

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.378/2009

This the 12th day of November, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member-A

J.P. Suman, aged about 52 years, son of late Sri Dukhi Prasad, Chief Travelling Ticket Inspector, North Eastern Railway, Gonda Junction, resident of Village-Pagra Bujurg, Post-Deoria Pandey, district Kushinagar.

.....Applicant

By Advocate: Shri A.R. Masoodi.

Versus.

1. Railway Board through its Chairman, Rail Bhawan, New Delhi.
2. General Manager (Personnel), North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager (Personnel), North Eastern Railway, Lucknow Division, Lucknow.

.....Respondents

By Advocate: Shri N.K. Agrawal.

Connected with

ORIGINAL APPLICATION No.379/2009

Zakir Ali, aged about 52 years, son of late Sri Abdul Raheem, Travelling Ticket Examiner, North Eastern Railway, Mailani Junction, Lucknow Division resident of Village-Mahraganj Ghosiana, Near Water Tank, Post-Badagaon, District-Gonda.

.....Applicant

By Advocate: Shri A.R. Masoodi.

Versus.

1. Railway Board through its Chairman, Rail Bhawan, New Delhi.
2. General Manager (Personnel), North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager (Personnel), North Eastern Railway, Lucknow Division, Lucknow.

.....Respondents

By Advocate: Shri Arvind Kumar.

ORDER

Hon'ble Ms. Sadhna Srivastava, Member (J)

With the consent of the learned counsel for the parties both these cases were taken up for final disposal at the admission stage. We have accordingly heard the learned counsel for both the parties.

2. Since the question of facts and law involved in both the cases are same, we proposed to decide both them by a common order.

3. The above two OAs have been filed aggrieved by the order dt.25.8.2009 passed by Divisional railway Manager, transferring J.P. Suman, Chief Travelling Ticket Inspector from Gonda, North Eastern Railway to Southern Railway, Trivendram Division and (2). Zakir Ali, Travelling Ticket Examiner, Mailani, North Eastern Railway to Waltair Division of Eastern Coast Railway.

4. The decision to transfer the aforesaid employee was taken by the Ministry of Railway. By order dated 31.07.09 the Ministry of Railways, New Delhi, communicated its decision to GM, NE Railway. The GM NE Railway by order dated 10.08.09 accordingly directed DRM, who in turn communicated the impugned order dated 25.08.09 to the applicants namely J.P.

Suman (O.A.No.378/2009) and Zakir Ali

(O.A.No.379/2009). According to the respondents both of them have been relieved on 01.09.2009. By order dt.08.09.2009 a Single Member Bench of this Tribunal has directed that no coercive action be taken against them. Thus, they have not yet complied with the order of transfer. The impugned order has been challenged as being violative of statutory rules, arbitrary in nature and without jurisdiction.

5. We have heard the learned counsel for the parties and perused the records.

6. Ministry of railways, it is clarified has directed for Inter Zonal Transfers of the applicants in exigencies of service. The exigency, it is stated, is that in connection with the leaking of question papers of written examination of RRB, Ajmer and RRB, Allahabad, the CBI enquiry is pending against the applicants and some others therefore, the competent authority, has chosen to exercise the power of transfer from one railway to other railway as envisaged by Rule-226 of IREM Code.

7. The scope of exercising of power of judicial review in the matter of transfer is limited to specific grounds.

8. The Supreme Court in the case of **State of Madhya Pradesh & Anr. v. Sri S.S. Kourav & Ors., 1995 (2) AISLJ SC 109** held:

"3.....The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders



came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

9. The Supreme Court in concise manner referred to the position in law which we have reproduced above.

10. In identical terms was the finding of the Supreme Court in the case of **National Hydroelectric Power Corporation Ltd. V. Shri Bhagwan & Anr., (2001) 8 SCC 574**. The finding reads:

"5.....It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.....".

11. We further refer with advantage to the decision of the Supreme Court in the case of **Union of Indian and Others v. Janardhan Debanath and Another, (2004) 4 SCC 245** pertaining to the same question that no Government servant has a legal right to be posted forever at any particular place or a place of his choice. The findings read:

"9.....No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferring posts from one place to another is not only as incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management,

as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. V. Shri Bhagwan [(2001) 8 SCC 574]."

12. The above decisions clearly show that transfer is an incidence of service. It is not a right of the Government servant to be posted at any particular place or insist to that effect.

13. The Indian Railway, in tune with the above principle, framed Rule 226 of the Indian Railway Establishment Code Vol.I. It confers such a power to transfer the Railway servant to any other department or railway or railway establishment. In case of Group 'C' and 'D' railway servants, the power has been conferred on the General Manager or by a lower authority to whom it may be re-delegated. The Rule reads:

"226 Transfers.- Ordinarily, a railway servant shall be employed throughout his service on the railway 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 of railway or railway establishment including a project in or out of India. In regard to Group 'D' railway servants, 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."

14. In Full Bench case of Ganesh Din and Others v. Union of India and Others reported in 2005 (2) Rule-226 (Supra), which deals with Inter Divisional/Inter Zonal Railway transfers such a transfer has been approved and affirmed by High Court of Delhi in para-13 of its judgment, which reads as follows:-

"Rule 226 and the above circulars have been carefully perused by us. We have also gone through the judgment of the Full Bench of the Central Administrative Tribunal in O.A.Nos. 1670/2004, 2743/2004 and 1405/2004 covering the cases of Sudhir Kumar and Ganesh Din as also the judgment of the learned Single Judge of this Court in CWP



No.14596/1997 titled Union of India Vs. Shri A.K. Gandhi and Ors. Where the validity of inter-divisional transfer was considered. He was considering a challenge to the judgment of the Tribunal, where an inter-divisional transfer had been quashed. Learned Single Judge rejected the plea that the transfer was in violation of the statutory Rule. He held that Rule 226 of the Indian Railway Establishment Code (Volume-1), which gives power to the authority to transfer a Railway servant to inter-zonal Railway in the exigency of service to be valid. The transfer made was in public interest, to provide clean administration in mass contact areas and was in the exigency of service. Power was also vested in the Competent Authority to pass an order of transfer in the case of a Railway employee detected to be indulging in malpractices in mass contact areas on inter-divisional basis in terms of circular of 2.11.1998. The circular read with provisions of Rule 226 of the Indian Railway Establishment Code (Volume-I) supports the action taken in transferring the employee."

15. The impugned order has been challenged on the ground of Inter Zonal transfer/ Inter Divisional Transfers under Rule 226 of Indian Railway Establishment Code can be made only 'in exigency of service', which terms means some thing more than 'Administrative grounds'. It has not been illustrated as to what is the distinction between 'in exigency of service' and 'Administrative grounds'. To our mind 'Administrative Ground' refers to routine administrative problems. 'The exigency in service' refers to serious problems. It means that reputation of service has been put in jeopardy i.e. transparency of service has been in endangered. It was a serious matter that the papers were leaked during the transportation therefore, it is a serious allegation of malpractice and corruption. Consequently, we are of the opinion that the Railway Ministry treated alleged involvement of the applicants in this incident as exigency of service. In the circumstances, we are unable to agree that the impugned order is violative of Rule-226 (Supra). In fact, the said rule has been





enacted to empower the competent authority to exercise the power of Inter Zonal Transfers in such serious cases.

16. Before we part, it may be mentioned that the impugned order has been passed by Ministry of Railways as mentioned above. The General Manager has only communicated the said order to Divisional Railway Manager vide letter dt.10.08.2009. The impugned order has not been passed by the General Manager. Therefore, it cannot be accepted as alleged before us that the order in question has been passed by General Manager.

17. Taking into account the above facts and law as discussed, we do not find any merit in both these cases.

18. In the result, both these OAs are dismissed. No costs.


(Dr. A.K. Mishra) 12/11/09
Member (A)


(Ms. Sadhna Srivastava)
Member (J)

Amit/-