

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 319 of 2003

Jabalpur this the 22nd day of May 2003.

Hon'ble Mr. R.K. Upadhyaya - Administrative Member
Hon'ble Mr. A.K. Bhatnagar - Judicial Member

Smt. Laxmi Tiwari,
Wife of Sri Rama Shankar
Tiwari, aged about 51 years
Head Mistress, Railway.

APPLICANT

(By Advocate- Shri S.K. Nagpal)

VERSUS

1. Union of India,
Through The Chairman
Railway Board, Rail
Bhawan, New Delhi
2. General Manager, South
Eastern Railway, 11,
Garden Reach Road,
Kolkata - 43
3. Chief Personnel Officer,
South Eastern Railway 11,
Garden Reach Road,
Kolkata- 43
4. Divisional Railway
Manager, South Eastern
Railway, Bilaspur.

RESPONDENTS.

O R D E R (ORAL)

By R.K. Upadhyaya, Administrative Member :-

In this application the applicant has sought the following reliefs :-

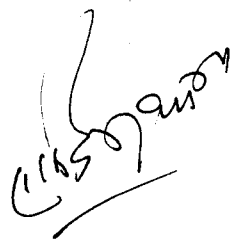
- (i) Quash the impugned order dated 16.8.2002, 28.8.2002 and 9.5.2003 Annexure- A/1, A/2 and A/3/1
- (ii) award cost of this application
- (iii) Grant any other relief as deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of this case.

2. The applicant was initially appointed as Khalasi

Teacher in SE Railway on casual basis w.e.f. 7.8.1980 at Shahdol, she was given regular appointment on 15.7.87 at the same place. Subsequently, she was promoted as Middle School Head Mistress at Mixed High School, SE Railway Shahdol, on 18.10.97 at the same station. The applicant was transferred by order dated 16.8.2002 (Annexure A-1) from Shahdol to Bilaspur. Aggrieved by the order of transfer, the applicant had filed OA No. 44/03 which was disposed of vide order dated 29.1.2003 in which the Tribunal directed the respondents to decide the pending representation of the applicant by a speaking order.

2.1 Pursuant to the direction of this Tribunal in OA 44/03, the impugned order dated 9.5.2003 (Annexure A/3) has been passed. The respondent No. 2 by the impugned order has disposed of the representation of the applicant observing that he did not find any reason for cancellation of transfer order already issued.

3. The learned counsel states that the order of respondent No. 2 deserves to be quashed as the same is punitive in nature, because the applicant has not been given any show cause notice. The learned counsel further argued that the applicant has been teaching Sanskrit in Mixed Higher Secondary School, Shahdol where the result of Sanskrit for Xth Board Exam was more than 90 percent. It is also stated that other teacher of her school whose results were worse than the applicant, have been given best Teacher's ^{award.} In this connection reliance was placed on the decision of Ernakulam Bench of this Tribunal in the case of C.C. Duseph Vs. Union of India & Ors. 2000 (1) ATJ 54 wherein it has been held as follows :-



" If a transfer was made for a misconduct or a conduct unbecoming of a Govt. Servant as a punishment the principles of natural justice demand that a notice should be given to the person concerned and he should be heard before taking a decision. Audi alteram partem is the basis of rule of law. Since that has been violated in this case we find no way to justify this impugned order"

It is claimed by the learned counsel that the impugned order being punitive in nature should be quashed.

4. The learned counsel informed that subsequently by an order dated 20.5.2003, a copy of which has now been placed ^{on} record, the controlling officer, i.e., the Assistant Divisional Engineer has passed an order whersby the applicant has been deemed relieved from the charge of Head Mistress of Mixed High School, Shahdol with a direction to report for duty to Bilaspur as per transfer order dated 16.8.2002 (Annexure A-1).

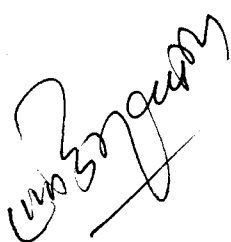
5. We have heard the learned counsel for the applicant and perused the material available on record.

6. We find that the post which is held by the applicant ^{is} transferable. May be that the applicant has some personal problems, but transfer being incident ^{of} service cannot be interferred because of personal problems of the applicant.

The Hon'ble Supreme Court in the case of : National Hydroelectric Power Corp. Ltd vs. Shri Bhagwan & Anr.

2002 (1) SLJ 86 SC have observed as follows :-

" Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting such transfer, the courts or the Tribunals can not interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of management as against such orders passed in the interest of administrative exigencies of service concerned."

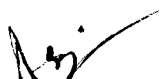


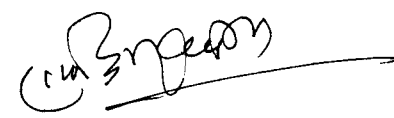
Similar view was also taken by the Hon'ble ^{Supreme} Court in the case of Damodar Prasad Vs. RSRTC and Ors, 2002 (1) ATJ 326.

7. In the present case we find that the applicant holds transferable liability. She was initially appointed and also earned promotions at the same station. She has been in the service for more than 12 years at a particular place. In a transferable post, none has a right to continue at one place. We also find that the place ^{at} which applicant has been transferred is also not far away from the present place of posting. Therefore, we do not find any reason to interfere with the order of the respondents.

8. So far as the claim of the applicant regarding order being punitive is concerned, we do not agree with the contention of the learned counsel of the applicant. It is not that the transfer of the applicant has been made as a substitute for the disciplinary proceeding. The respondents in the impugned order of transfer have categorically stated that they are concerned with over all administrative requirement. So far as administrative requirement is concerned, this Tribunal has no jurisdiction to interfere with such orders passed in the interest of administrative exigencies of service concerned. In this view of the matter the OA is liable to be rejected.

9. For the reasons stated in the preceding paragraphs, this application is rejected at the admission stage itself.


(A.K. Bhatnagar)
Judicial Member


(R.K. Upadhyaya)
Administrative Member

पृष्ठकल सं ओ/नरा.....जबलपुर, दि.....

पवित्रिपि पारवे पिल :-

- (1) लखन, नर नरनरनर नर एनरनरनर, जबलपुर
- (2) अरनरनर पी/पीनरी/कु.....के काउंसल
- (3) अरनरनर पी/पीनरी/कु.....के काउंसल
- (4) वंशपार, लखन, जबलपुर नरनरपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

Issued.
28/5/03

उप निदेश
28/5/03

SK Nagpal, Asst