

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.567/2006
This the ^{22nd} day of May 2007

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

Durgesh Bahadur Singh, aged about 48 years Son of Shri Chhedi Singh, R/o Quarter No. T-III/A Railway Station Colony Gauriganj, Sultanpur.

...Applicant.

By Advocate: Shri P.K. Shukla for Shri R.K. Upadhayay.

Versus.


1. Union of India through the Divisional Railway Manager, Northern Railway, Lucknow.
2. Divisional Commercial Manager, Northern Railway, Lucknow.
3. Senior Divisional Personnel Manager, Northern Railway, Lucknow.

By Advocate: Shri V.K. Khare.

ORDER

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

The applicant who has been working as chief goods clerk filed this OA challenging the impugned transfer order dated 17.11.2006 (Annexure-1), transferring him from Gauriganj to Tanda Railway Station, on the ground that the same has been issued as a measure of punishment, which is not maintainable in the eyes of law.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant for quashing the impugned transfer order and permit him to continue in the same station of Gauriganj.
 3. The applicant has filed Rejoinder Affidavit reiterating his pleas in the Original application.
 4. Heard both sides.
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5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The brief facts of the case are that the applicant who was initially appointed on 06.08.1980 as Goods Clerk promoted as Chief Goods Clerk and working at Gauriganj Railway Station since April 2002. The applicant got two children who are standing in 11th and 7th class at Raibareli. In the year 2006, a Memo dated 13.07.2006, was issued, making charges against him that he illegally stock^{ed}ing of one rack paddy and also that he misbehaved with Commercial Inspector as well as Station Superintendent, Gauriganj on 22.06.2006. He also submitted his reply on 31.07.2006 to the 2nd Respondent, but he has not passed any orders. Annexure-6 and 7 are the copies of Memorandum and reply of the applicant.

7. Thereafter, the respondents without passing any orders on the charges, issued impugned transfer order Dt. 17.11.2006, (Annexure-1), transferring him from Gauriganj to Tanda Railway Station which is at distance of 250 kilometers. After submitting representation dated 13.11.2006 (Annexure-8), the applicant filed this original application, challenging the impugned transfer order on the ground that he has been transferred as a measure of punishment and on the ground that it was in the middle of academic year of his children.

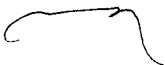
8. It is the case of the applicant that the respondents have transferred him as a measure of punishment, for the Memo (Annexure-1) issued against him and such orders of transfer by way of punishment is not at all maintainable and further it is malafide exercise of power. The respondents have stated that the said transfer was on administrative grounds but not as a punishment.

9. Admittedly, the 2nd Respondent has issued charge memo making allegations against the applicant under Section 3.1 of Sub Clause (II) and III of Railway misconduct Rules 1966, alleging that


on 22.06.2006 he misbehaved with commercial inspector and Station Superintendent, when they questioned him for stocking excess quantity of goods. The applicant submitted his reply to the said Memorandum on 31.07.2006. But without passing any orders on the said charges, the 2nd Respondent has issued impugned transfer order Dt. 17.11.2006 on the ground of administrative which is in the middle of the academic year.

10. Though the respondents contents that the transfer of the applicants has been effected on administrative ground, they are not in a position to show any of such reasons, except the alleged incident which happened on 22.06.2006 against the Commercial Inspector and Station Superintendent. Further the 2nd Respondent has not passed any orders on the charge memo against the applicant, after he submitted his reply on 31.07.2006. in the meantime, he issued transfer orders (Annexure-1) on 17.11.2006 transferring the applicant to Tanda Station which is at a distance of 250 kilometers from present station of Gauriganj. Because of such transfer in the mid-session, it will definitely effect the school education of the daughters of the applicant. It is not the case of the respondents that any of other employees have been transferred along with the applicant at this juncture. Similarly that any other employee has been posted in the place of the applicant and also not shown any administrative exigency for effecting the transfer of the applicant.

11. From the above discussions, it clearly shows that the applicant has been transferred only because of issuance of charge memo against him on 13.07.2006, which is with malafide intention and in the nature of punishment and except that there are no other reasons are appearing to transfer the applicant in the middle of the academic year of his daughters.



12. Such acts of the 2nd Respondent transferring the applicant is nothing but with malafide intention and punitive in nature, which is not at all sustainable and in such circumstances, the applicant is justified in questioning the validity of such impugned order.

In the result, OA is allowed, ^{quashing the} ~~questioning~~ impugned transfer order (Annexure-1). No costs. 


(M. KANTHAIAH)
MEMBER (J)

22-05-07

/amit/