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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 23/5/2000

OA 153/2000

Darshan Singh, Sheoji, Salimuddin and Alimuddin, all working as Gangmen under Sr. Section Engineer (P. Way), Western Railway, Sawai Madhopur.

... Applicants

Versus

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. General Manager, Western Railway, Churchgate, Mumbai.
3. Sr. Section Engineer (P. Way), Western Railway, Sawai Madhopur.

... Respondents

CORAM:

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

HON'BLE MR. N. P. NAWANI, ADMINISTRATIVE MEMBER

For the Applicants

... Mr. N. K. Mishra

For the Respondents

... Mr. T. P. Sharma

O R D E R

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

In this OA the applicants have challenged the order of transfer dated 21.3.2000, issued by respondent No. 3. Vide order dated 21.3.2000, the applicants alongwith others have been transferred from Sawai Madhopur to Lakheri on the ground that they have been declared surplus. The main grievance of the applicants is that junior to the applicants have been retained by respondent No. 3 but applicants have been declared surplus and they have been transferred to Lakheri. Therefore, it is stated that order of transfer is not legally sustainable as being contrary to the provisions of law/rules. It is stated that the respondents have not followed the principle of last come first go while declaring the applicants surplus. Therefore, action of the respondents is arbitrary, unreasonable and in violation of Article 14 of the Constitution of India. Therefore, the applicants have filed this OA for the relief as mentioned above.

2. Reply was filed. It is stated in the reply that 20 Gangmen who are declared surplus vide order dated 18.3.2000, issued by the Assistant Engineer, Sawai Madhopur, were transferred against the vacancies in Section Engineer (P. Way), Lakheri, in the interest of administration as well as in the interest of applicants. It is also denied that applicants were senior to the persons mentioned in para 4.4 of this OA. It is further stated in the reply that Assistant Engineer, Sawai Madhopur, was a necessary party in this case as respondent No. 3 has issued the impugned order of transfer in

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compliance of the order of Assistant Engineer, Sawai Madhopur, dated 18.3.2000. Therefore, this OA is not maintainable. It is also stated that order of transfer is not against any statutory rule/instructions and no mala fides are imputed against the impugned order of transfer. Therefore, this Tribunal should not interfere in the impugned order of transfer.

3. Rejoinder has also been filed reiterating the facts stated in the OA.

4. Heard the learned counsel for the parties for final disposal of this OA at the stage of admission and also perused the whole record.

5. The learned counsel for the applicants has argued that applicants have been declared surplus bypassing/ignoring the seniority of the applicants. Therefore, the order of transfer of the applicants is liable to be quashed. On the other hand, the learned counsel for the respondents has argued that the order of transfer of 20 Gangmen, who were declared surplus, was issued in the interest of administration as well as in the interest of applicants. He has also argued that no mala fides are imputed against anybody and the impugned order of transfer is not against any statutory rule. Therefore, this Tribunal should not interfere in the impugned order of transfer.

6. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

7. In *Shilpi Bose v. State of Bihar*, 1992 SCC (L&S) 127, the Hon'ble Supreme Court has observed that even if transfer orders are issued in violation of executive instructions of orders, the court ordinarily should not interfere with the said order, and affected parties should approach the higher authorities in the department. It is for the administration to take appropriate decision in the matter of transfer on administrative grounds.

8. In *State of MP v. S.S.Kaurav*, 1995 SCC (L&S) 666, and in *Rajendra Roy v. Union of India*, 1993 SCC (L&S) 138, the Hon'ble Supreme Court 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.

9. In *Union of India v. S.L.Abbas*, 1994 SCC (L&S) 320, the Hon'ble Supreme Court has held that order of transfer made without following guidelines cannot be interfered by the court unless it is vitiated by malafides or is made in violation of statutory provisions.

10. In *N.K.Singh v. Union of India*, 1994 SCC (L&S) 1130, their Lordships

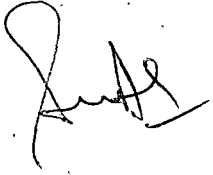
of the Hon'ble Supreme Court in para-2 of the Judgement had inter-alia observed that only realistic approach in transfer matters is to leave it to the wisdom of the superiors to take the decision unless the decision is vitiated by malafide or infraction of any professed norms or principle governing the transfer which alone can be scrutinised judicially.

11. In Abani Kanta Roy v. State of Orissa, (1996) 32 ATC 10, the Hon'ble Supreme Court has held that "it is settled law that a transfer which is an incident of service, is not to be interfered with by the court unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any professed norm or principles governing a transfer."

12. In Bank of India v. J.S.Mehta, 1992 (1) SCC 306, the Hon'ble Supreme Court observed that guidelines issued by the Government for posting husband and wife at one station do not give legal right to claim posting at one station if authorities consider such posting as not feasible.

13. In Express Newspapers (P) Ltd. v. Union of India, (1986) 1 SCC 133, the Hon'ble Supreme Court has observed that where malafides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability.

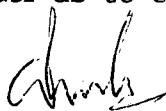
14. In the instant case, admittedly the applicants have been transferred after declaring them surplus vide order dated 18.3.2000 but the applicants are on permanent establishment of the department that could not be established by the applicants. The order dated 18.3.2000 has not been challenged in this OA. The respondents have made it very clear that order of transfer was issued in administrative exigencies as well as in the interest of applicants. The respondents have also categorically denied bypassing the seniority of the applicants while declaring them surplus. In our considered view, the impugned order of transfer is not punitive in any way as no mala fides are imputed against the respondents and there appears to be no violation of any statutory rule/instructions while issuing the impugned order of transfer. We are, therefore, not inclined to interfere in the above order of transfer as there is no basis to interfere with the same.

 15. In view of the legal position, as cited above, and facts and circumstances of this case, we do not find any basis to interfere in the impugned order of transfer.

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16. We, therefore, dismiss this OA at the stage of admission with no order as to costs.



(N.P.NAWANI)

MEMBER (A)



(S.K.AGARWAL)

MEMBER (J)