

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW.

ORIGINAL APPLICATION NO: 419/2003.

this, the 21<sup>st</sup>, day of May 2004.

HON'BLE SHRI S.P. ARYA MEMBER(A)

Mrs. Renu Nagar aged about 35 years, wife of Sri Pankaj Nagar, resident of 49, Clay Square, Lucknow.

....Applicant.

BY Advocate Shri K.P. Srivastava.

Versus

1. Union of India through it's General Manager (Establishment) Northern Railway, Baroda House, New Delhi.
2. Chief Personnel Officer, Northern Railway, Head Quarter Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway Hazratganj, Lucknow.
4. Smt. Kanchan Malviya, Rajya Bhava Sahayak Grade-II D.R.M. Office(Northern Railway), Lucknow.
5. Sandeep Mishra, Rajya Bhava Sahayak Grade-II, DRM Office (Northern Railway, Lucknow.

Corrected as per ⑥.  
order dt. 16.7.04 on  
M.P. no. 1274/04 in off  
419/03.

Smt. Asha Saxena, Sr. Rajya Bhava Adhikari, C/o DRM office, Northern Railway, Lucknow. (Mrs. Asha Saxena, aged about 59 years widow of Late Sri G.K. Saxena, R/o-57, Nandan Mahal...Respondents. Road, Lucknow.)

Dy. REGISTRAR BY Advocate: Shri N.K. Agarwal for Official respondents.

Central Administrative Tribunal  
Lucknow Bench, Lucknow. Shri A. Moin for respondent No. 4.

ORDER

BY SHRI S.P. ARYA MEMBER(A)

The applicant ~~was~~ working as Rajya Bhava Sahayak

(Grade-II) in the office of Respondent No. 3. Respondent No. 5 was transferred from Delhi on 24.1.2002 in the office of Respondent No. 3 in place of O.P. No. 4. The Respondent No. 4 was transferred to Carriage and Wagon Workshop Alambagh in the same capacity of Rajya Bhasa Sahayak Grade-II. Respondent No. 4 made a representation to Respondent No. 2 for continuance in the office of Respondent No. 3. As creche facility is not available in Carriage and Wagon Workshop, <sup>the</sup> post from the Carriage and Wagon Workshop was transferred ~~from~~ <sup>for</sup> 6 months to Respondent No. 3 so that respondent No. 4 may continue in the office (Annexure-7). On 12.6.2003, orders issued to transfer the applicant to Carriage and Wagon Workshop in place of Respondent No. 4. On 2.7.2003, letter issued from Respondent No. 3 as well for releasing the applicant. Representation made in this regard by the applicant was rejected by letter dated 19.8.2003. By this O.A., the applicant has prayed for quashing the order of transfer and <sup>order</sup> rejecting her representation (Annexure No. 1,2 and 3) and also direct the Respondent No. 1 and 2 to allow the applicant to perform his duty as Rajya Bhasa Sahayak Grade-II in the office of Respondent No. 3. The transfer orders and the representations have been assailed on the grounds of arbitrary exercise of power by transferring the applicant without any justified reason, the transfer order being punitive, rejection of representation without paying any heed to circumstances of the applicant, <sup>The</sup> orders of transfer dated 24.1.2002, transferring the Respondent No.4 to Carriage and Wagon Workshop already acted upon and her transfer being made to accommodate another employee amounting to malafide exercise of power.

2. Respondent No. 1 to 3 in their Counter Reply have stated that the cadre of Hindi Assistant is controlled by the Head Quarter, New Delhi. The transfer orders have been made by the competent authority of the Head Quarter office on administrative grounds which is a condition of service. Juniority or seniority is material for transfers. The services of Hindi Sahayak can be utilised anywhere in Northern Railway, <sup>able.</sup> the post being transferred.

It has been ~~also~~ denied that the Respondent No. 6 wanted to accommodate respondent No. 4 and therefore suggested the transfer of the applicant. Respondent No. 3 has given the proposal for transfer of the applicant in place of Respondent No. 4 on administrative grounds.

3. Respondent No. 4 has stated in her objection to amendment that Respondent No. 6, senior Hindi Officer has got no role to play the transfer of anybody as the competent authority is Mukhya Raj Bhasa Adhikari. According to the letters suggesting the transfer of the applicant is said to be either a manipulated document or the same has got no connection with the impugned transfer order. The letter of DRM (P) of 2.7.2003 is also said to be concocted and fabricated document.

4. Counsel for the applicant has relied on D.R. Sengal versus C.P.M.G. and others reported in (1991) 15 ATC-36 where it was held that transferring an employee for accommodating another in his place, was ~~held~~ discriminatory and arbitrary. An order of transfer of an officer simply to retain another officer whether in public <sup>interest</sup> or administrative exigency is held to be malafide and the court is competent to interfere even if they had no civil or evil consequences <sup>to</sup> follow from the said order. In Vinod Sahi Versus Union of India and others reported in (1996) 34 ATC 255, where it was held that the transfer of an employee to accommodate another employee was not a bona fide exercise of power. The Hon'ble High Court of Allahabad has held in the case of Umesh Chand Tiwari versus The State of U.P. <sup>(1987(13) Tar)</sup> where employer has a right to seek protection against being victimised. Authorities are to exercise their power reasonably. In Jitendra Kumar Saxena versus

Union of India and Others, this Bench of the Tribunal has held that order of transfer to accommodate another employee cannot ~~be said~~ to be in public interest or in administrative exigency.

5. Counsel for the respondents relied on the case of Najamal Hussain Mehadi versus State of Maharashtra and others reported in 1997 (1) Supreme Court Cases 532 where it was held that "Besides the transfer in question is within the Bombay City itself and not to any other place in the State of Maharashtra. While we decline to interfere with the order of transfer of the appellant, we would recommend the Government of Maharashtra to provide a residential quarter to the appellant near the place of his posting so that he can discharge his duties as a police officer faithfully and sincerely and his family members will not be put to any further harassment." On the basis of judgment, he has argued that there is no reason to interfere in the transfer when it has been made in the same city.

6. Counsel for respondent No. 4 has relied on Rajendra Roy versus Union of India and Another reported in JT 1992 (6) Supreme Court 732 where it was held that "unless ~~in~~ the order of transfer is passed mala fide or in violation of rules, the Court and Tribunal should not interfere." He has relied on National Hydro-electric Power Corporation Ltd. versus Shri Bhagwan and Shiv Prakash reported in 2002 (1) ATJ 108 where it was held that "the government servant or employee of public undertaking has no right to be posted forever at any one particular place." He has also relied on Shilpi Bose, H.N. Kirtania, S.L. Abbas and N.P. Thomas cases.

7. Counsel for the parties have been heard and the pleadings were perused.

8. From the facts and circumstances, it is clear that the

No. 4. Nothing has been explained by Respondent No. 3 with regards to his letter dated 7.8.2003 about the administrative exigency for transferring the applicant and that too during the discussion on telephone between Deputy Chief Rajbhasha Adhikari and Senior Rajbhasha Adhikari Lucknow. Once the transfer ~~was~~ was challenged, the circumstances leading to such transfer <sup>order to</sup> ~~be~~ disclosed

~~corrected as per~~ by the respondents. The same has not been done. ~~However, keeping~~ <sup>order dt 16.7.04 on</sup> <sup>in view</sup> <sup>of</sup> M.P. No. 1274/04 in OA 419/03. ~~Should~~

~~Dy. REGISTRAR~~ But while doing so, the rulings cited by the counsel for the Central Administrative Tribunal Lucknow Bench, Lucknow, <sup>for</sup> applicant <sup>for</sup> the transfer made for accommodating somebody is <sup>ive</sup> necessarily violating <sup>ive</sup> of the principle of natural justice, <sup>cannot be lost</sup> <sup>be said</sup>. ~~it~~ cannot ~~be~~ said to be just and fair. ~~Neither the order dated 24.1.02~~ <sup>dated</sup> and ~~nor~~ <sup>no</sup> The orders <sup>dated</sup> 12.6.03 & 2.7.03 had ~~ever~~ mentioned ~~of~~ admini-

~~shahue~~ exigency or public interest. Accordingly, I find that the orders transferring the applicant is neither just nor fair. It deserves to be quashed.

9. In view of the above discussions, the orders dated 12.6.2003, (Annexure 2), 2.7.2003 (Annexure-3) and 19.8.2003 (Annexure -3) are quashed with directions to the competent authority to consider the comparative difficulties and circumstances of applicant and O.P. No. 4 and pass appropriate order, ~~if~~ the ~~same~~ same is warranted in administrative exigency or public interest. No order as to costs.

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MEMBER(A)

Lucknow; Dated: 21.5.2004.

V.