

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 350 of 2006

Date of order : June 13, 2006

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Raj Kishore Singh, S/o Late Ram Adhar Singh, resident of village + post + Khajuria, District Champaran, presently posted as Sr. Commercial Clerk, E.C. Railway, Muzaffarpur.

....Applicant

By Advocate : Shri M.P. Dixit.

Vs.

1. The Union of India through the General Manager, E.C. Railway, Hajipur.
2. The General Manager (P), E.C. Railway, Hajipur.
3. The Chief Commercial Manager, E.C. Railway, Hajipur
4. The Divisional Railway Manager, E.C. Railway, Sonapur.
5. The D.R.M. (P) E.C. Railway, Sonapur.
6. The Senior Divisional Commercial Manager, E.C. Railway, Sonapur.
7. The D.R.M. (P), E.C. Railway, Dhanbad.

....Respondents

By Advocate : Shri B.K. Sinha

O R D E R(Oral)

By Sadhna Srivastava, M (J):-

The subject matter is transfer.

2. This application is for quashing (a) the order of transfer dated 6.3.2006 (Annexure A/3) whereby the



applicant has been transferred to another railway Division and (b) an order dated 6.6.2006 (Annexure A/6) whereby ³ against transfer ³ the representation filed by the applicant ¹ has been rejected by speaking order. The aforesaid impugned orders have been challenged mainly on two grounds. The first ground is that the impugned orders are in violation of the guidelines. The Ministry of Railways had issued instructions dated 29.3.1962 whereby it has been decided that non-gazetted employee against whom disciplinary case was pending or was about to start, should not normally be transferred from one Railway/Division to another Railway /Division till after finalisation of the departmental or criminal proceedings irrespective of whether the charges merited imposition of major or minor penalty. The learned counsel for the applicant submitted that major penalty charge-sheet had been served upon the applicant, hence the departmental proceedings had started at his present place of posting. The learned counsel has further submitted that the transfer order has been passed by way of punishment, hence the transfer order is liable to be



set aside. The second ground taken by the applicant is that undue hardship has been caused on account of transfer from Muzaffarpur to Dhanbad Division at the fag end of his service. The learned counsel for the applicant has placed reliance on a case reported in 1989 Vol. 1 ATC page 326 (Devendra Nath Bag vs. U.O.I and others.

3. The law is well settled that the transfer is not only an incidents of service but it is a condition of service. It is also well settled that the court in the case of transfer should normally not interfere unless malafide alleged or violation of rules shown. In the present OA the applicant has not alleged any malafide. He has failed to establish that there is any violation of statutory rules. So far as guideline is concerned, it has no statutory force. In administrative exigencies it is prerogative of the employer how to man his office. The plain reading of the transfer order does not smack malafide.

4. The Hon'ble Supreme Court in the case of State of U.P vs. Siya Ram , 2000 (4) ESC (SC) page 504 , has held as follows;



"...The High Court, while exercising jurisdiction under Article 226 and 227 of the Constitution of India, 1950, had gone into the question as to whether the transfer was in interest of public service. That would essentially require factual adjudication and invariably depends upon the peculiar circumstances of the case concerned. No government servant or employee of public undertaking has any legal right to be posted for ever at one particular place or place of his choice since the transfer of a particular employee appointed to a class or category of transferable post from one place to other is not only an incident of service but a condition of service, necessary too in public interest and efficient in public administration unless the order of transfer is shown to be the outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the Tribunal normally cannot interfere with such orders as a matter of routine as though they were the appellate authority substituting their own decision for that of the employer or management as against such orders passed in interest of administrative exigencies of the service concerned. This position was highlighted by this court in National Hydro Electric Power Corporation Limited vs. Shri Bhagawan and another (2001 (8) SCC 574)".

5. In the case of Silpi Bose vs. State of Bihar and others, the Hon'ble Supreme Court has held that the transfer orders issued by the competent authority do not violate any legal right. Even if the transfer order is passed in violation of



executive instructions or order, the court ordinarily should not interfere with the orders , instead the affected parties should approach the higher authorities in the department. If the courts continue to interfere in day to day transfer order issued by the government and its subordinate authorities, there will be a complete chaos in the administration, which would not be conducive to public interest.

6. As regards the second ground regarding undue hardship is concerned, it is settled law that the personal inconvenience of government employee cannot come in the way of administration in transferring the employees in administrative exigencies. The Hon'ble Apex Court in S.S. Kaurab vs. State of M.P, 1995 SCC (L&S) page 666 has held that the hardship caused to the employee from the transfer order is not a ground for judicial review of the transfer order.

7. In view of the above position, I do not find any ground to interfere in the matter. The OA is liable to be dismissed and the same stands dismissed at the admission



stage itself.

8. In the last, the learned counsel for the applicant made a request that he may be permitted to approach the competent authority regarding his transfer within the same division i.e., in Sonapur Division, which may be decided sympathetically. In this connection, it is observed that the applicant may file representation before the competent authority who should decide the same at the earliest possible. The observation made by me in the body of this order will not prejudice in deciding the representation.


[Sadhna Srivastava] M [J]

/cbs/