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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 185/1991(L)

Anwar Ahmed Khan Applicant

Versus

Union of India & Others Respondents

Hon'ble Mr. Justice U.C.Srivastava, VC

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr.K. Obayya, Member(A))

The applicant is an Assistant Station Master (A.S.M.) in the Northern Railway. There was a disciplinary proceeding against him which resulted in his dismissal on 23.12.1982. He challenged the dismissal order in the High Court, and the case having been received in the tribunal on transfer(F.A. 1137/87) was disposed of on 25.7.1990. The dismissal order was set aside. The respondents were directed to treat the applicant to be continuing in service and give him service benefits like a fixation of pay and promotion in accordance with law. He was not to get any back wages. The direction also stipulated that he should be re-instated in service within a period of one month from the date of receipt copy of the order. The applicant approached the authorities for appointment and after requisite medical test, he was given posting orders as A.S.M. and transferred to Harauni vide order dated 7.11.1990. It is against this order(Annexure-1), the applicant has come to the tribunal with a prayer that the order of transfer be set aside and also the applicant be promoted to the next higher grade of Station Master.

2. According to the applicant, his last station before dismissal was at Bhadohi to which station he came

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On request transfer on 6.5.1992 from Lucknow and as such as per direction of the tribunal, he was to be re-instated in the same post and given posting at the same station Bhadohi, though he was paid salary from Bhadohi, in between he was sent for refresher course to Zonal Training School Chandausi and also for safety Camp Training Course at Alambagh, Lucknow, after completion of course when he reported for duty at Bhadohi on 30.3.1991, the respondents have directed him to report at the transferred station namely Harauni.

2. The applicant has assailed the transfer order on the ground that it is in contravention of the judgement of the tribunal and that it is malafides with a view to harass the applicant and though four juniors persons who are due to for periodical transfer are retained at Bhadohi, he has been singled out for harassment.

3. The respondents have opposed the case and in their counter, it is pointed out that after judgement of the tribunal, when the applicant reported for duty he was sent for medical test and pending completion of certain formalities his salary was charged to the last station Bhadohi and by order dated 7.11.1990 posting orders were given to him as A.S.M. Harauni. It is stated that the applicant somehow managed to go for training course though the order was not issued by the competent authority. The respondents deny that there are not malafides in the posting orders and after refresher training he should have proceeded to Harauni to join the post. Regarding seniority it is

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stated that the applicant's original seniority has been restored and that he could not be promoted as Station Master as there are ^anumber of senior ~~of~~ A.S.Ms. above the applicant who are waiting for their promotion.

4. We have heard the learned counsel for the parties. The learned counsel for the applicant contended that the applicant is unnecessarily being harassed and that since his last station before dismissal was at ^oBhadhi, he should have been posted at Bhadhi only and not posted to Harauni which is nothing but transfer. The learned counsel further contended that the applicant came to Bhadhi at his own request, as he had certain personal problems; which need to be sympathetically considered since he has large family, including minor children and he has to look-after them as his wife died recently. The counsel for the respondents submitted that the applicant was posted to Harauni even though the order was given on 7.11.1990, he evaded joining there on some pretext or other and that in postings and transfers the interests of the administration will have to be seen and the personal problems if any have to be subordinated to administrative exigency and interests.

5. We have carefully considered the rival contentions. So far as the issue of promotion is concerned, the respondents clearly stated that there are many seniors to the applicant who are waiting for their chance for promotion and as such the applicant has no right for promotion as yet. For this reason, we do not see that there has been wrongful denial of

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promotion to the applicant. On the question of transfer the contention of the respondents is that it is not transfer but a posting. We have perused the relevant order contained in Annexure-1. Item 6 of the above order, relates to the applicant and is in following terms :-

"Pursuant to the directions of Hon'ble CAT/ALD/Circuit Bench/Lucknow in No. 645/83, Sri A.A.Khan, ASM in grade Rs. 1400-2300(RPS), whose pay was being charged at BOY in compliance to the interim injunction of Hon'ble High Court/Lucknow and who is waiting for orders, is posted as ASM/P&M in grade Rs.1400-2300(RPS). His pay in revised scales of pay will be fixed accordingly and be notified for payment."

From the above order it is evident that after re-instatement the applicant is given posting at Harauni and it is not a transfer. The applicant was holding a transferable post, and after dismissal order his tenure at Bhadohi came to end. The direction of the tribunal was only to the effect that he should be deemed to be continuing in service. There was no direction that he was to be given a posting at the very place he served last before dismissal.

6. It is well settled that the formation of opinion as to the existence of exigency of service, is left to the subjective satisfaction of the government. The responsibility of good administration is that of the government and the court would not judge propriety or sufficiency of such opinion by objective standards. In the case of E.P. Royappa Vs. State of Tamilnadu

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(A.I.R.(74) S.C.C. page 577), The Supreme Court held that the government is the best Judge to utilise the service of an employee." In Gujrat Electricity Board and another Vs. Atmaram Sungomal Poshani ¹⁹⁸⁷ (A.I.R.(9) SCC 1433) it was held that the transfer is an incident of service and that it can not be assailed merely on the ground of having made a representation and pendency of the same." Reference may be made to the case of Union of India Vs. H.N. Kirtania, (A.I.R. 1989(3) SCC 445) wherein the Supreme Court held that "transfer of a public servant made on administrative ground or in public interest should not be interefered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafides." In B. Vardhna Rao Vs. State of Karnataka (1986(4)SCC-13), the Supreme Court observed that any transfer by violation of transfer policy by itself would not be a ground for quashing that order of transfer, since instructions on transfer policy are more in the nature of guidelines to the officers.

7. The case of the applicant is one of re-instatement. He was out of service because of dismissal and was re-instated because of tribunal's order. For one, coming from leave or dismissal what is given is a posting order, and not a transfer order. Even if we hold that it was a transfer order, for the reasons discussed above we do not consider that any case is made out for our intereference. The applicant who was holding a transferable post was liable to be transferred from place to place and that in these matters

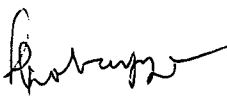
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it is the need of administration that is paramount and not personal problems or in-conveniences. It is noticed that the order was issued on 7.11.1990 but uptill now, the applicant has not joined at the new station; whatever may be his personal problems, those should not lead to non compliance of a validly passed order. As the applicant would only be making himself liable for disciplinary action for failure to join at the new station, he should join duty at Harauni immediately, and thereafter may make a representation about his personal problems. It is for the administration to consider the matter. We do not wish to make any observation or direction in this regard. The application is without merit and accordingly it is dismissed, with no order as to cost.


Member (A)


Vice-Chairman

Lucknow Dated: 15/12/1992
(RKA)