

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

**O.A. No. 139 of 2006
[MA No. 104/06]**

Date of order : 6-8-07

C O R A M

**Hon'ble Ms. Sadhna Srivastava, Member [J]
Hon'ble Mr. Amit Kushari, Member [A]**

Jainath Prasad Vishwakarma son of Late Ramdhani, Mistri, Resident of Railway Quarter No. 123/B, near Railway Hospital, Jhajha, P.O. and P.S. Jhajha, District-Jamui.

...Applicant.

By Advocate : Shri Krishna Prasad

Vs.

1. The Union of India, through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, East Central Railway, Hajipur, Vaishali.
3. Chief Personnel Officer, East Central Railway, Hajipur, Vaishali.
4. Divisional Railway Manager, Danapur Division, East Central Railway, Danapur, Khagaul.
5. Senior Divisional Personnel Officer, Danapur Division, East Central Railway, Danapur, Khagaul.
6. Senior Divisional Electrical Engineer (General), Danapur Division, East Central Railway, Danapur, Khagaul.
7. Shri Nirmal Kumar Srivastava, the then (Former) Senior Section Engineer, Electrical Jhajha now posted as Senior Section Engineer, Electrical, Patna.
8. Shri Ram Ratan Singh, Section Engineer, Electrical Danapur Division, East Central Railway, Jhajha.
9. Electrical Supervisor, East Central Railway, Garhara.

..... Respondents.

By Advocate : Shri S.K. Griyaghey..

ORDER

Mr. Amit Kushari, MJA. :- Shri Krishna Prasad argued for the applicant and Shri S.K. Griyaghey argued on behalf of the respondents (Railways). Their arguments were heard and all the pleadings were perused carefully.

2. The facts of the case are as follows.

The applicant was regularised in Railway service on 03.07.1973 in the Head Light Section in the Electrical Department and was posted at Jhajha-Danapur Division, East Central Railway. He initially joined service as a temporary Blacksmith in February, 1970 at Jhajha. Subsequently, in the year 1977 he was promoted to the post of Fitter Grade III and in 1984 he was promoted to the next higher post of Fitter Grade II. All these years he continued to be in the Head Light Section under Electrical Section at Jhajha. In the year 1995, the Head Light Section was abolished and a new Section called Air Conditioned Section was created in the Electrical Department of Danapur Division. After the abolition of Head Light Section the applicant was absorbed in the Train Light Section of the Electrical Department and he continued to be posted at Jhajha. In 2001, the applicant was transferred from Train Light Section to the Power House Section of the Electrical Department, but he continued to be posted at Jhajha. In 2003 he was further promoted to the higher post of Fitter Grade I. Then also he continued to be posted at Jhajha. From 1970 to 2003, i.e. for 33 years he had a continuous stay at Jhajha and he was never transferred out of this station. He lived in Jhajha with his family which included 4 unmarried daughters. Since he was an ST official he got the impression that he has never



been transferred out of Jhajha because he deserved a special treatment as an ST candidate and he should always get a home posting. Thereafter, the applicant fell ill and took leave for 35 days and later also he was not in good physical condition to discharge duties smoothly. His immediate superiors of Jhajha gave him various duties in various shifts. But, being not in good health he found it very strenuous to attend to so many duties and in so many shifts including night shifts. He was asked to perform duty as Generator Operator at Jhajha, Danapur DMU and he was under the impression that since he was in Power House Section he was not supposed to do duty in Train Light Section as a Generator Operator. Ultimately, the applicant got a chargesheet on 18.12.2003 for being negligent in his duties. However, he continued to do his duties up to 29.12.2003 till he was asked to again perform the duty of Generator Operator in DMU Rake No. 501. Due to his ill health he was unable to perform these duties and from 30.12.2003 he could not attend to his duties and he was marked absent in the attendance register. He pleaded for his posting in the Power House Section, but respondents did not agree to it and asked him to work in night shift.

3. The learned counsel for the applicant pointed out that the Union leaders also intervened on his behalf, but the respondents did not pay any heed to his difficulties and ultimately on 26.2.2004 the applicant was relieved from his duties at Jhajha and he was asked to report at the Electrical department of Garhara. The learned counsel for the applicant stated that he was relieved from Jhajha without a proper office order.

4. The respondents have, however, flatly denied this allegation. They

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have stated that the applicant was transferred vide Order No. 146 dated 24.02.2004 and he was only relieved from Jhajha as a consequence of this transfer order. The respondents stated that the applicant has been transferred from Jhajha to Garhara in administrative exigency and not out of any illwill or malafide reasons. The transfer order was issued by the competent authority in normal routine and so it is not at all bad in law. They have also stated that from the period 17.12.03 to 25.02.04 the applicant was very irregular in attendance and he performed his duties in a very casual manner. In administrative exigency and in the interest of railway administration he was transferred from Jhajha to Garhara. Shri Griyaghey pointed out that his transfer from Jhajha to Garhara took place after his working at Jhajha for a very unusual period of 34 years. He pointed out that there is no provision in law that a ST candidate will be allowed to stay in his station of choice for such a long period. He also pointed out that the applicant has not reported at Garhara till date and in the period from 25.02.04 onwards the applicant is unauthorisedly absent from the duties. The learned counsel for the applicant says that since the relieving order was illegal and against all norms of administrative propriety. the entire period should be treated as duty and he should be paid the salary for this period and he should be allowed to continue at Jhajha.

5. We have considered the arguments of both sides very carefully and we have also carefully gone through the WS, rejoinder and the supplementary written statement. The applicant entered service in February, 1970 and till the year 2004 he was never transferred out of Jhajha. Because of this long

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uninterrupted tenure at Jhajha the applicant had almost forgotten that he was in the Central Govt. service and could be transferred from one station to another. In fact, the Govt. of India employees have an all India transfer liability. A transfer from Jhajha to Garhara can hardly be considered a major transfer since both stations are in Bihar and the distance involved is not much. But the applicant has perhaps a mistaken notion that being a ST official he has every right to continue at Jhajha till his retirement. We are of the opinion that the respondents Railways do have a right to transfer their employee due to administrative exigency and unless there is a serious malafide motive Courts should not interfere in such routine administrative matters. We are, therefore, unable to quash the transfer order. We are also unable to treat his relieving from Jhajha as null and void. The applicant will, therefore, be well advised to report for his duty at Garhara as early as possible. The respondent Railways will have to consider how they can treat this period 25.02.2004 onwards to his actual date of joining at Garhara. We are unable to give any direction to the respondents in the matter. This OA appears to be totally misconceived and is, therefore, dismissed. MA No. 104/06 also stands disposed of accordingly. No costs.



[Amit Kushari]
Member[A]



[Ms. Sadhna Srivastava]
Member[J]

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