

CENTRAL ADMINISTRATIVE TRIBUNAL,**JAIPUR BENCH**

O.A.NO.291/00304/2016

ORDERS PRONOUNCED ON: 22.11.2016
(Orders reserved on: 07.10.2016) *u***CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)**

Mr. Dinesh Singh Meena S/o Sh. Dhanpal Singh Meena aged 43 years,
R/o Quarter No. 536/EE/B, Infront of TRD Office, Railway Colony,
Gangapur City, Sawaimadhopur (Rajasthan) Presently working as
Assistant Teacher in Railway Senior Secondary School, Gangapur City,
Sawaimadhopur (Rajasthan).

By : Mr. V.D. Sharma, Advocate.

Applicant

Versus

1. Union of India through Secretary General Manager, West Central Railway, Jabalpur (MN.P).
2. Chief Personnel Officer Western Central Railway, Jabalpur (MN.P).
3. Divisional Railway Manager, Kota Division, Western Central Railway, Kota.

By : Mr. Anupal Aggarwal, Advocate.

4. Senior Divisional Personnel Officer (Sr. D.P.O), Western Central Railway, Kota.
5. Gangawasi Sharma, Office Superintendent, Railway Senior Secondary School, Gangapur City, Sawaiwadhpor (Rajasthan).

By : None.

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Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The applicant has filed this O.A. inter-alia against order dated 28.4.2016 whereby he has been transferred from Railway Senior Secondary School, Gangapur City, Sawaimadhopur to Railway Senior Secondary School, Itarsi, Bhopal Division.

2. The facts, which lead to filing of this Original Application, are that the applicant was appointed as Assistant Teacher on 7.2.2000 in Railway Senior Secondary School, Itarsi Bhopal Division (M.P.) and then remained at various places and was lastly posted at Sawaimadhopur, Kota Division. He belongs to S.T. category and employees of such category are required to be posted near their home State / Home District. The applicant alleges that the respondent no.5 is posted as Office Superintendent. He raised some voice against misappropriation of school funds and embezzlement of public money, which created hostility against the applicant. Respondent No.5 got lodged an FIR against the applicant u/s 323, 341, 503 IPC on 16.4.2015. Investigation was conducted and no case was made out against the applicant. Respondent No. 5 was involved in embezzlement and one case u/s 376, 448 IPC and section 3(1)((12) SC/ST Act was lodged against him. One Shashi Bala Choudhary, at instance of respondent no.5, lodged a complaint against the applicant of sexual harassment, copy of which is not available with him. In enquiry, the allegations were found to be false. An FIR was also filed by her which was also found to be false. A

recommendation was made for transfer of respondent no.5 from present place of posting due to his unwanted behavior. Numbers of letters were written in that regard. However, the applicant has been transferred vide order dated 28.4.2015 to Bhopal in illegal and arbitrary manner despite his performance being upto mark. Hence the O.A. on the ground of transfer being vitiated by malafide of respondent no.5.

3. Respondents have filed a reply resisting the claim of the applicant. They submit that as a policy decision, no admission was to be made in the School and students studying in said school were informed to take admission elsewhere. Only 10+2 class were to continue for that session only. Applicant despite knowledge of this, has challenged transfer order which shows his malafide intentions. Even respondent no.5 has also been transferred to Bhopal and he has joined there. Thus, O.A. is not maintainable.
4. The applicant has filed a rejoinder.
5. We have heard learned counsel for the parties at length and examined the material on the file.

6. The facts are not in dispute that due to closure of classes the posts were surplus and as such the applicant as well as respondent no.5 both have been transferred. The very ground for challenge to order of transfer is malafide intention of respondent no.5. The same does not inspire any confidence now when both of them have been transferred due to their having been rendered surplus and classes having been closed down and students and parents were

advised to take admission somewhere else. In these circumstances, the applicant cannot have any grouse against his transfer order and the order of transfer cannot be faulted on any of the grounds raised by him in the Original Application.

7. It is by now well settled law that transfer is an exigency and incidence of service and is an administrative discretion and interference by the Tribunal/Courts with such transfer orders can be in a very rare case. In several decisions of the Hon'ble Apex Court like Mysore Paper Mills Ltd., Bangalore Versus Mysore Paper Mills Officers Association, Bhadravati and Another [1999(6)SLR 77] B. Varadha Rao versus State of Karnataka (AIR 1986 SC 1955), Shilpi Bose Versus State of Bihar (AIR 1991 SC 532), Union of India versus S. L. Abbas (AIR, 1993 SC 2444) and Airport Authority of India Versus Rajeev Ratan Pandey [JT-2009 (10) SC 472], Rajendra Singh Versus State of UP and Others [2010-1-SLR-632], it has been held that in the transfer matter of a Government employee, scope of judicial review under Article 226 of the constitution is limited. The Tribunal and High Court should not interfere with an order of transfer lightly, be it at the interim stage or final hearing, as the Courts do not substitute their own decision and as the Courts and Tribunals are not appellate authority in such matters of transfer.

8. It has been held that interference by the Courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service. We

may refer to the decisions of Apex Court in **B. Varadha Rao vs. State of Karnataka** AIR 1986 SC 1955, **Shilpi Bose vs. State of Bihar** AIR 1991 SC 532, **Union of India Vs. N.P. Thomas** AIR 1993 SC 1605, **Union of India vs. S.L. Abbas** AIR 1993 SC 2444 on the issue. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Apex Court in **Rajendra Rao vs. Union of India** (1993) 1 SCC 148; (AIR 1993 SC 1236), **National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan** (2001) 8 SCC 574; (AIR 2001 SC 3309), **State Bank of India vs. Anjan Sanyal** (2001) 5 SCC 508; (AIR 2001 SC 1748).

9. It has been settled that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 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 orders, were not competent to pass the orders.

We do not find existence of any such grounds in the instant case. In the case of S.L. Abbas (supra) it has been held that The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters, as is evident from Article 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323A. The Administrative Tribunal is not an

Appellate Authority sitting in judgment over the order; of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case it can safely be said that the transfer of applicant has been carried out in administrative exigencies as the very post against which he was posted stood abolished on closure of the classes.

10. In view of the factual and legal position discussed above, this Original Application turns out to be devoid of any merit and is dismissed.

11. The parties are left to bear their costs.

Place: Jaipur

Dated:

HC*

