

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.453/99

Date of order: 20/11/2009

Kana Ram, S/o Sh.Dula Ram, R/o Village Haspur, Via
Srimadhapur, Distt.Sikar, Rajasthan.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly, Churchgate, Mumbai.
2. The Divisional Rly.Manager, W.Rly, Jaipur.
3. Asstt.Engineer(North), Western Rly, Jaipur.
4. Permanent Way Inspector, W.Rly, Kanwat, Distt.Sikar.
5. Kuldeep Singh Mehla, FWI-II, W.Rly, Srimadhapur, Sikar.

...Respondents.

Mr.Ajay Gupta

: Counsel for applicant

Mr.R.G.Gupta

: for respondents No.1 to 4.

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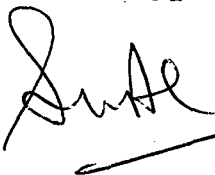
Hon'ble Mr.S.K.Agarwal, Judicial Member.

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

In this O.A filed under Sec.19 of the ATs Act, 1985, the relief sought by the applicant is to quash and set aside the order dated 13.7.99 and to direct the respondents to allow the applicant to work at Gate No.97.

2. The main ground of challenge as it appears from this O.A is malafides on the part of respondent No.5 and personal difficulties of the applicant in complying with the impugned order of transfer.

3. Brief facts of the case as stated by the applicant are that the applicant is a permanent Gangman and resident of Haspur. The applicant was posted at Gate No.96 in the

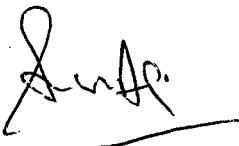


year 1990 looking to his family circumstances and physical condition and since then he was working with utmost satisfaction at Gate No.96. On 12.7.96, Shri Ram Dev alongwith respondent No.5 came and assaulted the applicant thereby the applicant sustained injuries. It is stated that on the complaint of the applicant, Railway Magistrate, Jaipur took cognizance against Shri Ram Dev and Shri Kuldeep Singh Mehla, respondent No.5 vide order dated 21.1.97. Further cognizance was also taken for the offence under Sec.3 of SC/ST(Prevention of Atrocities) Act, against Sh.Ram Dev and respondent No.5 on 30.6.98. Due to this, respondent No.5 started taking revenge against the applicant. It is stated that on 23.7.98, respondent No.5 assaulted the applicant and took inspection book and attendance register from the applicant. The applicant submitted complaint on 24.7.98 to respondent No.3 thereby respondent No.5 made false complaint against the applicant and respondent No.4 suspended the applicant vide order dated 25.7.98. The applicant made representation and ultimately the suspension order was revoked and the applicant was taken back on duty. Vide order dated 30.11.98, the applicant was transferred to RGK No.5. The applicant challenged this order before this Tribunal and this Tribunal vide order dated 16.3.99, directed the respondents to appoint the applicant nearby Gate No.96. In compliance to this order, the respondents vide its order dated 7.6.99; appointed the applicant at Gate No.97 but respondent No.5 refused to take the applicant on duty. It is stated that respondent No.3 all of a sudden, issued another order dated 13.7.99 transferred the applicant at Gate No.90 by amending the order dated 21.6.99 against which the applicant filed his representation

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on 26.7.99 but his representation was not considered. Hence, the applicant filed this O.A for the relief as above.

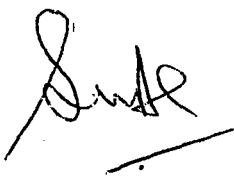
4. Reply was filed. In the reply the allegation of malafide on the part of respondent No.5 has been denied. It is stated that the transfer of the applicant from Gate No.97 to Gate No.90 was done on administrative ground. It is also denied that the work of the applicant was satisfactory while posted at Gate No.96. The applicant refused to handover the charge to his reliever Shri Ram Dev on 12.7.96 and the applicant was found sleeping on duty at Gate No.96 on 23/24.7.98 and departmental proceedings are in progress in this matter. It is stated that on the complaint filed in the Police Station, FR has already been given after investigation. It is admitted that O.A No.6/99 was decided on 16.3.99 by this Tribunal and in compliance to the directions given by this Tribunal, the applicant was posted at Gate No.97 But the applicant did not report on duty and he submitted an application on 5.6.99. It is also stated that as per letter No.W/350/10/Part.III(W6) dated 11.3.81, posting of Gateman cannot be made at a place which is within 8 Kms. from the residence of such gateman but Gate No.97 falls at the distance of 2 Kms from the residence of the applicant, therefore, superceded the order dated 7.6.99 (Annx.A10). The applicant was posted at Gate No.90 in administrative interest. It is stated that Gate No.90 is only 9 Kms away from the residence of the applicant. Hence, the applicant has no case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.
5. Heard the learned counsel for the parties and also perused the whole record.
6. Vide order dated 21.9.99, the impugned order dated



13.7.99 was stayed.

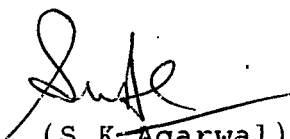
6. It is an admitted fact that directions given by this Tribunal in O.A No.6/99 have been complied with by the respondents' department and the applicant was posted at Gate No.97. It is also an admitted fact that notification issued by the General Manager, W.Rly, Bombay dated 11.3.81 makes it very clear that posting of a Gateman should not be done within 8 Kms from his residence. The impugned order dated 13.7.99 was issued in administrative interest by following the instructions dated 11.3.1981. Therefore, the question of malafides as alleged by the applicant has no meaning as regards the impugned order dated 13.7.99 is concerned. Undisputedly, the distance of Gate No.97 is only 2 Kms away from the residence of the applicant, therefore, in complying with the instructions dated 11.3.81, the order dated 7.6.99 (Annx.A10) was amended and a fresh order dated 13.7.99 was issued by which the applicant was transferred from Gate No.97 to Gate No.90. It is also clear from the averments of the parties that Gate No.90 is only 9 Kms away from the residence of the applicant, therefore, I do not find any infirmity/illegality in the impugned order dated 13.7.99.

7. The learned counsel for the applicant has vehemently urged that the person who has been posted at Gate No.97 is also a resident within 8 Kms from his residence, therefore, posting of the applicant at Gate No.90 is discriminatory. In this connection it is suffice to say that merely another person has been posted in contravention of the circular does not entitle the applicant to take advantage of the situation. However, it was the duty of the respondents to see that who so ever is posted at a particular Gate, the compliance of the aforesaid circular dated 11.3.1981 must be



adhered to so that there should not be any basis of complaint from any body.

8. In view of above all, I do not find any merit in this O.A and the same is hereby rejected. The interim direction issued on 21.9.99 is hereby vacated. The period of absence ^{from duty} of the applicant shall be regularised against any kind of leave due to the applicant if he joins his place of posting i.e. Gate No.90, within a period of 15 days from the date of passing of this order. No order as to costs.


(S.K. Agarwal)

Member (J).