f. the date the promotional post was filled up and give him all consequential benefits. Annexure-2 is a copy of the judgment in O.A. no. 441 of 2004 dated 18.12.2008.



6. Aggrieved with the said judgment, the respondent no.4 therein filed Writ petition bearing no. 292 {S/B} of 2009 on the file of Hon'ble High Court and by way of interim measure, the Hon'ble High Court stayed the operation and implementation of the impugned judgment only to the extent of direction issued by the Tribunal to appoint respondent no.5 on the next higher post alongwith arrears of salary. It shall be open for the competent authority/selection committee to proceed the matter in the light of the Tribunal's judgment and other statutory provisions as well as circulars. It was further observed therein that any decision taken by the respondents shall be subject to further order passed by this Court. Annexure-3 is the copy of the order of Hon'ble High Court dated 19.2.2009.

7. It is the case of the applicant that the judgment passed by this Tribunal has created a state of unrest in the mind of higher authorities against whom, this Tribunal has directed to hold an enquiry against the erring officer who had committed serious irregularities in the matter of selection. Further, the person is not entitled to continue on the higher post is still being extended the benefit of higher post and the applicant started seeking implementation of the order of the Tribunal, is the reason for passing of the impugned transfer order to victimize him and caused an undue hardships at the behest of his opponent who is still being allowed the benefits of higher post. It is also the case of the applicant that the impugned transfer order which is going to cause undue hardships to him for many other reasons, his wife is a Government servant working at Lucknow and his mother is aged about 70 years and depending upon him and his three children (two daughters and one son)



are studying at Lucknow and his eldest daughter who is studying in Class XI, is going to appear in the Board Examination during the next academic session and thus, causes serious hardships to him and his family members, at this stage.

8. From the pleadings of the applicant, it is clear that he has been transferred because of judgment in his O.A. bearing no. 441 of 2004 dated 18.12.2008 allowing his claim for promotion on the post of Commercial Inspector, quashing the promotion of private respondent and also directing the authorities to hold an enquiry against erring officers who had committed serious irregularities in the matter of selection. The other ground is that his transfer is pre-mature and he has been transferred within ten months from the present place of posting and another ground taken on the ground of hardships to him and his family members.

9. On perusal of impugned transfer order dated 27.2.2008 (Annexure A-1), it shows that the applicant alongwith 25 others have been affected with such transfer on administrative grounds. Admittedly, the claim of the applicant in the earlier O.A. bearing no. 441 of 2004 was for promotion on the post of Commercial Inspector and also questioning the promotion of respondent no.4 therein and the said O.A. was allowed by this Tribunal on 18.12.2008. In the judgment, this Tribunal also directed the authorities to conduct a departmental enquiry and fix responsibility on the officers who committed such irregularities in the face of Supreme Court decision and departmental circulars specifically instructing not to take

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seniority marks into account while allowing promotion. Being aggrieved with the decision, the respondent no.4 therein also approached the Hon'ble High Court and obtained stay of the order of this Tribunal to the extent of direction to appointment the respondent no.5 on the next higher post alongwith arrears of salary.

10. In respect of malice on the part of the respondents' authorities at the instance of the opponent against whom, he filed O.A. no. 441 of 2004 and succeeded in claiming the promotion, if the transfer of the applicant alone has been affected, there is some justification in making such allegation against the authorities. Admittedly, the applicant has not made any allegation or malice against any of the individual officer and none of them have been arrayed as a party in his official capacity. In respect of allegation of official prejudiced against him because of filing of his case in O.A. No.441/2004 for promotion in which this Tribunal ordered enquiry against the erring officers who had committed serious irregularities in the matter of selection. The applicant is justified, if the impugned transfer order has been effected against him alone. On perusal of impugned order Annexure A-1 reveals that alongwith the applicant, 25 other officials have been transferred that too on administrative grounds and in such circumstances, the argument of the applicant that because of his earlier case and direction of the Tribunal, caused prejudice in the mind of the respondent authorities and thus, effected his transfer, is not at all convincing.

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11. When the transfer of the applicant alongwith many others have been effected on administrative grounds, it is not open to the applicant to seek shelter on the pretext that he has not completing more then one year in the present post.

12. The transfer is an incidence of service and interference of this Tribunal in such transfers arises if such transfer was made with a malice exercise of power or against the transfer policy or by in competent authority. But no such circumstances are prevailing in the instant case for interference of this Tribunal.

13. The applicant has also taken a ground because of this impugned transfer order, it is going to affect of his family members including his old aged mother, wife who has been serving in Government service at Lucknow and also his children's education. It is the duty of the authorities while effecting the transfer of an employee, they have to take care of problems of such employee as a model employer, but such a ground is not a ground for interference by this Tribunal in respect of such transfer of an employee.

14. Admittedly, the applicant has not made any representation and immediately rushed to this Tribunal apprehending the implementation of the impugned transfer order. Under the above circumstances, this O.A. is disposed of with a direction to the applicant to make a representation in respect of his grievances because of his transfer to the competent authority within a period of one week from the date of this order, who shall consider and dispose of the same within a period of two weeks thereafter by passing a reasoned order

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and in the meanwhile, impugned transfer order dated 27.2.2008 (Annexure A-1) shall be kept in abeyance, if not already implemented. No costs.


{M. Kanthaiah}
Member-J

09.03.2009

Girish/-