

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH.

Registration No. DA - 742 of 1995

Date of order December 22, 1995

Shri Niwas Shamma ..... Applicant.

Versus

Union of India and others ..... Respondents.

For the applicant : 1. Shri Laxmi Narain, Adv.  
2. , , Sunil Kumar, Adv.

CORAM : Hon'ble Mr. N. Sahu, Member (A)

O R D E R

Hon'ble Mr. N. Sahu, Member (A) :-

This application is <sup>as</sup> equal to the earlier application DA 59/94. In that application the transfer order dated 20.1.1994, transferring the applicant, Head T.T.E, Danapur to Silahdah Division on the same pay, Grade and capacity alongwith the post was the subject-matter of dispute. By an order dated 8.12.1994, I had directed that the applicant shall address a representation to the

Chief Commercial Manager, Eastern Railway specifying his grievance against the impugned order of transfer, who within two months thereafter shall dispose of the same by a reasoned order. The applicant accordingly submitted a representation on 2.2.1995. After considering the representation, the Chief Commercial Manager stated that the operation of the transfer order shall be kept in abeyance and not given effect to till ~~the~~ after the finalisation of the disciplinary proceedings presently pending against the applicant. He next stated that the transfer order dated 20.1.1994 would stand and would not be cancelled. The Chief Commercial Manager instructed that the decision of the Board be respected and implemented and the transfer order dated 20.1.1994 shall not be implemented till the disciplinary proceedings are finalised. In this petition, the applicant fears that the transfer order dated 20.1.1994 will now be implemented as disciplinary proceedings have been concluded and the punishment has also been awarded. He, therefore, pleads in the present application that the Annexure-1 by which his transfer order was impugned in the earlier OA should be quashed.

2. The learned counsel suggests that the impugned order was not made on administrative ground or for reasons of exigencies of service. He states that

the transfer order was confirmed on the basis of allegations made. There was no opportunity given to the applicant while coming to the conclusion that his stay at Danapur would not be conducive to the running of the administration. He alleges violation of principles of natural justice. It is stated that the respondents have shown utter haste in transferring the applicant on the basis of advice of the Vigilance Directorate of Railway Board. The order is punitive in nature and suffers from mala fide and baise. It is further stated that the applicant has been reduced to two scales below in time scale for the period of three years with cumulative effect as a result of the disciplinary proceedings and therefore the earlier order transferring him to Sialdah Division on the same pay, Grade and scale alongwith the post is no longer valid.

3. I have carefully considered the submissions of the learned counsel for the applicant, Shri Laxmi Narain. He has forcefully pleaded at length that the impugned transfer order should be quashed.

4. The law is very well settled that the exercise of jurisdiction of administrative authority concerning inter-departmental transfer is not open to judicial review. Secondly, the administrative exigencies and public interest in case of transfer have over-riding effect and the pleas of personal hardship



can be ignored. In a series of judgement of the Supreme Court, it has been held that the Government is the best Judge to utilise the services of ~~her~~<sup>its</sup> employees: E.P. Roypa vs. State of Tamil Nadu AIR 1974, the Supreme Court page 555. In 1989 (3) SCC 455, it was held that the transfer of a public servant made on administrative ground or in public interest should not be interfered with, unless the transfer order is illegal, on the ground of violation of statutory rules or on ground of mala fide. In B. Vardhan Rao vs. State of Karnataka 1986-4 SCC 131 the Supreme Court held that any transfer made in violation of transfer policy would not be a ground for quashing the order. In Gujrat Electricity Board case 1989 (2) SCC 602, the Supreme Court held that the transfer is an incident and a condition of service and no Government servant had legal right for being posted at any particular place. Whenever a public servant is transferred, he must comply with that order. In S.L. Abbas case, 1993 25 ATC 844, the Supreme Court reiterated the proposition that the transfer guidelines do not confer on an employee a legal and enforceable right.

5. In view of the above, I do not think there is any case whatsoever in this application. Para 6 of the order of the Chief Commercial Manager



dealt at length the history of cases initiated against him and the history of the complaint against him. The long list is formidable and I am satisfied that in the interest of administration, the decision to transfer the applicant after conclusion of the disciplinary proceedings is well-founded. There are two exceptions mentioned in the Supreme Court decision, which can be given as reason against the transfer order. First, the order must have violated some statutory rules. Secondly, it is made purely on account of mala fide motives. The first ceases to apply now. The applicant had been heard. The disciplinary proceedings are concluded and till the disciplinary proceedings are concluded, he had been retained at Danapur. The second ground of mala fide is unacceptable, because it is merely a vague allegation. No person has been named against whom malice is attributed. Finally, the whole ground on which this application has been filed has already been disposed of by my order dated 8.12.94. This present application is hit by rule of res judicata.

6. For the reasons mentioned above, this application is dismissed at the admission stage itself.

in limine.

N. Sahu  
(N. Sahu) 22/12/95  
Member (A)

(CBS)