IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.276/2001 Date of order: 6/8/2003

Chhotey Khan, S/o Inayat Khan, working as Technician III C&W Depot, Dholpur.

...Applicant.

Vs.

1. Union of India through the General Manager, Central Rly, Mumbai.
2. The Divisional Rly.Manager(Personnel), Central Rly, Jhansi.
3. Sh.Shakti Shankar Pandey, Wagon Supervisor(TXR), Loco Shed Central Railway, Dholpur.

...Respondents.

Mr.R.S.Sharma : Counsel for applicant

Mr.T.P. Sharma : for respondents.

CORAM:

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

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

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

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash and set aside the impugned order of transfer dated 15.11.2000 at Annx.A1 by which the applicant alongwith others were transferred from Dholpur to Gwalior.

2. In brief facts of the case as stated by the applicant are that while working on the post of Technician III in C&W Depot, Dholpur, the applicant was transferred temporarily vide order dated 15.11.2000 by respondent No.2. It is also stated that some posts from C&W Depot Dholpur were also transferred to C&W Depot, Gwalior. It is stated that on 7.4.2000, Sh.Ganga Ram Meena, Station Master Dholpur

lodged an FIR against Railway Contractor, Sn.Jenu and respondent No.3 and a case was registered under Sec.379, 411 IPC. It is stated that respondent No.3 asked the applicant to give his statement in the police and applicant refused to give a false statement thereby respondent No.3 issued the relieving order of the applicant and others. Thereafter, the applicant brought this fact to the notice of Section Engineer, Gwalior who cancelled the order. It is stated that the impugned order dated 15.11.2000 has lost its validity as it was a temporary transfer which is valid only for 180 days. Therefore, relieving the applicant after such a long time i.e. more than 7 months, is not a bonafide exercise on the part of respondent No.3, therefore the applicant filed this O.A for the relief as above.

3. Separate reply was filed by respondent No.1&2 and respondent No.3. In the reply filed by the respondents it is stated that the applicant has already been relieved on 16.6.2001, therefore, the applicant is not working under the control of respondent No.3 w.e.f. 16.6.2001. It is stated that after receving the transfer order, the applicant made a request to the DRM Jhansi that his children are getting education in school and he is not in a position to join at Gwalior, therefore, the DRM Jhansi, after considering the request allowed the applicant at Dholpur Depot till the end of the session. It is stated in the reply that in the FIR lodged by Sh.Ganga Ram Meena, no case is made out against respondent No.3. In the reply, malafide on the part of respondent No.3 was denied and stated that as per the orders/instructions of DRM Jhansi, the applicant alongwith others were relieved on 16.6.2001 and the applicant has no case for interference by this Tribunal.

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

5. It is an undisputed fact that vide order dated 15.11.2000, the applicant alongwith others was transferred from Dholpur to Gwalior alongwith the posts and this transfer was temporary. It is also an established fact that on the basis of oral orders given by DRM Jhansi, the transfer order dated 15.11.2000 was deferred on the ground that the children of the applicant are getting education in the school. It is also clear from the averments made by the respondents that on the orders issued by DRM Jhansi, the applicant alongwith others was relieved with the direction to join at Jhansi in pursuance of the order of transfer dated 15.11.2000.

6. The learned counsel for the applicant submits that the impugned order dated 15.11.2000 was a temporary transfer and temporary transfer is not valid after 180 days, therefore, after lapse of 180 days, the impugned order of transfer becomes automatically ineffective/inoperative. He has also argued that because of malafide on the part of respondent No.3, the applicant was relieved.

7. We have given anxious consideration to the contention of the learned counsel for the applicant.

8. Undisputedly, the impugned order of transfer was not implemented.The respondents in the reply have made it clear that at the request of the applicant the implementation of transfer order dated 15.11.2000 was deferred till the academic session was over because of the education of his children; although this fact has been denied by the applicant. On a perusal of the averments Annx.R1, it becomes

abundantly clear that at the request of the applicant, the impugned transfer order dated 15.11.2000 was deferred on the basis of oral orders issued by DRM Jnansi, on tne ground of education of his children and after end of the academic session, the impugned transfer order was implemented and the applicant was relieved on 16.6.2001. Moreover, the impugned order of transfer was implemented only on 16.6.2001 when the applicant was relieved. Merely that an order for temporary transfer was issued on 15.11.2000 does not necessarily mean that the temporary transfer order will be ineffective/ inoperative after 180 days of its issuance. Rules regarding temporary transfer do not lay down any such provision, therefore, we are not inclined to accept the contention of the learned counsel for the applicant that the order of temporary transfer dated 15.11.2000 has become ineffective/ inoperative. On a perusal of the averments made by the parties, it has not been established that there has been any malafide on the part of respondent No.3 in issuing the impugned order of transfer and merely a criminal case registered at Police Station Dholpur on the report of Station Master, Sh.Ganga Ram Meena, does not mean that there was a malafide on the part of the respondents' department, i.e. DRM Jhansi to transfer the applicant alongwith others from Dholpur to Gwalior. The applicant is required to establish malafide on the part of the respondents' department in clear cut words but the applicant failed to establish any malafide on tne part of the respondents' department.

9. Transfer is an incidence of service and this Tribunal can only interfere in the transfer matters when the transfer is arbitrary and against the infraction of

professed norms and is actuated with malafides.

10. In Shilpi Bose Vs. 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.

11. In State of MP Vs. S.S.Kaurav, 1995 SCC(L&S) 666, 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.

12. In N.K.Singh Vs. Union of India, 1994 SCC(L&S) 1130, held 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 violated by malafide or infraction of any professed norms or principle governing the transfer which alone can be scrutinised judicially.

13. In Abani Kanta Roy Vs. State of Orissa (1996) 32 ATC 10, Hon'ble Supreme Court held that it is settled law that a transfer which is an incidence 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.

14. In the instant case, the applicant failed to establish infraction of any professed norms by the respondents' department in issuing the impugned order of transfer and the applicant also failed to establish any malafide on the part of the respondents' department.

Therefore, in view of the settled legal position and facts and circumstances of this case, we are of the considered opinion that the applicant failed to establish any case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed. However, the applicant may file representation of the competent authority for redressal of his grievances and the competent authority is expected to consider the grievances of the applicant, sympathetically.

15. In view of above all, this O.A is dismissed having no merits with no order as to costs.

(A.P.Nagrath)
Member (A).

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