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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.143/96

Date of order: 3.7.1996

Chater Singh

: Applicant

Vs.

Union of India & Ors.

: Respondents.

Mr.P.V.Calla

: Counsel for applicant

Mr.Tej Prakash Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec. 19 of the Administrative Tribunals Act, 1985, Shri Chater Singh has prayed that the order dated 20.2.96 (Annex.A2) transferring the applicant from Agra East Bank to Carriage & Wagon Shop (CWS) Kota, may be declared illegal in so far as it relates to the applicant.

2. The applicant's case is that he joined the Railways as Khalasi on 23.5.1962 and got promotions from time to time. He was promoted to the post of Fitter Grade-I, scale Rs.1320-2040 and he has been working on the said post at Agra East Bank since his promotion which falls under, Kota Division of the Western Railway. The appointment of the applicant was made for Agra East Bank and there was no reason to transfer him to Kota. Ordinarily as per the rule, no railway servant is liable to transfer from one establishment to another to which he is posted on his appointment or a transfer can only be made on the request of the person seeking transfer. Initially vide letter dated 2.11.1995 about 25 employees working as Fitters Grade-I at Agra East Bank were transferred to Kota. The applicant has learnt that one Shri Harbhajan Singh M, who was also transferred alongwith others from Agra to Kota pointed out that while his juniors had been retained at Agra he has been transferred to Kota. Shri Harbhajan Singh's request for

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cancellation of his transfer has been accepted and the transfer order of Shri Harbhajan Singh has been cancelled vide order dated 14.2.1996 (Annex.A1). Persons junior to the applicant have been retained at Agra whereas the applicant has been transferred to Kota. If there was any exigency regarding transfer the junior should have been transferred first. Also, the applicant is retiring on superannuation on 30th June 1998 and therefore, a transfer at this stage would cause hardship to him.

3. The respondents in the reply have taken two preliminary objections to the maintainability of the O.A. One is regarding the applicant not having exhausted the alternative remedies available to him. The other is that Shri Harbhajan Singh, to whom a reference has been made in the O.A as the person whose transfer order has been cancelled has not been made a respondent in the O.A. They have added that the transfer of the applicant was effected on administrative grounds and they are entitled to transfer a railway employee from one place to another on the basis of the requirements of the job. Further, according to them the persons named by the applicant in the O.A who are stated to be junior to the applicant are on the verge of retirement and persons retiring within two years cannot be transferred. While cancelling the transfer of Shri Harbhajan Singh, the applicant has been transferred in his place as per the administrative requirements of the Railways.

4. During the arguments, the learned counsel for the applicant pointed out that all the persons junior to the applicant as per the seniority list placed by him on record at Annex.A2 are not in fact retiring within a period of two years. He has also drawn attention to the rule regarding transfers, reproduced as part of General Conditions of Service in the Railways, at page 133 of Railway Establishment Rules and Labour Laws, 1995 edited by K.P.Sharma and published by Bahri Brothers

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Delhi, to suggest that the applicant cannot be transferred from one place to another.

5. The learned counsel for the respondents stated that the transfer was effected on administrative grounds and no malafides have been alleged against any official respondents for effecting the transfer of the applicant. In these circumstances, according to him, it would not be proper for the Tribunal to interfere with the transfer order of the applicant.

6. We have heard the learned counsel for the parties and have gone through the material on record including the rules cited before us. In Union of India Vs. S.L.Abbas, JT 1993(3) SC 678, the Hon'ble Supreme Court has held that an order of transfer can be interfered with only if it is passed malafide or it is in violation of the statutory provisions. No malafides have been alleged by the applicant against any of the respondents by impleading them as respondents by name. We have seen the instructions cited by the learned counsel for the applicant to suggest that transfer can not be effected from one place to another. What the instructions provide is that ordinarily a railway servant shall be employed throughout his service on the Railway or the Railway Establishment to which he is posted on first appointment but in the exigencies of service it shall be open to the President to transfer the railway servant to any other department or establishment. These instructions refer to transfers from one Railway to another or from one Railway establishment to another and not to transfer from one place to another within the same Railway or the same Railway establishment. The applicant was posted at Agra East Bank, which is in Kota Division and he has been transferred to Kota. Both these Stations are within the Kota Division of the Western Railway. Therefore, the instructions cited by the learned counsel for the applicant are of no help to him. It is, however, seen that while the respondents have stated in their

reply that the transfer has been effected on administrative grounds, the learned counsel for the respondents was not able to clarify to us what was the precise administrative ground or the actual exigency of service due to which the applicant had been transferred from Agra East Bank to Kota. The averment that when Shri Harbhajan Singh represented against his transfer on the ground that his juniors had been retained his transfer was cancelled, has not been rebutted by the respondents. The applicant is also retiring from service on 30.6.1998, on superannuation. In these circumstances, while not interfering with the order of transfer, we direct that the applicant may make a representation to the respondents Nos.2 & 3 regarding his transfer stating therein the facts of his case and if such a representation is made within a period of 15 days, the respondents shall consider it on merits and dispose it of within a period of one month from the date of receipt thereof. While disposing of the representation, the respondents shall also bear in mind the considerations which led them to cancel the transfer of Shri Harbhajan Singh on his making a representation in this regard. The operation of the order Annex.A2, transferring the applicant was stayed by the Tribunal vide order dated 1.3.1996 and the said stay continues till date. If the applicant makes a representation as aforesaid within a period of 15 days, the respondents shall not give effect to the order of transfer till the disposal of the representation of the applicant.

6. The O.A stands disposed of accordingly with no order as to costs.



(Ratan Prakash)

Member (Judl.).



(O.P. Sharma)

Member (Adm.).