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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.358/99

Date of order: 8/10/99

V.P.Chaudhary, S/o Shri Dev Chaudhary, R/o House No. 37 A-2F/12, New Madhu Nagar, Agra, at present employed on the post of Train Ticket Examiner, HBC, Agra Fort, Western Railway, Kota Division.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager(Estt.), Kota Division, Kota.
3. Station Manager, Agra Fort, Western Railway, Kota Divn.

...Respondents.

Mr.Shiv Kumar - Counsel for applicant

Mr.T.P.Sharma - Counsel for respondents.

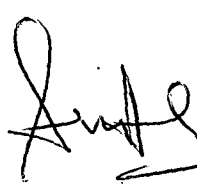
CORAM:

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

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the impugned order of transfer dated 4.5.99 by which the applicant was transferred from Agra Fort to Kota.

2. Facts of the case as stated by the applicant are that the applicant was transferred from Agra Fort to Roopvas vide order dated 9.10.96 but on his application, he was retransferred from Roopvas to Agra Fort vide order dated 21.11.96. It is stated that the applicant was again transferred from Agra Fort to Kota vide the impugned order of transfer dated 4.5.99. It is also stated that the applicant belongs to sensitive category for which normal tenure of posting is 5 years but the applicant was transferred in violation of the circular issued by the Railway Board dated 17.6.96 only after 2½ years. It is also stated that the children of the applicant are getting education at Agra Fort and this transfer is not in public interest and has been done in colourable exercise of power, therefore, by this O.A, the applicant has requested to quash the impugned order of transfer.

 3. Reply was filed. In the reply, it is stated that the applicant remained at Roopvas only for four days i.e. from 19.11.96 to 22.11.96. The applicant is working at Agra Fort from 1989, therefore, he has completed more than 5 years period at Agra Fort and there is no violation of any Rule/Circular issued by

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the Railway Board. It is also stated that the Railway Administration has decided that the staff holding sensitive post and has completed more than 5 years at a place should be transferred from that place, hence, the applicant has been transferred by the impugned order dated 4.5.99.

4. The learned counsel for the parties have agreed to dispose of this O.A. at the admission stage.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant has vehemently argued that the applicant has indeed completed 2½ years tenure at Agra Fort, therefore, his transfer vide the impugned order is against the policy of transfer issued by the Railway Board, which is infraction of statutory norms. He has also argued that the circular issued by the Railway Board in connection with the transfer is a statutory rule and violation of the same can be interfered by this Tribunal.

7. On the other hand the learned counsel for the respondents has argued that since 1989, the applicant is working at Agra Fort except the period commencing from 19.11.96 to 22.11.96 (4 days only) therefore, transferring the applicant after completion of tenure is not in violation of any rule/instructions. He has also argued that the guidelines issued by the Railway Board does not create any legally enforceable right and the respondents have every power to transfer the employee in administrative interest even before the completion of the tenure.

8. I have given thoughtful consideration to the rival contentions of both the parties.

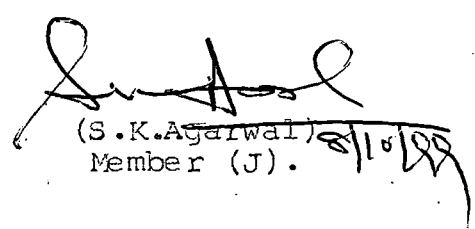
9. In Home Secretary U.T Chandigarh Vs. Darshjeet Singh Grewal, 1994 (4) SCC 15, it was held by the Apex Court of the country that "executive authority has a power to transfer even if one has not completed the normal teneure in public interest." As per the respondents, the applicant was transferred on the basis of the instructions issued by the Railway Board as the applicant holding a sensitive post, had completed more than 5 years tenure at a place, i.e. Agra Fort. Moreover, the policy of transfer has issued by the Railway Board is merely a guideline and in case of violation, the applicant does not have any legally enforceable right in view of the decision given by the Apex Court in Union of India & Ors. Vs. S.L.Abbas 1994 SCC (L&S) 230. The same view has also been taken in VPS Panwar Vs. Union of India SLR 1999 (2) 502, High Court of Jammu and Kashmir,

in which it has been held that transfer order before completing the tenure is only in violation of guidelines which are only executive instructions and are not enforceable by law. Therefore, the applicant has no case to get the impugned order of transfer quashed on this very ground.

10. Regarding the personal difficulties of the applicant, the departmental authorities are only competent to consider the case of the applicant and this Tribunal cannot interfere on this ground. This Tribunal can only interfere where the order of transfer is malafide and in violation of statutory norms. In State of M.P Vs. S.S.Kaurav 1995 SCC 666 and in Rajendra Ray Vs. Union of India, 1993 SCC (L&S) 138, the Hon'ble Supreme Court of India has observed that transfer order which is not malafide and not in violation of service rules and issued with proper jurisdiction cannot be quashed by the Court. In N.K.Singh Vs. Union of India (1994) 28 ATC 246, Hon'ble the Supreme Court in para 2 of the judgment had inter alia observed that only realistic approach in transfer matter is to leave it to the wisdom of the superiors to take the decision unless the decision is vitiated by malafides and in violation of any professed norms or principles governing the transfer which alone can be scrutinised judicially.

11. In view of the legal position and facts and circumstances of the case, the applicant has no case and this O.A is liable to be dismissed having no merit.

12. I, therefore, dismiss this O.A with no order as to costs.


(S.K. Agarwal)
Member (J).