

OA 14/09.

S-3. 2009

Mr. Nand Kishore, Counsel for Applicant.  
Ms. Sonal Singh, proxy counsel for  
Mr. Alok Garg, Counsel for Respondents.

Learned proxy counsel for  
the respondents has produced a copy  
of the Master Circular dated 8.4.91,  
which ~~has~~ is taken on record.

Heard learned counsel  
for the parties.

Order reserved.

17/3/09.

order pronounced today  
in the open court by the  
above said Bench.

17/3/09.

C.O.

(B.L. Khater)  
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

Jaipur, the 17<sup>th</sup> day of ~~February~~<sup>March</sup>, 2009.

**ORIGINAL APPLICATION NO.14/2009**

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Kishan Lal Gurjar,  
Office Superintendent Grade-II  
Under Assistant Divisional Engineer,  
North Western Railway,  
Bandikui.

... Applicant

(By Advocate : Shri Nand Kishore)

Versus

1. Union of India through  
General Manager,  
North Western Railway,  
Hasanpura Road,  
Jaipur.
2. Divisional Railway Manager,  
North Western Railway,  
Power House Road,  
Jaipur.
3. Shri A.K.Narula,  
Assistant Divisional Engineer,  
North Western Railway,  
Bandikui.

... Respondents

(By Advocate : Ms.Sonal Singh, proxy counsel for  
Shri Alok Garg)

**ORDER**

PER HON'BLE MR.B.L.KHATRI

*Bm*

The applicant has filed this OA against the order dated 13.10.2008 (Ann.A/1), whereby while working in the capacity of Office Superintendent Grade-II at Bandikui, he has been transferred to Jaipur in the interest of administration. Through this OA, the applicant has prayed for the following relief :

"That the transfer order dated 13.10.2008 (Ann.A/1) as far as applicant is concerned may be declared arbitrary, bad in law and capricious and against the policy of Railway Board, be quashed and set aside."

2. Through this OA, the learned counsel for the applicant inter-alia made the following submissions :

- i) That on the basis of mutual transfer, the applicant had resumed his duty at Bandikui on 20.1.2007, as per Ann.A/3. He has not yet completed even two years on the present posting and has been transferred to Jaipur.
- ii) That the applicant had sought information under RTI Act, vide his application dated 22.10.2008, viz. asking the reasons for his transfer e.g. as to what administrative interest is involved in his transfer, whether there is any complaint against him on the basis of which he has been transferred, photo-stat copy of the internal noting regarding his transfer be supplied, and the vacancy position/reason for keeping the posts vacant at Bandikui etc.
- iii) That the respondents had replied, as per Ann.A/5, but they have not mentioned any reason for his transfer before completion of the tenure period in contravention of Railway Boards' direction.
- iv) That the applicant has also made a representation dated 4.11.2008 (Ann.A/6) but the same has not been decided by the respondents so far.

3. Learned counsel for the applicant had invited attention of the Bench to the transfer policy dated 26.6.2000 [RBE

No.123/2000] and submitted that as the applicant joined at Bandikui on 20.1.2007 and has been transferred vide order dated 13.10.2008, as such he has not completed the normal period of stay at Bandikui as per the conditions laid down in para-4 of the said policy.

4. Learned counsel for the applicant also invited attention of the Bench to the letter dated 6.11.2008 (Ann.A/5), whereby it was informed that the applicant has been transferred against a vacant post. It was also mentioned in the said letter that the applicant has been transferred in the interest of administration.

5. Learned counsel for the applicant pleaded that it is only because of bias on the part of respondent No.3 that the applicant has been transferred and there is no specific reason or administrative exigency to transfer the applicant.

6. He also pleaded that the impugned transfer order is not for any administrative reason but the same is punitive in nature and tantamount to colorable exercise of power and hence discriminatory and arbitrary and requires to be quashed.

7. Learned counsel for the applicant ultimately pleaded that the controversy involved in the present case can be resolved in view of the order passed by the Principal Bench of this Tribunal at New Delhi in the case of **K.K.Jindal v. General Manager, Northern Railway and Ors.** [1986 (2) SLR 69], wherein it was held [in para 23] that from the above discussion it is clear that the impugned order is thus for reasons other than merely administrative. ....Basis for the order of transfer being the suspicion as regards conduct that the employee was indulging in undesirable activities and proceeded to act on that conclusion that the transfer was not for any other administrative reasons. Therefore, the order was punitive in nature and was also colourable exercise of power. The order was discriminatory and arbitrary. The impugned order was, therefore, quashed.

8. Notice of this application was given to the respondents, who have filed their reply thereby opposing the claim of the applicant. Learned counsel for the respondents submitted that the employer can transfer any employee in the interest of administration. She had referred to the transfer policy filed by the applicant at Ann.A/2 and relied upon sub para (ii) of para-4, which is applicable in the case of employees who are not holding sensitive posts and wherein it is laid down that such employees cannot normally be transferred to another place for reasons like the seniority unit being different/very small, the office being localized etc., a change in seat which will result in change in the nature of job being performed by the staff, will meet the requirements of periodical transfer. Learned counsel for the respondents vehemently contended that case of the applicant is not covered by this policy.

9. On being directed by the Bench through order dated 10.2.2009 to produce copy of the transfer policy and disclose administrative reasons, respondent No.2 did not file any reply or affidavit. However, learned counsel for the respondents has filed a copy of the Railway Board's letter dated 8.4.91 and no administrative reasons were disclosed for transfer of the applicant. The learned counsel relied on para-4 of the Railway Board's letter dated 8.4.91, which reads as under :

"4. Transfers otherwise than on temporary basis are necessitated by administrative requirement or occasioned by consideration of requests received from the Railway servants. Transfer is not a punishment."

10. Learned counsel for the respondents also relied upon the following judgements in support of her contention :

(1) **Union of India and Others v. S.L.Abbas** [AIR 1993 SC 2444], wherein the Apex Court held as under :

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the

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Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

(2) **State Bank of India v. Anjan Sanyal and Others** [(2001) 5 SCC 508], wherein the Apex Court held as under :

"An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

(3) **State of M.P. and Another v. S.S.Kourav and Others** [(1995) 3 SCC 270], wherein (in para-4) the Apex Court held as under :

"It is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to retransfer him again to Jagdalpur. We cannot appreciate these grounds. The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

11. I have heard the learned counsel for the parties and perused the record. I find that the applicant had joined at Bandikui on 20.1.2007 and he has been transferred vide order dated 13.10.2008 (Ann.A/1) at a time when he has not completed even two years stay at Bandikui. The applicant had also submitted a representation, which has not been decided by the competent authority so far. The respondents have justified the impugned transfer order on the basis of interest of administration. On being directed by this Bench, vide order

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dated 10.2.2009, to disclose administrative exigency which necessitated transfer of the applicant, a copy of the Railway Board's letter dated 8.4.91 was filed, wherein it has been laid down that the officials can be transferred in case the same is necessitated by administrative requirements. The respondents could not file any policy regarding periodical transfers. However, the applicant has filed a transfer policy, as per Ann.A/2, which lay down that the persons working on sensitive posts are required to be transferred every four years. No specific policy regarding periodical transfers or specifying the period of stay at a particular station has been brought to the notice of this Tribunal. Time and again, the respondents have submitted that the applicant has been transferred for administrative reasons but even after being specifically asked by the Bench through order dated 10.2.2009 the respondents could not disclose those so-called administrative reasons nor could they produce any record for perusal of the Bench even if the reasons were not to be disclosed to the applicant.

12. In this case, it is proved that the applicant has not been transferred under any specific transfer policy. The respondents had even, on being asked specifically, could not state whether any complaint was filed by anybody against the applicant or any inquiry was pending against him or he was involved in any undesirable activity or had participated in any Andolan. The applicant is neither holding a sensitive post nor connected with operation of Railways. He is simply holding the post of Office Superintendent Grade-II.

13. It was held by a plethora of judgements that an arbitrary order of transfer passed for extraneous reasons is not sustainable in the eye of law. In this connection, it is necessary to quote a few of such judgements. In the case of **E.P.Royappa v. State of Tamil Nadu** [AIR 1974 SC 555], the Apex Court held [in para 85 & 86] as under :

"85. ....Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate

and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible consideration, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Art. 14 and 16."

"86. It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position. He can complain of violation of Arts. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is, therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post. That might have some relevance to Art. 311 but not to Articles 14 and 16. We must, therefore, proceed to consider whether the transfer of the petitioner first to the post of Deputy Chairman and then to the post of Officer on Special Duty was arbitrary, hostile and in mala fide exercise of power. What was the operative reason for such transfer: was it the exigencies of public administration or extra administrative considerations having no relevance to the question of transfer? Was the transfer to the post of deputy Chairman or Officer on Special Duty so irrational or unjust that it could not have been made by any reasonable administration except for collateral reasons? These are the questions which call for our consideration."

In the case of **Pratap Singh v. State of Punjab** [AIR 1964 SC 72], the Apex Court held as under :

"The power vested in a public body to transfer any official must be exercised honestly, bona fide and reasonably. It should be used in the interest of public purpose. If the power is used on extraneous consideration or for achieving an alien purpose or on oblique motives, its use would be mala fide and any colourable exercise of that power would, therefore, be struck down by the court.

..... If this were put aside, the second ground of attack on the orders may be viewed from two related aspects - of ultra vires pure and simple and secondly as an infraction of the rule that every power vested in a public body or authority has to be used honestly, bona fide and reasonably, though the two often slide into each other."

It was also held in the case of **P.Pushpakaran v. The Chairman, Coir Board, Cochin and Others** [1979 (7) SLR 309] by the Hon'ble Kerala High Court [in para 3 & 4] as under:

"The right to transfer an employee is a powerful weapon in the hands of the employer. Sometime it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

14. Vide order dated 10.2.2009 the respondents had been directed to disclose exigency of the administration and to file transfer policy, if any, under which the applicant was transferred, but the respondents, specially respondent No.2 i.e. DRM, NWR, Jaipur, did not file any reply or affidavit. However, a copy of Railway Board's letter dated 8.4.91 was filed by the learned counsel for respondents and it was submitted that as per para-4 of this letter, transfer of the applicant was necessitated by administrative requirements. Respondents No.2 or 3 had neither disclosed any reasons to the applicant under the RTI Act nor the same were disclosed before this Tribunal. Under such circumstances, adverse view could have been taken and transfer of the applicant could have been cancelled straightway. However, taking the most reasonable view, the General Manager, NWR, Jaipur, is hereby directed to call for the record of applicant's transfer from the DRM and personally ascertain whether any reasons had been recorded for transfer of the applicant. In case no reasons had been recorded, the General Manager should order cancellation of transfer in respect of the applicant. In case the General Manager finds that reasons were existed at the time of transfer of the applicant but the same are no longer in existence now, even then he should order for cancellation of transfer of the

applicant. The General Manager is directed to comply with these directions within a period of one month from the date of passing of this order.

15. With these observations, the OA stands disposed of with no order as to costs.

  
(B.L. KHATRI)  
MEMBER (A)

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