

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 656/1998.

Date of Decision: AUGUST 06, 1998.

V. Prathap Kumar,

Petitioner/s

Shri B. Lahiri,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri P. S. Lambat,

Advocate for the
Respondent/s

CORAM:

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

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(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

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

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 656/98.

Dated this Thursday, the 6th day of August, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

V. Prathap Kumar,
Electrical Assistant Driver,
South Eastern Railway,
Nagpur.

Residing at -
C/. Himmath Singh,
Plot No. 3, Bosalawadi,
Lashkaribagh,
Nagpur.

... Applicant

(By Advocate Shri B. Lahiri)

VERSUS

1. Divisional Railway Manager,
South Eastern Railway,
Nagpur.
2. Senior Divisional
Electrical Engineer (OP),
South Eastern Railway,
Nagpur.
3. Divisional Personnel Officer,
South Eastern Railway,
Nagpur. ... Respondents.
4. Senior Divisional Electrical
Engineer (O.P),
Adhra Division,
South Eastern Railway,
Adhra (W.B).

(By Advocate Shri P.S. Lambat).

: OPEN COURT ORDER :

(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)

This is an application challenging the order
of transfer. Respondents have filed reply. I have heard
the Learned Counsels appearing on both sides.

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2. The applicant came to be appointed as an Electrical Assistant Driver and posted for training purpose. According to the applicant, after training he was posted at Dongargarh. Subsequently, on his request, he was transferred to Nagpur in March, 1998. But two months later, by the impugned order dated 15.05.1998 the applicant has now been transferred to Adhra Division. Being aggrieved by this order, the applicant has come up with the present O.A. It is alleged that the order of transfer is bad and unjustified since the applicant was transferred to the present post only three months earlier. It is a case of transfer from one Division to another and applicant will lose his seniority in the new division. It is also alleged that the order of transfer suffers from malafides. The transfer is also bad being contrary to transfer policy as mentioned in the Fifth Pay Commission Report. On these grounds, the applicant has approached this Tribunal for quashing the impugned order of transfer dated 15.05.1998.

3. The respondents have filed reply justifying the order of transfer being in administrative interest. It is not admitted that the applicant was posted as Electrical Assistant Driver either at Dongargarh or Nagpur. But it is explained that it is a case of posting under the process of training. The applicant and other Drivers have been posted under the impugned order after completion of training. Then it is stated that the applicant came to be relieved on 20.05.1998. The allegation of malafide is denied.

4. The short point for consideration is, whether the applicant has made out a case for interfering with the impugned order of transfer.

5. According to the applicant, after training he was posted at Dongargarh and on his request, he was transferred to Nagpur and three months later he is now transferred to Adhra Division. It is therefore submitted that transferring the applicant within such a short time after the previous order is not justified and is not colourable exercise of power. On this proposition, reliance was placed on two authorities of two Benches of this Tribunal reported in 1992 (2) ATC 87 [Yaminikant Verma V/s. Union Of India & Others] and 1995 (1) SLJ 591 [Smt. Binapani Tripathy V/s. State Of Orissa]. Then he also placed reliance on a decision by a Division Bench of the Principal Bench of this Tribunal reported in 1998 (1) SLJ 563 [G. M. Chawla V/s. Union Of India & Others] where an order of transfer was quashed on the ground of malafide.

In my view, it is unnecessary to refer to these decisions since the matter is now covered by number of decisions by the Supreme Court on the same point. Now the position is very crystalized by number of decisions of the Supreme Court which says that the Court or Tribunal cannot sit in appeal over the administrative decisions regarding transfer of officials. It is further pointed out that personal hardships or difficulties are not circumstances to vary with the Tribunal or Court by interfering with the order of Transfer, though they may be grounds which may be pressed before the Competent

Authority who issues the order of transfer or any higher officer. It is further observed by the Supreme Court in number of decisions that the transfer guidelines are only guidelines and even if they are violated, that is no ground for the Court or Tribunal to interfere with the same. Now the settled position is that, the transfer can be interfered by the Court or Tribunal only on two grounds, namely - if the order of transfer is in violation of any statutory rules or if it suffers from malafides (vide AIR 1995 SC 1056 [State of Madhya Pradesh V/s. S.S. Kaurav], AIR 1993 SC 2444 [Union Of India V/s. S.L. Abbas], And AIR 1991 SC 532 [Shilpi Bose V/s. State of Bihar]).

6. Now having referred to the law declared by the Apex Court, let us come to the facts of the present case.

The Learned Counsel for the respondents submitted that the applicant was appointed subject to training for 18 months. Though such a stand is not specifically taken in the written statement, he placed before me the appointment order dated 25.07.1996 issued to the applicant which clearly says that the applicant should undergo 18 months training, then he will be subject to test and then he will be absorbed in the post. Though this order is dated 25.07.1996, it is now admitted before me that the applicant joined the post on 24.08.1996. If we calculate 18 months from that date, it comes to February or March 1998. Therefore, the applicant's version that after completion of training he was regularly appointed at Dongargarh and Nagpur, cannot be accepted. Though the orders of transfer give such an indication, it cannot stand

the test of scrutiny in view of the specific words in the appointment order stating that the applicant will have to undergo 18 months training. As rightly pointed out by the Learned Counsel for the respondents, the posting to Dongargarh or Nagpur was also in the process of training and it was not a regular posting in the strict sense of the term as mentioned in the appointment order. Therefore, sending the applicant for the purpose of training either at Nagpur or Dongargarh will not give any right to the applicant. Now, after full completion of the training, the applicant is given the first posting at Adhra, which the applicant is challenging. After the training is undergone by the applicant successfully, it is for the administration to decide as to where the applicant should be posted. It is not ~~in~~ the province of this Tribunal to give a direction as to which place the applicant should be posted after successful completion of training. Hence, on this short ground the impugned order cannot be interfered with by this Tribunal.

7. Even granting for a moment that the applicant had completed training and he had been posted to Nagpur on his request, still there is no legal impediment for the administration to transfer the applicant from Nagpur to another place in administrative interest. The respondents have clearly stated that the transfer was in administrative interest. Once such a stand is taken by the department, then this Tribunal cannot sit in appeal over that decision and scrutinize whether the order of transfer is in public interest or not. Though the word has been used as malafide in the application, no material ~~is~~ placed on record to substantiate the allegation of malafide. The order of



transfer is certainly not against any statutory rules. Even the Fifth Pay Commission Report, on which the applicant's Counsel placed reliance, only says that the Government should formulate policy regarding transfer. Nothing is brought to my notice that after the Fifth Pay Commission Report the railway administration has made any statutory rules regarding transfer.

Hence, in my view, the impugned order of transfer is neither against any statutory rules nor it suffers from malafides.

8. As far as the personal difficulties of the applicant are concerned, it is a matter for the administration to take note of and take a decision on the matter and not for this Tribunal. The Learned Counsel for the applicant submitted that his client has already given a representation to the higher authority vide his representation dated 05.06.1998. According to the Counsel for the applicant, the appropriate authority has not taken any decision on his representation. I leave to the appropriate authority of the railway administration to consider the grievance of the applicant as made out in his representation dated 05.06.1998 and apply his mind and pass appropriate order according to rules.

9. In the result, the O.A. fails and his application is rejected at the admission stage. No costs.

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