

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.486/95

Date of order: 28.09.1999

Jagdish S/o Shri Mangi Lal, Carpenter in the office of P.W.I.
(Construction), Western Railway, Jaipur.

...Applicant

Vs.

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay- 20.
2. The Chief Engineer (Construction) Western Railway, Jaipur Division, Jaipur.
3. The Senior Divisional Engineer, Western Railway Jaipur.
4. The P.W.I. (Construction B.G.), Western Railway, Jaipur.
5. The C.P.M., Western Railway, Jaipur.

...Respondents.

Mr.P.V.Calla, counsel for the applicant

None present for the respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

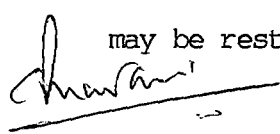
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P. Nawani, Administrative Member

In this application, as amended, under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

"It is, therefore, prayed that the Hon'ble Tribunal may kindly called for entire record and by an appropriate direction respondents may be directed to allow the applicant to work at Jaipur Division as if the relieving letter dated 10.10.1995 (Ann.A/1) has never been issued. The G.M.'s officer letter dated 16.6.1996 as referred in Ann.A/1-1 may kindly be quashed and set aside. Further, respondents may be directed to provide Transfer Allowance to the applicant and if there is an exigency and also required for the interest of administration the Transfer of the applicant from Jaipur Division to Ajmer Division may kindly be treated as temporary transfer and the position of the applicant may be restored."



2. The facts of the case are that the applicant was engaged as Casual Labour Group-III category in the year 1981 and has worked at various places in the Construction Department and presently under the control of P.W.I.(C), B.G., Western Railway, Jaipur. The applicant was given temporary status in 1984 in Group-III and he never worked as Group-IV employee. While working as Carpenter (Artisan), he was subjected to a trade test for Group-III post which he passed. He was also screened for a Group-III post in 1987-88. At present the applicant is working in the grade of Rs. 950-1500 and fixed at Rs. 1200/-. The applicant has filed a separate Original Application in this Tribunal regarding his prayer for being given regular appointment in Group-III. In that OA, he had also prayed that he may not be subjected to transfer without providing benefit of transfer as provided to a regular Class-III employee. The applicant has also mentioned that his seniority is maintained at Jaipur Division and his regular absorption is also due at the strength of Jaipur Division. He stated that normally Casual Labours either in Group-III or Group-IV are not required to be permanently transferred from one Division to another and only in the extra-ordinary circumstances, he can be transferred with the condition that he will get transfer allowance. He cited a decision of this Tribunal in OA No. 605/94 Alladin and Ors. Vs. Union of India decided on 28.3.95, wherein the respondents were directed to grant transfer allowance which has been otherwise admissible to the applicants had they not been Casual Labours/Temporary Status holder. The applicant's grievance in this application is that without any transfer order, the relieving order dated 10.10.1995 (Ann.A1) was handed over to him alongwith a free railway pass also dated 10.10.95 (Ann.A2) to enable him to travel to the new place. He claims that it will be evident from a perusal of Anns.A1 and A2 that the applicant has been transferred permanently to Ajmer Division. He also states that before transferring him from Jaipur to Ajmer Division, neither any notice, whatsoever, has been given nor any reason has been offered and, therefore, his transfer order dated 16.6.95 (Ann.A3) is liable to be quashed. It is also stated that the transfer was on the ground that the applicant was found surplus as would be evident from the order dated 16.6.1995 (Ann.A3). The applicant's claim that Shri Rameshwar S/o Shri Ram Kumar was junior to him at Jaipur but was still retained and the applicant though senior was declared surplus. The applicant has come to Jaipur on 11.3.1992 while Shri Rameshwar on transfer from Kota had joined at Jaipur on 1.7.1992. The applicant assails the impugned

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orders at Anns. A1 and A2 on the grounds that there was no reason to transfer him from Jaipur Division where he was working since long and his seniority was also retained at Jaipur Division and also that he was not appointed on the strength of Ajmer Division. The basic order i.e. dated 19.6.1995 (there must be mistake in mentioning the date as no such letter of 19.6.95 has been annexed by the applicant and he may be intended to refer to order dated 16.6.95 which is at Ann.A3), was not available to him so he was not able to make a factual representation to the higher authorities in the absence of availability of the said letter and that the respondents have relieved the applicant with the mala fide intention on account of his having filed the earlier OA seeking absorption in a Group-III post. The applicant has concluded by saying that if on account of any exigency his services were required at Ajmer Division, an appropriate order should have been passed that he will get transfer allowance and for what period of time he is being temporarily transferred to Ajmer Division.

4. The respondents have filed reply to the Original Application. Preliminary objection of the respondents is that the applicant has unnecessarily included the relief he is seeking in another OA which is still pending and included such facts as having passed the trade test for Group-III post for which the applicant has filed no documents. The applicant was engaged for the project work between Chittor and Kota which was on the strength of the Ratlam Division and it is, therefore, incorrect to say that his seniority is maintained in Jaipur Division and he has to be regularly absorbed in Jaipur Division, where he was first engaged for the project work between Chittor and Kota which was at the strength of the Ratlam Division but despite this the applicant has failed to implead Ratlam Division as a party in the OA. They have asserted that it was incorrect to say that the Casual Labours can only be transferred on the condition that they should be given transfer allowance. Rather no rule prescribed such a condition neither has the applicant annexed a copy of such rules. In fact, what is entitled to Casual Labours on transfer is as per circular of the Railway Board and these have been detailed at para 4 of the reply of the respondents. It has also been stated that the applicant has been transferred to Ajmer Division but under the same construction project i.e. under the Chief Project Manager, (Construction), Jaipur. The applicant has erroneously mentioned that he has been transferred permanently to Ajmer Division. The

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true and correct position of his transfer is shown in his transfer order dated 16.6.95 (Ann.R1) and by not filing a copy of this order the applicant has deliberately made misleading statement. The applicant has also erroneously given a reference to one Shri Rameshwar saying that he was junior to him without submitting any proof thereof. The fact of the matter, according to the respondents, is that the applicant's seniority is maintained in Ratlam Division and in fact the applicant is posted at Marwar Junction in Ajmer Division where the project work was going on and as such due to availability of work in Ajmer Division such transfer has been effected. As regards the applicant's claiming that a copy of the order dated 16.6.95 was not made available to him though he was relieved on its strength, the applicant could have asked the administration to supply of the said order but without making an application/representation, he has erroneously made the allegation regarding non-supply of a copy of the order. Therefore, the grievance of the applicant is erroneous. The applicant has also made allegations of mala fide but these being vague and without any basis, are untenable. Finally, the directions sought by the applicant in the relief clause are not proper and justified and the facts clearly show that the applicant has no right to continue to a place where he was earlier posted. The OA should, therefore, be rejected and dismissed.

5. We have carefully gone through the records and heard the learned counsel for the applicant. The learned counsel for the respondents was not present on the date of hearing and was given time to file his written submissions within a week, which was duly filed has been perused as far as it relates to the pleadings in the case.

6. Although the applicant has brought in the question of his regularisation in a Class-III post which he himself admits is of subject matter of another OA pending in this Tribunal, we are going to limit ourselves to the examination of the issue whether the transfer order dated 16.6.95 (Ann.A3 as also Ann.R1) and the relieving order dated 10.10.95 (Ann.A1) need to be quashed and set-aside. Other part of the relief sought i.e. whether the respondents should be asked to provide transfer allowance etc. will obviously depend on the outcome of the OA.

7. The applicant had initially stated that he was just given a relieving order Ann.A1 and the the Railway free pass Ann.A2 and

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asked to join at Ajmer. However, when the respondents annexed the transfer order dated 16.6.95 (Ann.R1), the applicant also in his amended application annexed a copy of the same as Ann.A3. It is thus clear that there was a transfer order dated 16.6.1995 and the relieving order Ann.A1 was only a consequence of the said transfer order. The very existence of the transfer order takes the wind out of the case of the applicant. It is unacceptable that the applicant was completely unaware of the transfer order dated 16.6.1995 and for almost four months he continued to remain unaware of the existence of such a transfer order. Transfer is a routine condition of service and he had not been shown any rules which provide for service of transfer order and an acknowledgement of the receipt thereof. Even if, it is assumed for the sake of arguments that the applicant was not aware of this transfer order, immediately on receiving the relieving order which he has impugned in this OA, he could have made inquiries and submitted a representation, if he felt that such an order would cause any prejudice to him. As regards the question of our interference with the transfer order, the law is very clear. In a catena of judgments, the Hon'ble Apex Court has held that transfer order should not be interfered with unless there are strong and pressing grounds rendering the order illegal on grounds of violation of statutory rules or grounds of mala fide. In Union of India Vs. S.N.Kirtania reported in 1989 (3) SCC 131 and State of Madhya Pradesh and Anr. Vs. S.S.Kourav and Ors. reported in AIR 1995 SC 1056, the Hon'ble Supreme Court has held that Courts or Tribunals are not appellate forums to decide on transfer made on administrative grounds and they cannot go into expediency of posting of an officer to a particular place.

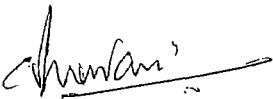
8. The applicant has mentioned that he has been transferred from Jaipur Division to Ajmer Division and a Casual Labour cannot in normal circumstances be transferred from one Division to another Division and if at all such employees can only be transferred on temporary basis and is entitled for transfer allowance. The respondents, on the other hand, have stated that such an averment is incorrect. They have stated that on transfer, Casual Labours are not entitled to transfer and packing allowance as it is only admissible to the regular staff and whenever Casual Labours are shifted, to facilitate them to move from one location to another, they are provided with travel facility, which has been provided to the applicant in the instant case. They have also contested the plea of the applicant about being transferred from

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Jaipur to Ajmer Division and stated that the applicant has been shifted under the same construction project which is headed by the Chief Project Manager (Construction), Jaipur in view of the availability of work within Ajmer Division. It, therefore, appears that the applicant is not on the permanent strength of the Jaipur Division and has not been transferred to Ajmer Division as such but shifted to a location within Ajmer Division under the charge of the same Chief Project Manager (Construction), Jaipur. It is thus not an inter-divisional transfer as is understood in the common parlance but a transfer within the same construction organisation headed by the Chief Project Manager and the applicant has not been able to establish his case in any manner.

9. We, therefore, find no merit in this application and it is accordingly dismissed with no order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member