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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.310/91

Dr. J.N. Kathuria,
C/o. Shri G.S. Walia,
Advocate High Court,
Office No.65, 1st Floor,
Prabhat Centre,
Near Fire Station,
Near Konkan Bhavan,
New Bombay - 400 614.

.. Applicant

vs.

1. Union of India
through
Secretary,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.

2. General Manager,
Central Railway,
Bombay V.T.
Bombay - 400 001.

3. Dr. V.D. Mathur,
Chief Medical Officer,
Central Railway,
Bombay V.T.
Bombay - 400 001.

.. Respondents

Coram: Hon'ble Shri Justice U.C. Srivastava,
Vice-Chairman

Hon'ble Shri M.Y. Priolkar,
Member(A)

Appearances:

1. Mr. G.S. Walia
Advocate for the
Applicant.

2. Mr. J.G. Sawant
Advocate for the
Respondents.

ORAL JUDGMENT
(Per M.Y. Priolkar, Member(A))

Date: 9-8-1991

The applicant who was working as
Senior Divisional Medical Officer, Central Railway,
Bombay V.T. has in this application challenged the
order dated 24-4-1991 by which he has been transferred
and posted as Sr.DMO, Bhusaval. The transfer order ^{is} ~~was~~
^{assailed} ~~served~~ on the ground of ^{being} ~~malafide~~, vindictive, arbitrary
discriminatory, unilateral and not in public interest
or in the exigencies of service.

2. The applicant has alleged mala fides against respondent No.3 who is his head of department viz. Chief Medical Officer, Central Railway. The mala fides are however, not substantiated except stating that there has been delay in posting adequate number of staff in the dispensary and also the supply of medicines was erratic. It is also alleged that ^{the} transfer order is the result of a complaint made by the Railway Mazdoor Union against the applicant and the Union had also demanded immediate transfer of the applicant for being rude to certain lady employees.

3. The Chief Medical Officer has filed his affidavit denying the allegations of mala fides. The respondents have also stated that shortage of staff is there in all dispensaries and hospitals and shortages are uniformly shared by all units. The supply of stores to various units on the Central Railway is arranged by the Divisional Stores and not by the office of Respondent No.3. The same procedure is applicable uniformly to all dispensaries and hospitals of the Central Railway as far as the matter of supply of medicines is concerned. As regards the complaint from Railway Mazdoor Union, the respondents have pointed out that the applicant himself in para 4.8 of the application admits that he was aware of the pending routine transfer in February '91 itself whereas the complaint by the Union to the General Manager was in April, 1991. Evidently the complaint from the Union was not the only factor influencing the transfer of the applicant. We do not therefore find any substance in the allegation of mala fides made by the applicant.

4. For the charge of discrimination the applicant says that there are some doctors who have not

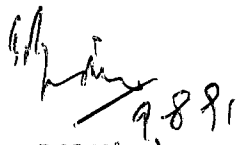
been transferred even though they have a longer period of stay than the applicant. Admittedly, there are no rules or instructions or norms under which a transfer have³ to be effected purely on the basis of the stay of the employees in a particular station. When the applicant has already continued for more than 12 years in Bombay and there is no transfer policy on the basis of seniority or juniority of stay in Bombay, it is within the administrative discretion of the respondents to transfer the employees on the basis of exigencies of service for which the department would be the best judge. We do not therefore find any justification for change of discrimination against the applicant.


5. Another ground urged by the applicant is regarding his health problem and certain family difficulties. It is however well settled that this Tribunal does not interfere purely on the basis of compassionate grounds. The respondents have stated that there is a Railway hospital at Bhusaval which is adequately equipped to look after the normal health problems of the employees.

6. Lastly, the applicant submits that he has now sent an application for voluntary retirement from railway service to be made effective from 1-5-1992 and on that basis his transfer order to Bhusaval may be cancelled. Obviously this is an entirely different matter which has to be decided separately by the Railway administration on merits.

7. On the basis of the foregoing discussion and since the doctor who is posted in the place of the applicant from outside has already joined and the applicant is stated to be on sick leave on the

basis of a certificate from a private doctor, we find no justification for interfering in this case. The applicant has stated that there is a post of Sr. Medical Officer available at Kalyan where he can be posted until his voluntary retirement comes into effect after 9 months. According to the respondents there is no urgent need for filling up the post at Kalyan whereas the filling up the vacancy at Bhusaval is more urgent. In the circumstances, we dismiss this application as devoid of any merit with no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman