

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW**

**Original Application No.58 /2009**

**Lucknow, this the 13<sup>th</sup> day of August, 2009**

**Hon'ble Dr. A.K. Mishra, Member (A)**

Ashok Kumar Singh, aged about 59 years, S/o Late Sri Ranjeet Sing  
R/o 14-MIG, Maushlesh Kunj Ayodhya, District Faizabad.

**Applicant.**

**By Advocate Sri Alok Trivedi.**

**VERSUS**

1. Union of India through the Secretary, Ministry of Railways,  
Government of India New Delhi.
2. The General Manager Northern Railway, Baroda House New  
Delhi.
3. The Divisional Railway Manager (P) Northern Railway, Lucknow  
Division, Lucknow.
4. The Sr. Divl. Commercial Manager Northern Railway, Lucknow  
Division Lucknow.

**Respondents.**

**By Advocate Sri Arvind Kumar.**

**ORDER**

**By Hon'ble Dr. A. K. Mishra, Member (A)**

The applicant has challenged his transfer from Ayodhya to  
Tanda Station made in the order dated 2.2.2009 of respondent No. 4.  
He has also challenged the order dated 24.2.2009 in which his  
representation for retention at Ayodhya as less than two years was left  
for his superannuation was rejected.

2. The grounds taken in the O.A. as amended subsequently are; (i)  
the transfer order of 2.2.2009, though stated to be made in  
administrative exigency, was actually a punitive order as seen from the



subsequent clarification given in the order dated 27.2.2009 while rejecting the representation of the applicant;

(ii) that the transfer has been made in violation of the policy guidelines of the Railways as contained in their Circular No. 940-E/0-III(EIV) dated 14.3.2004 covered by Serial No. 6024 with states that the transfer from one station to another in the same grade should not, as a matter of principle, be made if an employee is left with two years to retire;

(iii) that less than 18 months are left for him to retire from Railway service and the present transfer order would cause serious dislocation for his preparations for post-retirement settlement;

(iv) that earlier he was transferred on 22.6.2007 and the representation of the applicant was favorably considered by the same respondent No. 4 who recommended forcefully in his letter dated 3.9.2008 for cancellation of the earlier transfer order which was never implemented and he was allowed to continue at Ayodhya;

(v) that the grounds taken in the impugned letter dated 24.2.2009 could not survive a careful scrutiny.

3. The respondents have submitted that the Railways had the power to transfer an employee even if he is left with two years to retire and placed reliance on the instructions contained in the Railway Board Circulars dated 23.5.1981 and 30.10.1998.

4. It would be worthwhile to consider whether the case of the applicant falls within the exceptions enumerated in the aforesaid two circulars of the Railways. The circular dated 23.5.1981 states that "General Managers can exercise their discretion to transfer non-gazetted staff from stations/posts against whom there are complaints-



the man with longest stay being shifted first and those on the verge of their retirement (with 1 or 2 years service left) may be exempted if complaints against them are not serious."

5. The circular dated 30.10.1998 states, "it has been decided that the cases of staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed, should be reviewed at appropriate level and such staff transferred on inter-divisional basis." This circular does not specifically refer to cases of staff members who are left with less than two years of service. Nevertheless, let us examine whether the applicant had repeatedly figured in vigilance cases of serious natures and whether the transfer was justified on that ground.. The respondent No. 4 has referred to one vigilance case of 2006 in which he was transferred at the instance of the vigilance department on 22.6.2007. The vigilance department itself had recommended imposition of a minor penalty against the applicant. In spite of this transfer order, the respondent No. 4 in his letter dated 3.9.2008 had strongly recommended retention of the applicant at Ayodhya on the ground that he had rendered blotless service for the last 30 years and was instrumented in increasing the Railway revenue and that he had genuine health and family problems. The applicant also submits that the charge against him was about purchase of an old truck to enable his elder son to carry on a reasonable living on his own ; that the truck was purchased with loan assistance from financial institutions and that the facts were intimated to the competent authority; further, no opportunity was given to him to defend himself in a reasonable manner in that the documents relied on were never supplied to him. Since he has accepted the penalty and not filed any appeal, these averments are not helpful to him. The second charge related to alleged revenue loss for the Railways which, according to the applicant, resulted from a prohibitory order issued by the resident Magistrate, Ayodhya against unloading of coal, chemicals, gitty etc. on the ground that these materials were causing environmental



pollution. In the face of the Magisterial order, there was little that the applicant could have done in the matter at the cost of environmental hazards. This matter related to 2008, but a minor penalty was imposed on 6.2.2009 after transferring him on 2.2.2009 without considering the full facts of the case and the pleas of innocence of the applicant. Another charge sheet was issued on 17.11.2008 about loss of revenue relating to certain Box-N-Wagons which were received at Ayodhya. The applicant explained the full facts stating that there was no accompanying RR from the dispatch station; therefore, the weighment taken at Vyas Nagar was taken into account and appropriate levies were imposed on the dispatcher. However, this was challenged in a Writ Petition before the Hon'ble High Court which stayed the orders of recovery and directed for deposit of 1/3 of the demand amount relating to wharfage and demurrage. In the face of the direction of the Hon'ble High Court, the applicant could do no other than to render compliance to the Court's direction. Even in spite of such extenuating circumstances, a minor penalty was imposed on him on 25.2.2009 after he was transferred on 2.2.2009 and his representation against the transfer order was rejected on 24.2.2009. It is further contended that penalties imposed in 2009 have been challenged before the appellate authority and, therefore, could not be treated as final.

6. The other allegations about complaints received from the traders have not been substantiated by any documents nor the applicant has been called upon to explain any matter at any point of time.

7. The main thrust of the learned counsel for the applicant is that since appeals have been preferred against the minor penalties, those could not be relied on and construed as serious offences in terms of the clarification issued in the letters of Railways. In two cases, the penalty was imposed after the transfer was made; therefore, these two penalties could not be used as basis for his transfer. Neither does he figure repeatedly in vigilance cases. It was only once that the vigilance




department sought for his transfer which was effected on 22.6.2007, but never implemented at the instance of the respondent No. 4.

8. The learned counsel for the respondents have submitted that transfer of an employee is an incident of public service and no employee has a vested right to continue at a place of his own choice. The law is well settled in this regard. Nevertheless, the Railways itself has stipulated that an employee should not be transferred from his station if he is left with less than two years of service before retirement. Things should have been alright if he would have been relieved in terms of his earlier transfer order dated 22.6.2007. The applicant is not to blame, if he was not relieved by the authorities and allowed to stay at Ayodhya.

9. It is admitted that the applicant is left with about 18 months of service, and it would be inequitable to transfer him to a different station at this stage of his career. Therefore, the impugned orders are set aside and the respondents are directed to adjust the applicant against any non-sensitive post at Ayodhya so that he can organize himself for retirement and post-retirement life smoothly. It is not necessary for the respondents to retain him in the present post. He can be adjusted against any innocuous post in the same grade at Ayodhya.

10. The application is disposed of with the above directions.

  
(Dr. A.K. Mishra)  
Member (A)