

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 811 of 2005

Gwalior, this the 22<sup>nd</sup> day of November, 2005

Hon'ble Shri Madan Mohan, Judicial Member

K.L. Jharia, son of Shri M.L. Jharia,  
aged about 48 years, posted as A.S.M.,  
Western Central Railway, Jabalpur (MP). ... Applicant

(By Advocate - Shri H.R. Naidu)

V e r s u s

1. Union of India, through the Secretary, Ministry of Railway, New Delhi.
2. Divisional Railway Manager, Western Central Railway, Division at Jabalpur, Jabalpur (MP). ... Respondents-

(By Advocate - Shri N.S. Ruprah)

O R D E R

By filing this Original Application the applicant has claimed the following main reliefs :

"(i) to quashed the order impugned contained in Ann. A/3 with A/4 issued in respect of the earlier order impugned contained in Annexure-A/1, by issuing an appropriate writ/order or direction like of nature,

(ii) to allow to petitioner as usual in service in posting place at Deori extending the all benefits or in alternatively, the petitioner/applicant be allowed in service in Jabalpur so that he kept was and availed medical treatment and care to protection of the life of his son."

2. The brief facts of the case are that the applicant is posted as S.S.Gr./ASM in Railway Station, Deori under the control of respondent No. 2. He was transferred vide order dated 7.6.2005 to Majhgawan in District Satna. He submitted representation against it but of no use. The respondents are well aware of the fact that his younger son is suffering from heart problem as there is a hole in his heart and is continuously taking treatment since 1998. When the representation of the applicant was not considered he filed an Original Application No. 612/2005 and the Tribunal vide

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its order dated 4th July, 2005 directed the respondents to consider and decide the representation of the applicant. The respondents vide order dated 9.8.2005 (Annexure A-3) rejected the claim of the applicant and the applicant was also relieved to join the new place of posting. The aforesaid impugned order is passed aginst the rules and law and is arbitrary and malafide. This order is passed assigning the very reason of complaint which is not a ground in its existence. Hence, he has filed this Original Application.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that his younger son who is aged about 9 years is suffering from heart problem as a hole is found in his heart. He is suffering since 1998 and is required regular medical checkup which is not available in Majhgawan i.e. the transferred station. The applicant submitted a representation before the respondents but when it was not decided he filed an Original Application No. 612/2005, whereby the Tribunal directed the respondents to consider and decide the representation of the applicant. The respondents have rejected the representation of the applicant vide order dated 9.8.2005. The basis of the transfer of the applicant is one complaint Annexure A-5 which shows the malafide intention of the respondents against the applicant. He further argued that the applicant has to visit Bangalore for treatment of his son from time to time. The respondents should have considered the acute genu-ine problem of the applicant on humanitarian grounds also. Hence, the OA deserves to be allowed.

5. In reply the learned counsel for the respondents argued that the applicant was transferred from Deori to



Majhgawan vide order dated 7.6.2005. The applicant filed OA No. 612/2005. In compliance of the order of the Tribunal the impugned order dated 9.8.2005 is passed by the respondents, whereby his representation was dismissed. Due consideration has been given by the respondents to the fact that the son of the applicant is ailing. The medical facilities are also available at Satna where the applicant is being transferred. The applicant is on a transferable post and transfer is an exigency of service. Inspite of best efforts on the part of the respondents to give full consideration to the applicant's case especially the ground of personal difficulties and hardships, the representation of the applicant could not be allowed and hence the same has been rejected. The applicant has completed more than four years of service in the same place i.e. Deori. The applicant has always made an effort to remain in and around Jabalpur. He has remained in Sihora, Bhedaghat, Katni and finally at Deori. Whenever he is transferred to another district he makes efforts and gets the same cancelled. Now this time also he has been transferred to Majhgawan which is only 200 Kms. from Jabalpur. The applicant is giving lame excuses of the family hardships. The correct fact is that Satna is a big city and all the medical facilities are available over there. The applicant could not show any malafide and there is no concern with the alleged complaint with the impugned order of transfer of the applicant. Thus, the OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, I find that the applicant is transferred from Deori, which is 14 Kms. from Jabalpur to Majhgawan (near Satna) which is 200 Kms. from Jabalpur. The argument advanced on behalf of the respondents that the applicant can also go to Satna from Majhgawan for medical treatment, also seems to be factually

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correct. The respondents have mentioned in their return that the applicant has completed more than 4 years of service in the same place i.e. Deori. The applicant has always made an effort to remain in and around Jabalpur as he remained in Sihora, Bhedaghat, Katni and Deori. Whenever he is transferred to another district he make efforts to get the same cancelled. These aforesaid facts are not controverted by the applicant by filing any rejoinder. Admittedly the applicant is a Central Government employee and he is liable to be transferred through out the country anywhere. I find that he is transferred within the state of Madhya Pradesh i.e. Majhgawan which is in district Satna. The applicant could not show any malafide against the respondents and also any contravention of any rules or guidelines. It is also not established by the applicant that the impugned order of transfer is passed by an authority having no competence or jurisdiction. It is a settled legal proposition that the Courts/Tribunals should not interfere in the matter of transfer unless the aforesaid three conditions/elements are violated by the respondents. It is also a settled legal proposition that the transfer is an incidence of service.

7. Considering all the facts and circumstances of the case, I am of the considered view that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.

(Madan Mohan)  
Judicial Member

पृष्ठांकन सं. ओ/व्या.....जबलपुर, दि.....  
प्रतिलिपि नामे लिखा:-

(1) सचिव, नाम लगाया.....के उपसेवक, जबलपुर  
(2) आवेदक, लगाया.....के काउंसल  
(3) प्रत्यक्षी श्री, लगाया.....के काउंसल  
(4) विवाही, लगा "SA".....विवेत  
सूचना एवं आकार राम गार्डन्सीट नं  
28/11/06  
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