

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL-LUCKNOW

BENCH LUCKNOW.

O.A. NO. 191 of 1991.

Gaya Bux and two others..... Applicants.

Versus

The Union of India and others..... Opp. Parties.

Hon'ble Mr. Justice U.C.Srivastava - V.C.

(By Hon'ble Mr. Justice U.C.Srivastava-VC)

The applicants three in number are employed as Gangman in Gang No. 21 LB on Lucknow Bareilly Railway Line of N.E. Railway with their postings at Hargaon Railway Station N.E. Railway under P.W.5 treated as respondent no. 5.

The applicants have approached this Tribunal against the transfer order transferring them to Biswa which is also under the same/ <sup>P.W.I</sup> ~~with~~ respondent no. 5. The grievance of the applicant is that the said opposite party no. 5 has harassed the Gangman and other Class IV employees and the applicants have raised voice against the said P.W.I Lakhimpur and that is why respondent no. 5 bears a grudge against them. Ultimately ~~they were harassed by the said P.W.I~~ <sup>they were harassed by the said P.W.I</sup> The applicants and others sent a complaint dated 1.10.90 with the allegations of corruption, taking bribe etc by him, also mentioning therein that the harassment had gone to a great extent and charging of money etc.. The applicants grievance is that it is because of the said complaint and ultimately said respondent no. 5 has got him transferred and this transfer order is nothing but by way of punishment for which no opportunity of hearing was given to them.

The transfer order is also in violation of Rule 2041 of the Railway Establishment Code 5.3 ( 227) which reads as follows:- Transfer of Railway servants:

(a) A competent Authority may transfer Railway servants from one post to another; provided that, except - (1) On account of inefficiency or misbehaviour, or (2) on his written request. A Railway servant shall not be transferred substantively to, or, except in a case covered by rule 2038(Fundamental Rule- 49) appointed to officiate any post carrying less pay than the pay of the permanent post on which he holds a lien or would hold a lien, had his lien not been suspended under Rule 2008 (F.R.14).

(b) Nothing contained in Clause (a) of this rule or any clause (10) of rule 2003 (F.R. 9 (13).....

The respondents have resisted the claim of the applicants and have pointed out that this transfer orders ~~was~~ already passed in exigency of the situation and on the Administrative grounds and the instant transfer is not on the ground of any misconduct or mis-behaviour. It has been pointed out by them denying that respondent no. 5 has not filed his own reply. In the counter affidavit which has been filed by the respondent no. 1 to 5 though not by respondent no. 5, but filed by the Divisional Engineer. It has been stated that all the complaints were made with ulterior motive and it is not correct that respondent no. 4 made recommendations for the transfer of the applicants on the aid and advice of respondent no. 5. Further that the maintenance of Railway Track cannot be left unattended as the passenger and goods trains constantly ply over it and in order to ensure the safety of the passengers and the rolling stock, the replacement of the applica

has already been made. It has been pointed out that the applicants' work was found to have not performed their duties according to the rigid standard and specifications, or were found to be performing their work inefficiently and were, at times, guilty of insubordination and some time this resulted in delay in movements of trains and put the running of trains on unnecessarily, for which show cause notice and even disciplinary actions were initiated against these applicants and in this connection they have filed certain documents for the year 1979, 1981, 1982, 1984, 1987, 1989, 1990 and 1991 (against Meharban Lal and one dated 4.5.91 and 15.3.91).

The facts stated above indicate that the transfer of the applicants is detached with the complaint made by them against P.W.I. No Administrative exigency or the ground which has led to inter transfer has been clarified. The transfer is that of place and that too within the jurisdiction to same P.W.I. It is not the case of respondents that such inter transfer have been made in the routine.

Rule 227 of Railway Establishment Manual deals with the transfer of posts and not place and the same does not apply in the instant case. No rule which permits such transfer or the authority for the same has been pointed out. Moreover this transfer order has now lost it's utility as it has already been stayed by this Tribunal and effect to the same has not been given. In view of what has been said above, the application is allowed and the transfer order quashed. However it is open for the respondents to pass fresh transfer order in accordance with law, in case the exigency of situation demands.

Dt: May 4, 1992.  
(DPS)

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Vice Chairman.