

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
O.A. No. 41/06

Lucknow this the 18th day of August 2006

Hon. Mr. Justice Khem Karan, Vice Chairman.

Laddan Prasad aged about 48 years, son of Late Stau, resident of Quarter No. T/2-B, Railway Station Pachperwa, N.E. Railway, Pachparwa.

Applicant

By advocate Shri K.R. Ahirwar.

Vs.

1. **Union of India through General Manager, N.E. Railway, Lucknow.**
2. **Divisional Railway Manager, N.E. Railway, Lucknow.**
3. **Assistant Operative Manager, N.E. Railway, Lucknow.**
4. **Sri C. Lal, presently working as Traffic Inspector N.E. Railway, Gonda.**
5. **Sri S.P. Chaudhary presently working as Station Superintendent N.E. Railway, Pachperwa.**

Respondents.

By Advocate Shri K.K. Shukla.

Order

By Hon. Mr. Justice Khem Karan, Vice Chairman

1. The applicant is challenging the legality and propriety of transfer order dated 27.10.05 (Annexure-1), by which he has been transferred from Railway Station, Pachpedwa to Majhra Purab, on administrative grounds. Some other incidental reliefs have also been sought.
2. It transpires while being posted at Pachpedwa, the applicant had some dispute with Station Supdt. (respondent No. 5) his superior, in connection with shifting of a hand pipe, from near his residential quarters. He made written complaints (A-2, 5) to authorities^{for} restoring the facility. A perusal of his written complaint (A-3) dated 17.10.05 addressed to the Officer In-charge of Police Station Pachpedwa, reveals that there was some incident on 17.10.05, involving his wife and respondent No. 5. He alleged that the respondent No.5 assaulted his pregnant wife, as a result of which she sustained injuries. It appears that Traffic Inspector Gonda Loop was asked to enquire into the allegations, relating to the incident dated 17.10.05 and he submitted his report (Copy of which I A-8). According to his report, the applicant, his wife assaulted and humiliated respondent No.5, because

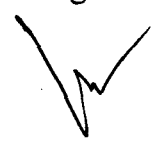
he sent a note to the Controller saying that the applicant was found sleeping while on duty at 2.15 in the night. Then there came the impugned order of transfer which the applicant is challenging in this O.A., mainly on the grounds that the same is malafide and punitive. He says such transfer in the mid of the school Session to such a far off place lying at long distance from his home district is punitive and bad. It has also been said that his school going children will not be able to continue their education at the new station as there are no such schools.

3. In their reply, the respondents have tried to say that the impugned order of transfer is not malafide or punitive and has been passed on administrative grounds. They say that after the applicant picked up quarrel or dispute with his immediate senior, namely Station Superintendent, there was no option but to transfer him from that Railway Station to another Railway station. They say that it cannot be said that the applicant could not have been transferred from that Railway Station to Railway Station Manjhra Poorab or his post was not transferable one. They have denied the allegations of malafide etc.

4. In his Rejoinder, the applicant has reiterated the pleas already taken in O.A. Reference to certain judicial pronouncements on the subject of transfer has also been made in this Rejoinder.


5. During the course of arguments, Shri K.R. Ahirwar appearing for the applicant informed the Tribunal that under the compelling circumstances, the applicant joined at Mnjhra Poorab, about a month ago.

6. Shri Ahirwar has referred to a number of judicial pronouncements (decision dated 8.5.1997 the Hon. High Court at Allahabad in Civil Misc. Writ Petition No. 27123 of 1996 Smt. Gayatri Devi vs. State of U.P. and others, B. Vardha Rao vs. State of Karnataka (1986 (4) SCC, 131, decision dated 5.1.94, High Court Allahabad in writ Petition No. 2954 (S/S) of 1993, Indra Pal Singh and another vs. Chairman and Managing Director Indian Telephone Industries, decision dated 5.9.97 of High Court in



Writ Petition No. 624 (S/S) of 1997, Lokesh Kumar vs. State of U.P. and others and also on E.P. Royappa vs. State of Tamilnadu (1994(1), S,LR 497, Smt. Kanka Das vs. State of West Bengal (1992 (8) SLR 356, Calcutta) to support his argument that transfer actuated by malice, or punitive in nature or influence⁴ by extraneous considerations and not in public interest should be interfered with. He says even transfers of Govt. Servants, ordered in mid of the Session, have been interfered with in some cases, with a view to prevent the servant and his school going children, from unbearable miseries. The learned counsel has also argued that the alleged physical assault on the respondent No.5, could not have been made the basis of transfer, especially when the applicant had a counter-version and disciplinary proceedings were in contemplation. According to him, in fact, the applicant has been punished for alleged misconduct by way of transferring him in mid of the Session, without giving him an opportunity of hearing. Shri Ahirwar says when there are no Schools at Manjhra Purab (as stated in para 4.19 of O.A. and not specifically denied in reply), where school going children of the applicant can continue their study, then the impugned transfer is punishment to all the family members of the applicant.

7. On the other hand Shri K.K. Shukla argues on the basis of State Bank of India vs. Anjan State Bank of India vs. Anjan Sanyal and others reported in Legal Digest, April, 2002, page 126, that the transfer of a Govt. servant being part of the service conditions, so the courts should not interfere with it unless it finds it is malafide, or is in breach of service Rules or the Authority who passed the order, was not competent to do so. According to him, the impugned transfer is not malafide nor can be called punitive and the Authority concerned was well-justified to shift him from there, in the circumstances when the applicant was fighting with the Station Supdt, And due to strained relations between the two, administrative problems were increasing day by day.




8. I have considered the respective submissions in the light of various judicial pronouncement, referred to above. Though this much is well settled that transfers of Govt. servants, are subject to judicial review, but scope for interference is very very limited one. If such transfer is not in public interest but is malafide, punitive or influenced by extraneous considerations or is in breach of ^{professed} ~~proposed~~ policy or smacks of favouritism, the Courts/Tribunals may interfere in suitable cases. No straight jacket formula can be evolved and it all depends on the facts and circumstances of a particular case, as to when the Courts will interfere.

9. Transfer orders, passed on administrative grounds, have to be seen ⁱⁿ ~~the~~ light of the facts and circumstances, appearing in a case and not on the principles or guidelines regulating routine or periodical transfers. Most of the judicial pronouncements cited by Shri Ahirwar, were in the context of periodical or routine transfers.

10. The impugned order of transfer was passed on administrative grounds. What this Tribunal can see is as to whether there were really such grounds or the Authority has used the expression without any basis. ON careful perusal of the pleadings and the material on record, I find that there were such grounds. If the applicant had gone to the extent to lodge F.I.R. against his superior officer, and was having strained relationship with him, the Authority was well justified to shift him from there to any other Station, to avoid further complications. The Tribunal will not be justified to interfere with such an order of transfer. It is difficult to characterize such an order as malafide or punitive or influenced by extraneous considerations. Transfers on administrative grounds such as in this case, cannot be deferred to the end of the School Session.

11. But I would like to observe that the authorities should have promptly resolve^d the issue, raised by the applicant in July through application (a-2), but they failed to realize that the same might lead to ugly situations. They woke up only after incident of 17.10.05.



12. I do agree with Shri Ahirwar on the point that the applicant, who is a low paid employee, can be accommodated at a station close or nearer to his home district where his children may continue their education. I hope that the D.R.M., N.E.R. Lucknow will consider his request for change of station.

13. So, this O.A. is disposed of ⁵but with a direction that in case the applicant makes any request for accommodating him at some other railway station, close or nearer to his home district, the D.R.M. N.E. Railway Lucknow will consider the same sympathetically and try to accommodate him as far as possible.. No order as to costs.

(Signature)
18-8-2006
Vice Chairman

s.a.