

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 11/7/2001

OA No.538/2000

Rakesh Kaushal s/o late Shri M.G.Kaushal r/o Opposite Maharastriya Samaj, Dadawari, Kota Junction, presently working as Section Officer, Sr. A/cs Officer (S&C), Western Railway, Kota.

..Applicant

Versus

1. Union of India through the F.A. & C.A.O. (Administration), Churchgate, Mumbai.
2. The Senior Accounts Officer (Survey and Construction), Western Railway, Kota.

.. Respondents

Mr. Anupam Agarwal, counsel for the applicant

Mr. S.S.Hasan, counsel for the respondents

CORAM:


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

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER


Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The applicant, while working as Section Officer (Accounts) at Mumbai had put in request on 17.4.1997 for transfer to Kota where his wife is employed and staying with his old widow mother and children. His request was accepted and he was transferred to Kota vide order dated 29.10.1999. One Shri Ajeet Nagar had also made similar request for transfer to Kota from Vadodara and his name was noted on 23.4.97. The applicant joined at Kota in the month of November, 1999 while Shri Ajeet Nagar joined much later in pursuance of order dated 13.4.2000. Vide order dated 20.11.2000 (Ann.A1) the applicant has again been transferred back to Mumbai and he is aggrieved with this order and has filed this OA with the prayer that



the impugned order dated 20.11.2000 may be quashed and set-aside and the respondents be directed to allow the applicant to work at Kota.

2. The main thrust of the applicant's plea in his written statement is that he was transferred on his own request from Mumbai to Kota and he came to Kota only in November, 1999 and in about a year's time he is again being sent back while retaining Shri Ajeet Nagar at Kota. His plea is that his name for transfer was noted before that of Shri Ajeet Nagar, he came to Kota also earlier than Shri Nagar and now Shri Nagar is being retained and he is being sent back to Mumbai putting him into great difficulty, as his wife is working as Lecturer in the State Government in Women's Polytechnic College, Kota. The very purpose on his request transfer, he contends, is being defeated by the impugned order. It is stated that as per the Government's guidelines it is clearly mentioned to keep the husband and wife at the same station, but by his transfer again to Mumbai, the said policy of keeping husband and wife at the same station, is being violated by the Department. The applicant cited the example of Smt Kamlesh Mishra who was transferred to Jaipur on out of turn basis so that she could stay with her husband and that this transfer supports the contention of the applicant that these guidelines are for keeping the husband and wife at the same station. Further, it has been stated that even if a need arose for transferring a person from Kota, then an employee having longest stay at Kota should have been transferred in preference to a person who has just been recently brought to Kota. The applicant neither has longest stay nor has been posted to Kota, the last of all and he has been picked up in arbitrary manner for being sent back to Mumbai. Action of the respondents, as per the applicant, is wholly illegal and arbitrary and also violative of the departmental guidelines of keeping husband and wife at the same station. Thus, he pleads that the impugned order dated 20.11.2000 deserves to be set-



aside. As one of the grounds for relief, the applicant has imputed malice to the respondents and has stated that the transfer has been ordered just to harass him.

3. In reply to the OA, respondents have admitted that there is a scheme of name noting, which is being operated in consultation with the recognised unions of the railways. The reason for this transfer given by the respondents is that one temporary post of Section Officer, which was being operated on work-charged basis at Kota, has been surrendered and as such one Section Officer at Kota had become surplus. In such circumstances, the department has followed the instructions contained in Railway Board's letter dated 27.7.1966, which lays down that in the event of curtailment of cadre, juniormost employees should be transferred to the extent of curtailment. The applicant being the juniormost at Kota has been ordered to be transferred out. Department's policy also provides that in a situation where an employee is transferred on reduction of cadre that employee is to be considered on priority basis for transfer back to the station from where he was shifted on occurrence of first available vacancy, as has been clarified in the Railway Board circular dated 28.1.1970. Thus, the respondents contend that there is no arbitrariness in this transfer and the applicant should have no apprehension that his case for being brought back to Kota will not be considered favourably. It has also been stated that Shri Ajeet Nagar had qualified App.III A examination in the group of Section Officer in the year 1994 whereas the applicant qualified the said examination in the year 1995. As the Section Officer Shri Ajeet Nagar is senior to the applicant and in that view, retention of Shri Ajeet Nagar at Kota cannot be said to be arbitrary and also not a cause of grievance to the applicant. The respondents have emphasised that it is a settled legal position that an order of transfer can be challenged only if it is in violation




of any statutory rules or provisions or it is passed with malafide intention. In the present case, there is nothing to show that either there is any violation of rules or any malafide in transferring the applicant to Mumbai.

4. A rejoinder was filed by the applicant wherein the applicant has cited the cases of Smt. Kamlesh Mishra and Smt. Manta Dubey that their cases were considered on out of turn basis and they were ordered to be transferred so that husband and wife could serve at the same station. The applicant's grievance is that his case was not put up for the General Manager's consideration. Thus, he has challenged the averments made by the respondents that they are following the laid down guidelines and has stated that very purpose of name noting system has been vitiated by out of turn consideration of some cases. The applicant has also disputed the stand of the respondents that Shri Ajeet Nagar is senior to him. The applicant has stated that he passed the Appendix-III A examination in the year 1994 alongwith Shri Ajeet Nagar and was senior to him and that on that ground also he has a better claim to be retained at Kota.

5. Heard the learned counsel for the parties and perused the written statements of the parties alongwith documents annexed.

6. The main thrust of the arguments of the learned counsel for the applicant is that by the impugned order the very purpose of name noting for transfer on request has been defeated. The learned counsel also makes a mention that the impugned order was an action taken with malice, [but he could not substantiate this allegation by providing any facts. The malice is not established by making a mere statement, but has to be substantiated by providing definite instances so as to come to a reasonable inference that such a possibility



exists. In that event, even it would be necessary to implead the party accused of acting in a malafide manner]. His other contention was that the applicant was not the juniormost at Kota. To prove this point, he produced before us the result of App.III examination of the year 1994 in which Shri Ajeet Nagar's name also appears. In this panel the applicant stands senior to Shri Ajeet Nagar. This contention of the learned counsel was rebutted by the opposite side on the ground that the result shown for our perusal was for the category of the ^{Traffic} Inspector of Accounts (TIA) and not of Section Officer (Accounts). The learned counsel for the respondents produced before us the result of App.III examination for the category of Section Officer (Accounts) for the year 1994 and 1995. As per these results, Shri Ajeet Nagar qualified in this examination in the year 1994 and the applicant in the year 1995. Thus, in the category of Section Officer (Accounts) Shri Nagar is senior to the applicant. It was admitted by the applicant, who was present in person, that he had opted for the category of Section Officer (Accounts). The learned counsel for the applicant claims that for the purpose of promotion to the grade of Assistant Accounts Officer, the applicant would still rank senior. This was countered by the learned counsel for the respondents saying that from this group, the first promotion was to the grade of Sr. Section Officer to which Shri Nagar has superior claim to the applicant as being senior. We have perused the results of the App. III examination and the arguments on the subject of seniority advanced before us by either side. We have no doubt that in the category of Section Officer (Accounts) the applicant is junior to Shri Ajeet Nagar.

7. The scope of judicial interference in a matter of transfer is very limited and is only confined to examine whether the transfer is in violation of any statutory rules or is an action arising out of any malafide. In so far as malafide is concerned, mere



averment has been made by the applicant in his written statement and a similar mention has been made by the learned counsel at the oral argument stage, but no individual by name has been impleaded as a party respondents and nothing of substance for proving any malafide has been provided. We reject this contention that this transfer is arising out of malafide on the part of any official.

8. Curtailment of cadre is a matter of fact and in such a situation it becomes necessary to transfer some individuals from that station. The policy of the department that in the event of curtailment of a cadre, the juniormost person should be transferred out, cannot be faulted. It is just a matter of co-incident that the applicant, who came to Kota only about a year back, also happened to be a juniormost when the necessity of transfer occurred. The fact that he is junior to Shri Nagar in the cadre of Section Officer (Accounts) has been established successfully by the respondents. In such a situation, the guidelines of transfer for keeping the husband and wife at the same station, can be of no help to the applicant. Such guidelines do not confer upon a Government employee a legally enforceable right as held by Hon'ble the Supreme Court in Union of India and ors. v. S.L. Abbas, AIR 1993 SC 244. The applicant has cited two cases, one of Smt. Kamlesh Mishra and the another is of Smt. Manta Dubey where the General Manager has exercised his discretionary powers to approve out of turn transfer of the employees so that they could be at the stations where their spouses are posted. Such discretionary powers are exceptions and exceptions do not provide a ground for legal right. The authority competent to exercise such discretionary powers goes into the facts and circumstances of each case and takes a decision. On the basis of such a decision, other employees cannot base their claims for a legal remedy. Administrative law permits use of discretionary powers which, of course, have to be exercised in a manner which is neither unlawful nor arbitrary.

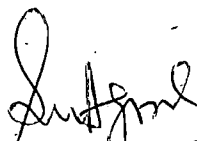
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9. The learned counsel for the respondents stated at the Bar that whenever the next opportunity arises and a vacancy occurs at Kota, applicant's case will be considered for being posted to Kota, on priority. We consider this as a very fair expression of the Department's intention and we part with this case with the hope that as and when next vacancy arises the department will consider bringing back the applicant to Kota on priority. In view of the aforesaid circumstances, we do not find any reason to interfere with the impugned order.

10. We, therefore, dismiss this OA, but with no order as to costs.


(A.P.NAGRATH)

Adm. Member


(S.K.AGARWAL)

Judl. Member