

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA 362 of 1996

(Date of decision 27.11.96)

Surajdeo Poddar Applicant

Versus

Union of India & Others . . . Respondents

Coram: Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

Counsel for the applicant: Mr. Abdul Hakim

With

Mr. S.K.Tiwary

Counsel for the respondents: Mr. Gautam Bose

ORDER

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This application has been filed by applicant Surajdeo Poddar, an employee of the Railways against his transfer from Jamalpur Workshop, Eastern Railway Jamalpur to Patratu under DRM, Dhanbad. The applicant has challenged this transfer order on various grounds including the assertion that the Chief Works Manager, who has passed the order of transfer has no powers to pass such an order. It is also asserted that under the transfer order the post to which the applicant has been transferred has also been transferred from Jamalpur. It has also been contended that the orders have been passed on administrative grounds but the same have not been disclosed and further that the order is

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mala fide in order to defeat the orders of this Tribunal passed in OA No.185 of 1991 and OA-365 of 1991 on 8.4.1992 by which a direction has been issued to allot the out-houses to the applicants of these cases which included the present applicant also.

2. On behalf of the respondents the assertions made by the applicant have been denied. It is contended that the transfer order was passed by the competent authority on administrative ground and was not a mala fide order and cannot be challenged before this Tribunal.

3. I have heard the learned counsel at the admission stage and both the counsel have agreed that the matter may be finally disposed of at this stage.

4. I will take up the assertions made by the learned counsel for the applicant first. The first ground which has been raised by the learned counsel is that the order in question has been passed by the Chief Works Manager, Eastern Railway, by which the applicant has been transferred from Jamalpur Workshop, Eastern Railway to Patratu, under DRM, Dhanbad. It is contended that the Chief Works Manager was not competent to pass such an order. The learned counsel for the respondents has argued that Chief Works Manager had, by this order, transferred the applicant from Jamalpur to Patratu which was also in the Eastern Railway and that he had powers to pass such an order. The learned counsel has referred to the schedule of powers on establishment matters by which the General Manager, Eastern Railway has delegated powers in respect of transfer of staff to various authorities. The schedule shows that the Chief Works Manager had full powers to transfer staff under his ^{even} control outside the Railway subject to the approval of

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the Head of the Department. In the circumstances it cannot be accepted that the Chief Works Manager was not competent to transfer the applicant from Jamalpur Workshop to Patratu.

5. The learned counsel for the applicant has then argued that by this transfer order the post on which the applicant was working is sought to be transferred to Patratu which could not have been done. It is true that the applicant has been transferred to Patratu along with the post on which he was working. The learned counsel has not brought to my notice any rule or order to indicate that the Chief Works Manager could not have transferred the applicant along with the post. By this order the post on which the applicant was to work at Patratu became available to him on his transfer to that place. This objection by the learned counsel cannot also be accepted.

6. The third objection by the learned counsel for the applicant is that though in the order of transfer it has been mentioned that the applicant has been transferred on administrative grounds, these grounds have not been disclosed. The learned counsel for the respondents has argued that the transfer of the applicant was on administrative grounds and it was not required that the grounds should have been disclosed in the order. I do not find any reason for not accepting the arguments by the learned counsel for the respondents. It was not necessary for the authority concerned to disclose the administrative grounds in the transfer order. As observed in the case *Basudeo Mahto vs. Union of India* 1992 (1) PLJR AT 35 "the Administration is the best judge of the exigencies of service and interest of administration unless there is violation of any rules or instructions, the jurisdiction of the authority competent to transfer cannot be

disputed."

7. It is for the authority concerned to decide as to whether an employee under him should be transferred in public interest or on administrative grounds. It is not for the Courts or Tribunal to interfere in such matters unless it is established that the order was passed mala fide.

8. The last contention of the learned counsel for the applicant is that in fact this order was mala fide and was passed in order to make the orders passed by this Tribunal on 8.4.1992 nugatory. It is contended that this Tribunal in OA-185 of 1991 and OA-365 of 1991 passed order on 8.4.1992 directing the respondents to allot the out houses in which the applicants were living till then. It is contended that the present applicant was also one of the applicants in those OAs. The argument is that in order to circumvent the order by this Bench of the Tribunal, his transfer order has been passed.

9. The learned counsel for the respondents has denied that the order was mala fide or was passed to circumvent the order passed by this Tribunal. He stated that against the order dated 8.4.1992, the respondents have filed SLP before the Hon'ble Supreme Court on which the notices have already been issued. It is also contended that the order by this Bench was passed in April, 1992, the present order was passed on 5.10.1994 and it is totally unrelated to the earlier order of this Tribunal.

10. As will appear from the arguments by the learned counsel, the order of this Tribunal was passed on 8.4.1992 directing the allotment of the out-houses in which the applicants of those cases were residing. The present transfer order has been passed more than two years after that order by this Tribunal. Further that order is still in challenge before the Hon'ble Supreme Court. I do not find anything to show that the order of transfer has been passed as a result of the earlier order passed by this Tribunal.

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It is quite easy to allege existence of mala fide but it is difficult to prove the same. Merely by making an assertion of mala fide without substantial proof in respect of the same, the applicant cannot persuade the Tribunal to accept his contention. The learned counsel for the applicant has argued that in respect of the some other applicants of the above mentioned OAs, the authorities have initiated steps to punish them. Reference has been made to Annexure-A/2, A/2-1 and A/2/2. Annexure-A/2 relates to one Mannu Choudhary on whom a chargesheet has been served on 3.5.1995 on the ground of unauthorised occupation of out houses and taking unauthorised electric power connection. Annexure-A/2-1 relates to one Arjun Ram on whom notice has been served regarding the alleged unauthorised occupation of out houses. Annexure-A/2/2 relates to one Pashupati Prasad regarding unauthorised possession over Railway quarter. It appears that proceedings under Public Premises (Eviction of unauthorised occupants) Act 1971 has been initiated against that person. None of these persons is a party to the present proceedings and it will not be proper to comment as to whether the action taken against these persons was bonafide or mala fide. The case of the present applicant is quite different and distinct as it relates to his transfer on administrative grounds from one place to other. In my view the applicant has failed to establish that the order passed by the Chief Works Manager was mala fide.

11. Considering the facts, no ground for quashing the transfer order has been made out. The OA is hereby dismissed. No costs.

V. N. Mehrotra
27.11.96
(V. N. MEHROTRA)
VICE CHAIRMAN