

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY
CAMP SITTING AT NAGPUR

Original Application No.882/89

Shri Norman Basil Michael ... Applicant

vs

Union of India and Ors. ... Respondents

CORAM : Hon'ble Vice Chairman, Shri G.Sreedharan Nair
Hon'ble Member (A), Shri I.K. Rasgotra

Appearances:

Shri Y.M.Bodhankar, Advocate,
for the applicant and Shri
P.S. Lampat, Advocate, for
the Respondents.

JUDGEMENT:

Dated : 10 August 1990

(Per. Shri I.K.Rasgotra, Member (A))

The above Original Application has been filed by Shri N.B.Michael, Assistant Mechanical Foreman, Ajni, Nagpur, challenging his transfer order of 30.6.89 and has prayed for setting aside the same as being punitive, vindictive, malafide and motivated. Advocate Bodhankar appearing for the applicant submitted that the applicant was being transferred on account of his involvement in money lending business. In fact there was a vigilance enquiry and based on the report of the Vigilance Department the applicant has been charge sheeted. The case is, however, still not finalised. It has also been averred that one of the dismissed Railway employee, Shri Dattu Bhagat, witness in the enquiry, has submitted that other witnesses can be produced by him only after the applicant is transferred out of Ajni. According to the learned counsel, this goes to prove the malafides and bias against the applicant. Another reason for assailing

the transfer order was that the transfer was in the middle of the educational session which is in controvension of the Government policy. As the applicant was not in a position to carry out the transfer order he, therefore, represented requesting for cancellation of the transfer order to the Chief Mechanical Engineer on 21.10.1989. The application was filed on 21.11.89, just about a month after the representation was submitted. The Respondents in their written statement submitted that the transfer order of the applicant has been issued by the headquarters as seniority, transfer and posting of supervisors of his rank are centralised. The transfer has, therefore, no nexus with the disciplinary proceedings started on account of his alleged money lending business. They two are separate issues. The learned counsel appearing for the respondents submitted that the applicant without waiting for a reasonable time for the disposal of his representation filed the application in the Tribunal. The transfer was made in the interest of administration and a number of other people were also involved in the transfer. It is not a single isolated case of transfer which can be assailed as such. The applicant has since reported sick and has not carried out the transfer order so far.

2. We have heard the learned counsel of both the parties and perused the records. On a pointed query from us we were told that the applicant has been working at Ajni continuously since 1985. It cannot, therefore, be said that the transfer is unwarranted or arbitrary.

It is also not punitive in nature as the disciplinary enquiry in money lending business is separately continuing. Being a senior supervisor, the transfers and promotions at that level are centralised in the headquarters. This cannot be a matter of grievance. The transfer is a normal incidence of service and cannot be faulted as such. Honourable Supreme Court in several cases has held that transfer being an incidence of service should not ordinarily be interfered with. The correct approach would be that whenever such a transfer is made the Government servant should represent to the competent authority for seeking redressal of his grievances. In case the representation is rejected, he has no alternative but to carry out the order unless malafides can be proved. It is more than a year since the transfer order was issued and the grievance of mid session transfer has no relevance now. The material before us does not substantiate the case of malice or malafides on the part of the respondents. Accordingly, the application fails and is dismissed with no orders as to costs.

I.K. Rasgotra
(I.K. Rasgotra)
Member (A) 107 8/1990

G. Sreedharan Nair
(G. Sreedharan Nair)
Vice Chairman

88
8-170