

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 148 of 1997

DATE OF DECISION.....13.10.99.....

Sri Tapan Kumar Paul (PETITIONER(S))

Mr. G.N.Das ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors. RESPONDENT(S)

Mr. J.L.Sarkar Railway Standing Counsel ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR. JUSTICE D.N.BARUAH, VICE-CHAIRMAN.

THE HON'BLE MR. G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of the Bench may be allowed to see the Judgment ?
2. To be referred to the reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 148 of 1997.

Date of decision : This the 13th day of October, 1999.

HON'BLE MR. JUSTICE D.N. BARUAH, VICE-CHAIRMAN.

HON'BLE MR. G.L. SANGLYINE, ADMINISTRATIVE MEMBER.

Shri Tapan Kumar Paul,
Son of Late Dhirendra Kumar Paul,
Sr. Transhipment Clerk, Lumding,
Office of the Divisional Railway Manager(P),
N.F. Railway, Lumding. ...Applicant.

By Advocate Mr. G.N. Das.

-versus-

1. Union of India
(represented by the General Manager(P),
N.F. Railway, Maligaon.
2. Divisional Commercial Manager,
N.F. Railway, Lumding.
3. Divisional Railway Manager(P),
N.F. Railway, Lumding.
4. Asstt. Commercial Manager,
N.F. Railway, Lumding.

By Advocate Mr. J.L. Sarkar, Railway Standing Counsel.

O R D E R

BARUAH J.(V.C.).

In this Original Application the applicant has challenged the Annexure-VIII order dated 26.6.97 and Annexure-X order dated 10.7.97 and prayed for quashing and setting aside the said orders and seeks for further reliefs :

Facts are :

The applicant was at the material time Senior Transhipment Clerk at Lumding. He was transferred from Lumding to Dharmanagar by Annexure-VIII order dated



dated 26.6.97. Against the said order the applicant approached this Tribunal. This Tribunal admitted the application on 9.7.97 and by way of interim measure the operation of the Annexure-VIII order was also suspended. On the very next day the Annexure-VIII order of transfer was cancelled and Annexure-X order dated 10.7.97 was passed transferring the applicant to Katihar. Thereafter the applicant amended the application challenging the Annexure-X order.

2. In due course the respondents have entered appearance and filed written statement.

3. We have heard Mr. G.N.Das, learned counsel appearing on behalf of the applicant and Mr. J.L.Sarkar, learned Railway Standing Counsel. Mr. Das challenged the Annexure-VIII order saying that the said transfer is punitive in nature. He also challenged the Annexure-X order of transfer. He further submits that this order was issued with malafide intention to harass the applicant. Therefore the order of transfer of the applicant cannot be sustained. However, he fairly admits that Annexure-VIII was cancelled, thus no longer in existence. Mr. Sarkar on the other hand submits that there is no ground to challenge the Annexure-VIII order in view of the fact that the Railway Administration had already cancelled the order. He further submits that while passing the order of transfer there was no malafide intention. Mr. Das has not been able to show anything that either this is contrary to the rule or with a malafide intention though he initially submits.

4. We have perused the pleadings and also Annexure VIII order. The said order has since been cancelled, therefore the parties agreed that this need not be considered.

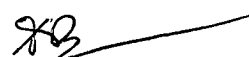


5. On hearing the counsel for the parties it is now to be seen whether Annexure-X order can sustain in law. The only allegation is that it was passed with malafide intention. Order of transfer can be challenged on the ground of malafide provided the challenger makes out a prima facie case; only thereafter the burden shifts to the Government to refute the allegation as has been held in the case of Union of India Vs. Ex. Major N.R. Ajwani reported in (1996) 9 SCC 406. In another case State of Punjab Vs. Chaman Lal Goiyal reported in (1995) 2 SCC 570 the Apex Court held that in the absence of clear allegation of malafides against a particular officer and in absence of impleading such officer nomine, such allegation would not be sustainable.


6. In the present application on our perusal we do not find any allegation of malafide, nor do we find any ground to speak of impleading of any officer who is guilty of malafide. We requested Mr. Das to show if any averment has been made in this regard, but he has very fairly submits that no such averment is made. It is also well settled that mere allegation of malafide is not enough for the Court or Tribunal to come to the conclusion about the malafide action. It has to be proved in a due manner. We do not find any malafide action in issuing the Annexure-X order. Mr. Das also has not been able to point out any legal infirmity for passing the Annexure-X order. On perusal of the impugned Annexure-X order we also find no infirmity.

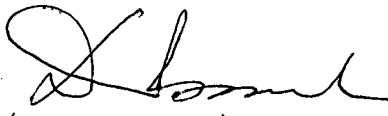
7. In view of the above we do not find any illegality in passing the Annexure-X order. Therefore we find no ground to interfere with the order of transfer.

Accordingly the application is dismissed.



8. Considering the facts and circumstances of the case, we made no order as to costs.


(G.L. SANGLYINE)
Administrative Member


(D.N. BARUAH)
Vice-Chairman

trd