

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 13<sup>th</sup> July, 2001

OA No.52/2001

Shri Krishna Meena s/o Shri Chiranjil Lal Meena r/o Qtr. No. 252-F,  
Workshop Colony, Near Neta Hotel, Tullapura, Kota.

..Applicant.

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Dy. Controller of Stores, Western Railway, Kota Junction.

.. Respondents

Mr. Rajvir Sharma, counsel for the applicant

Mr. U.D.Sharma, 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 is aggrieved with the transfer of Shri Mohd. Abu Zafar, Depot Stores Keeper-III (DSK-III) to Ratlam on his own request and of Shri Mohd. Afaque, DSK-III to Kota on his own request by order dated 29.1.2001 (Ann.A1). He, therefore, filed this application with the prayer that the transfer in respect of Shri Mohd. Abu Zafar and Shri Mohd. Afaque be quashed. His further prayer is that the respondents be directed to transfer the applicant to Kota on the post of DSK-III.

2. We find from this application that the two above named persons S/Shri Mohd. Abu Zafar and Mohd. Afaque have not been impleaded as parties, though the relief sought by the applicant



directly hits their interest. The respondents have taken a preliminary objection in their reply to the OA and have contended that due to non-impleadment of necessary parties, this OA is not maintainable. In his rejoinder to the reply <sup>of</sup> the respondents, the applicant has asserted that the above named persons are not necessary parties as what he is claiming is his own transfer to Kota as he had made request for his transfer before these two persons. The law in this matter is very clear that in the absence of the parties likely to be affected by the relief prayed for, the relief prayed has to be dismissed. Hon'ble the Supreme Court in State of Bihar and Ors. v. Kameshwar Prasad Singh and ors., 2000 SCC (L&S) 845 has observed as under:-

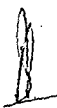
"It appears that the High Court totally lost sight of the fact that in his petitions filed from time to time Brij Bihari Prasad Singh had not impleaded any of his seniors as part-respondents. In the absence of persons likely to be affected by the relief prayed for, the writ petitions should have normally been dismissed unless there existed specific reasons for non-impleadment of the affected persons. Neither was any reason assigned by the writ petitioner nor did the Court feel it necessary to deal with this aspect of the matter. Ignoring such a basic principle of law has resulted in the supersession of 168 Inspectors and 407 Deputy SPs."

In view of the principle clearly enunciated by Hon'ble the Supreme Court, the relief sought by the applicant in this case in respect of quashing of the orders of transfer of above named two persons is not maintainable in law.

3. The other relief prayed for by the applicant is that



respondents be directed to transfer him to Kota. His plea is that on his promotion to the post of DSK-III, he was posted at Ratlam on 5.10.1998, even though there was a vacancy at Kota. In the year 1999 he made a request for being posted at Kota. On 9.6.99, it is stated that the authority at Ratlam passed an order posting him to Kota, but he was not allowed to join. The post of DSK at Ratlam was abolished vide order dated 13.12.99, consequent to which, he was transferred to Kota, but instead of being allowed to join at Kota, he was relieved for posting to Tuglakabad vide order dated 15.1.2000. After joining at Tuglakabad the applicant submitted an application for his transfer to Kota. The applicant maintains that he was allowed to join Kota vide order dated 9.8.2000, though the said order has not been placed on record. He reported at Kota on 10.8.2000 and it is stated that he was not allowed to join at Kota but instead posted at Ratlam. He submitted another application dated 14.8.2000 requesting for his posting at Kota in view of the family circumstances explained in his application. It is stated that his old parents and his wife and children are staying in Kota and it is necessary for him to stay at Kota to look after them. His plea is that instead of considering his request, the respondents have issued the impugned order dated 29.1.2001 (Ann.A1) which includes other names, who had requested for their transfer, but the applicant's name is not there. Being aggrieved with this order, he made a representation on 29.1.2001 to which he has not received any response till this application is filed. He contends that the transfer orders dated 29.1.2001 is malafide as the applicant's name has not been included in this order. This order is stated to be arbitrary, malafide and discriminatory. The applicant contends that there are departmental guidelines in respect of name noting for transfer and in his case the department has violated these guidelines. He further submits that he belongs to ST community and as per the policy of the Government, a person belonging to SC/ST community has to be considered for posting




at the place of his choice. These instructions of the Government have also not been followed in his case and he has been treated in a discriminatory manner, while other persons of the same community have been posted at the place of their choice.

4. In reply to the OA, the respondents have admitted that the applicant had submitted request for transfer to Kota and he also made a representation dated 29.1.2001. This representation has been disposed of by letter dated 13.2.2001 (Ann.R3). This letter gives in detail various instances of misconduct on the part of the applicant and the number of disciplinary cases initiated against him. It has been stated that the administration is within its competence not to effect transfer of employees on account of administrative exigencies. Merely by giving a request under the name noting scheme, the applicant has acquired any ~~as~~ legally enforceable right.

5. In the rejoinder filed by the applicant he has stated that even if disciplinary cases are being proceeded against him, these cannot be a ground for denying his request for transfer. His plea is that if any wrong has been committed by him, the department is free to take action under the rules, but this cannot be co-related with the matter of his transfer. A copy of the Railway Board's letter dated 24.12.85 has been annexed by the applicant wherein instructions have been reiterated that due consideration should be given to SC/ST candidates and as far as possible they should be posted near to their home town. The applicant's contention is that this policy has been given a go-bye while issuing the impugned order.

6. Heard the learned counsel for the parties and perused the entire record.



7. The learned counsel for the applicant while reiterating the points made in the written statements stated that the guidelines of the department in respect of the name noting scheme and also in respect of posting SC/ST employees near to their place of choice are statutory in nature and these have been violated by the respondents. The learned counsel was of the view that pending disciplinary cases cannot be considered the factor denying request of the applicant for transfer to Kota. The learned counsel for the respondents countered the submissions of the other side on the ground that departmental guidelines are mere guidelines and these are not statutory instructions. He placed reliance on AIR 1993 2444, Union of India and ors. vs. S.L.Abbas, in support of his contention that guidelines issued by the Government do not give an employee any legally enforceable right. On the matter of preference to be given to SC/ST employees, the learned counsel referred to Hon'ble the Supreme Court's observations in the case of Laxmi Narain Mehar v. Union of India and ors., 1997 SCC (L&S) 643 wherein it has been held that though SC/ST employees are entitled to be considered for posting near their home town, this concession was subject to administrative exigencies.

8. The law in the matter of transfers in service has been clearly established and it has been held in a catena of cases that the scope of judicial review in the matters of transfer is only limited to examine whether transfer has been made by any extraneous consideration and colourable exercise of powers and also whether the transfer is vitiated by malafide or is violative of any statutory provisions. Hon'ble the Supreme Court in the case of S.L. Abbas (supra) has observed as under:-

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of



transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the government employee a legally enforceable right."

Thus it is clearly established that who should be transferred where is a matter for appropriate authority to decide. In the instant case, though the learned counsel for the applicant did say that the transfer was <sup>e</sup> result of malafide, but no material was provided to support this contention and no official has been impleaded as a respondent alleging malafide. The scheme of name noting does exist and ordinarily it is expected that transfers are considered in order of merit as it appears in the name noting register, but in view of certain reasons in an individual case and in administrative exigencies, if an employee is not considered, this cannot be construed as an illegal action against which remedy lies in the Courts or Tribunals. The Courts and Tribunals are not expected to interfere in the orders of transfer which were in the exigencies of administration. In this case the respondents have given a detailed reply vide Ann.R3 apprising the applicant in clear terms as to why his request has not been considered favourably. The applicant's plea that the disciplinary cases and his conduct cannot be taken into account while taking a view of his

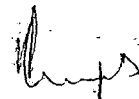


request for transfer, is not based on any reasoning.

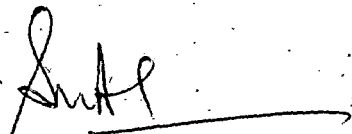
9. In so far as the claim of the applicant that as per Railway Board's order, he deserves consideration to be posted at Kota being an ST employee, the question again <sup>is</sup> that these are only guidelines and these are to be considered as far as possible. In the case of Laxmi Narain Mehar (cited supra) this issue came up for consideration by the Hon'ble the Supreme Court. The Apex Court observed that "Then it is contended that the petitioner being an officer belonging to the Scheduled Castes, is entitled to be considered for retention of his posting nearest his home town. It is true that the instructions have been issued as reproduced at p. 18 of the paper-book to that effect, yet they would be subject to administrative exigencies".

10. In view of the principle clearly established, there is no ground for directing the respondents to post the applicant at the place of his choice. It is a matter clearly within the domain of the administrative authorities competent to take a view in the matter. The applicant has failed to make out any case in his favour and this application is liable to be rejected.

11. We, therefore, dismiss this application as devoid of any merit. No order as to costs.

  
(A.P. NAGRATH)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member