

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 549/98

Date of Decision: 30.7.1998

Vikas S.Matey

.. Applicant

Shri Y.R.Singh.

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

The Hon'ble

(1) To be referred to the Reporter or not? *no*

(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 549/1998.

Thursday, this the 30th day of July, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

Vikas S.Matey,
Quarter No.(MS)
RB III 427 'E' Church
Road, Ajni,
Nagpur - 440 003.

... Applicant.

(By Advocate Shri Y.R.Singh)

V/s.

1. The Union of India through
the D.R.M. (P),
Central Railway,
Nagpur.
2. The Sr. Divisional Electrical
Engineer TRD, Central Rly.
Nagpur.

... Respondents.

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

In this application, the applicant is challenging the order of transfer on promotion dt. 7.5.1998. The respondents have filed their reply. I have heard the learned counsels appearing on both sides.

2. The applicant is working as Junior Engineer Gr.II in Central Railway at Nagpur Division at Ajni. He is now promoted as Junior Engineer Gr.I and transferred to Dadra Moher in M.P. The applicant is challenging the order of transfer mainly on the ground of mala fides. He further alleges that his wife is working in Nagpur and he has certain personal difficulties like young child etc. He has therefore approached this Tribunal for quashing the order of transfer.

3. The respondents have filed reply denying the allegation of mala fides. They have justified the order

...2.

of transfer on promotion being done in the administrative exigencies. There is also an allegation in the reply that the applicant tried to bring political pressure through M.P. and M.L.A. for retaining promotion and to cancel the order of transfer.

4. At the time of arguments, the learned counsel for the applicant has challenged the order of transfer on the ground that it suffers from mala fides. He/also pleaded that the applicant is having certain personal difficulties. On the other hand, the learned counsel for the respondents justified the stand of the Administration in making the order of promotion on transfer in the administrative interest.

5. As far as mala fides are concerned, it is stated that the applicant is an active member of the Union being the Divisional Secretary and even arranged a Tool-Down strike at Nagpur on 1.5.1998. The respondents have taken ~~the~~ stand that the applicant's Union is not a recognised Union at all. Even otherwise, the respondents have promoted the applicant and he is being sent on promotion. If really the respondents wanted to victimize the applicant, they could have promoted juniors and would not have given promotion to the applicant at all. Therefore, a person who is promoted cannot say that he is promoted in order to victimize him. In fact the applicant was promoted last year also on transfer even long prior to the strike in May, 1998. Even at that time the applicant could have gone on transfer on promotion, but he refused promotion and continued in the present post. Therefore, again if the applicant is promoted in May, 1998 and sent on transfer it cannot be said that

it is due to mala fide intention. After going through the pleadings and materials on record, I am not satisfied that this is a case of transfer on promotion being mala fide.

6. As far as the applicant's personal difficulties of having a young child or his wife working in Private concern is not a matter for the Tribunal to consider. The guidelines regarding keeping husband and wife at the same place is meant for the Administration to consider and not for the Tribunal or Court to strike down the transfer on that ground. The Supreme Court has observed time and again that transfer is an incident of service and should not be interfered with by the Tribunal even if the order of transfer is contrary to guidelines. The Railway Administration cannot be conducted from the corridors of Court or Tribunal. It is for the Administration to decide about postings, transfers and promotions and the ^{rights} orders should not be interfered with by the Court or Tribunal. The Supreme Court has pointed out that only if the order of transfer is mala fide or is against any statutory rule then only the Tribunal or Court can interfere with the order of transfer (vide Union of India V/s. S.L.Abbas (AIR 1993 SC 244)). There are number of other decisions of the Supreme Court which are referred to in para 7 of the written statement which I have considered in another Judgment pronounced by me to day in O.A. No.507/98 - R.Amprose V/s. Western Railway and connected cases, where I have held that the law is now crystal clear and the scope of interference by the Tribunal in matters like this is very limited. In fact the Supreme Court has gone on to observe in one of the cases that the wheels of administration cannot be obstructed by orders passed by Courts or Tribunals. If the applicant has any personal difficulties then it is

open to him to make a representation to the administration and it is for the administration to take a decision one way or the other. It is certainly not a matter for the ^{Court or} Tribunal to interfere with.

7. I must also mention something about the interim order passed by this Tribunal. This Tribunal by order dt. 9.7.1998 passed an interim order that the order of transfer on promotion dt. 7.5.1998 should not be given effect to unless the applicant has already been relieved. The order was passed on 9.7.1998, but the respondents have brought to the notice of the Tribunal that the applicant had been relieved on 19.6.1998 itself. Inspite of this, the respondents have stated that with due respect to the orders passed by the Tribunal the applicant was allowed to continue in the present job though he had been relieved earlier. Now the applicant has come with the version that he had not been relieved and the respondents have brought out a document to show that he has been relieved on 19.6.1998, the letter is dated 19.6.1998 and has been signed by six officials of the Department to show that the applicant has been relieved and the applicant did not receive the relieving order. In the circumstances, as stated by the respondents, I hold that the order of stay did not come into effect at all since there is an earlier relieving order of the applicant from the present post.

In my view, no case is made out for interfering with the order of transfer on promotion.

8. In the result, the application is rejected at the admission stage. The earlier interim order



dt. 9.7.1998 stands vacated. No costs. At this stage the applicant's counsel prayed for extension of interim order by a week or two to enable the applicant to hand over the charge and proceed to the new place etc. In my view, it is not for this Tribunal to grant any further time. But however, liberty is given to the applicant to make a request to the administration, who of course would consider the same and pass appropriate orders according to the rules.

R.G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

B.