

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 04.12.2014

OA No. 291/00030/2014

Mr. C.B. Sharma, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/00030/2014

Date of Order: 4.12.2014

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Latif Khan S/o Shri Munshi Khan, aged about 41 years, resident of Quarter No.W-126-E, Railway Colony, Bandikui and present working as Trackman, Unit No.19 under Section Engineer (Public Way), North Central Railway, Bandikui.

.....Applicant

(By Advocate Mr. C.B. Sharma)

VERSUS

1. Union of India, Through General Manager, North Central Zone, North Central Railway, Allahabad(U.P.)
2. Divisional Railway Manager(P), North Central Railway, Agra Division, Agra (U.P.)
3. Assistant Divisional Engineer(Line), North Central Railway, Id-gah, Agra (U.P.)
4. Section Engineer(Public Way), North Central Railway, Bandikui.

.....Respondents

(By Advocate Mr. Anupam Agarwal)

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ORDER

(Per Hon'ble Mr. Anil Kumar, Administrative Member)

The applicant has filed the present OA praying for the following reliefs:-

8. (i) That respondents be directed to produce entire record relating to the case and after perusing the same letter dated 7.1.2014(Ann.A/1) with the order dated 4.9.2013(Ann.A/8) transferring the applicant from Unit No.19 to Unit No.14 may kindly be quashed and set aside with all consequential benefits.

(ii) That the respondents be further directed to allow the applicant to work at present place of posting i.e. Unit No.19 under respondent No.4 and to give similar treatment as given to Shri Subhash, coworker of the applicant.

(iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the cost of this application may be awarded.

2. This is the second round of litigation. Earlier the applicant had filed OA No.716/2013 being aggrieved by the transfer order dated 4.9.2013 vide which he was transferred from Trackman Unit No.19 to Trackman Unit No.14. The applicant was given liberty by this Tribunal to file the representation before the competent authority for cancellation of his order dated 4.9.2013. The applicant filed

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the representation before the respondents on 16.11.2013 which has been rejected by the respondents vide their letter dated 7.1.2014. Being aggrieved by the rejection of his representation for cancellation of transfer the applicant has filed the present Original Application.

3. Heard the learned counsel for parties and perused the documents on record. The Ld. Counsel for the applicant submitted that the children of the applicant are studying in Railway School, Bandikui. That he has got a Gas connection at Bandikui and staying in Railway Quarter allotted to him. That the respondent No.3 without any base transferred the applicant from Unit No.19 to Unit No.14 vide order dated 4.9.2013 (Ann. A/8) in which six employees have been transferred. The learned counsel for the applicant argued that out of six employees, 3 employees have been transferred at their own request. The applicant No.2 has also been adjusted in Unit No.14. The employee at Sl.No.5 Shri Subhash s/o Shri Babu has been adjusted again in Unit No.19 from where he was transferred on the pretext that he is an office bearer of the Union of Achnera Branch. Thus only the applicant has been singled out for transfer to a far off place of about 40 KM. from his place of posting. That he is a low paid employee. That the respondents were annoyed with the applicant because he disclosed the short-coming with regard to the attendance of some employees. That his

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transfer is on the same footing as that of Shri Subhash whereas now Shri Subhash has been adjusted at Unit No.19 again, therefore, the applicant should also be allowed to work as Trackman/Gangman at Unit No.19.

4. On the other hand the Ld. Counsel for respondents argued that the applicant has been transferred in administrative exigency due to the administrative reasons. The transfer is an incident of service. No employee has right to remain posted at a particular place of posting. All the facilities as that of Unit No.19 are also available at Unit No.14.

5. The Ld. Counsel for the respondents argued that transfer of the employees at Sl.No.1, 2 and 4 was not due to administrative exigency. Their transfer was a routine transfer. The transfer of Shri Subhash s/o Shri Babu at Sl. No.5 of the transfer order dated 4.9.2013 (Ann.A/8) and of the applicant were due to administrative exigency. However, Shri Subhash was an Office Bearer of a recognized Railway Union and, therefore, he could not have been transferred and his transferred was cancelled.

6. I am not inclined to agree with the averments made by the Ld. Counsel for the respondents that the transfer order of Shri Subhash S/o Shri Babu whose name appears at Sl.No.5 of the transfer order dated 4.9.2013 was cancelled only due to the fact that he was an office bearer of a

recognized Railway Union and, therefore, he could not have been transferred. The basis of transfer as per the Ld. Counsel for the respondents is the fact finding report dated 22.8.2013 (Ann. R/1) in which the name of 4 employees have been mentioned including Shri Subhash. There is no law which permits immunity to any office bearer of the Organisation or gives license to them to create indiscipline in the Organisation. In fact office bearer of the Union should act more responsibly then others. According to the fact finding report the allegation against all the 4 employees is that they indulged in groupism and they did not obey the orders of the supervisors/Mate. They did not enter in the chamber of the Supervisor one by one instead they all went as a group. Therefore, in my opinion if Shri Subhash's transfer has been cancelled by the respondents inspite of this act of indiscipline, therefore, on the basis of fair play and equity the applicant's transfer should also have been cancelled.

7. However, with regard to the submissions of the learned counsel for the applicant that other similarly situated persons who have been named in the fact finding report have been adjusted at the same place and the applicant has been transferred the Ld. Counsel for the respondents submitted that these employees have given their representation for favourable consideration whereas the

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applicant has not given any such representation to the competent authority, therefore, his case was not considered. In case the applicant also gives the representation it would be sympathetically considered either for retaining him at the same place of posting i.e. Trackman Unit No.19 or to a nearby Unit. The Ld. Counsel for the applicant agreed to the suggestion of the Ld. Counsel for the respondents to give a fresh representation to the competent authority for cancellation of his transfer.

8. In view of the above discussions the applicant is directed to file a fresh representation to the competent authority for cancellation/modification of his order within 15 days from today and the respondents are directed to sympathetically consider the same particularly in view of the fact that other similarly situated persons have been adjusted at the place of their choice and decide the same within a period of one month from the date of receipt of such representation. If such a representation is given within 15 days by the applicant the interim relief given by this Tribunal vide order dated 15.1.2014 shall continue to be operative till disposal of the representation by the respondents. It is made clear that if the applicant is aggrieved by the decision taken by the respondents he would be at liberty to redress his grievance according to the provisions of law.

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9. With these observations and directions the OA is disposed of.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/