CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 709 of 2002

Jabalpur, this the 1st day of April, 2003.

Hon'ble Mr. Shanker Raju - Member (Judicial)
Hon'ble Mr. R.K. Upadhyaya - Member (Admv.)

Moolchand Kori S/o Shri Ramlal,
aged about 42 years, R/o LIG 265-II,
Vishva Bank Colony, Sanjeewani
Nagar, Agar Road, Ujjain APPLICANT

(By Advocate - Shri K.N.Pethia)

VERSUS

1. Union of India
Through ; Secretary to
Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.

2. Western Railway,
Through ; Its General Manager
Church Gate, Mumbai.

3. Divisional Railway Manager,
Ratlam. RESPONDENTS

(By Advocate- Shri M.N.Banerji)

O R D E R

By R.K.Upadhyaya,Member (Admnv.)-

The applicant has filed this O.A. seeking a direction for quashing the order dated 26.8.2002 (Annexure-A-4) by which he has been transferred to Ratlam. The applicant has also prayed a direction to the respondents for not recovering rent for the period he retained residential accommodation at Ujjain. The applicant has further requested that this Tribunal may command the respondents to issue an order re-transferring the applicant from Ratlam to Ujjain.

2. It is stated by the applicant that he was working as Chief Goods Train Clerk at Ujjain and being a surplus staff was transferred to Ratlam vide order

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dated 1.12.1998. The claim of the applicant is that he is the senior most surplus employee and as per order of the Railway Board dated 24.12.1985 scheduled castes and scheduled tribes candidates should be posted near to their native place. The learned counsel of the applicant further stated that junior surplus staff has not been disturbed whereas the applicant has been transferred. The learned counsel of the applicant invited attention to Headquarters office circular dated 23.5.1989, by which Railway Board's circular dated 21.4.1989 has been circulated, wherein it has been stated that normally the junior most of the employees should be rendered surplus. According to the learned counsel the applicant is not the junior most, therefore, he should not have been transferred. Therefore, the order of transfer deserves to be quashed.

3. In spite of notice having been issued to the respondents on 2.12.2002, no reply has been filed so far. However, the learned counsel of the respondents stated that he may be heard and the matter may be disposed of on the basis of pleadings on record and after considering his arguments. He stated that it is the prerogative of the employer to place the employees where the employer considers them more suitable. The applicant had earlier filed O.A.No.447 of 2002 seeking a direction to the respondents to consider his representation for his transfer/posting back to Ujjain. This Tribunal by an order dated 4.7.2002 had directed the respondents for disposal of the representation of the applicant within one month of receipt of the copy of that order. Accordingly, order dated 26.8.2002, which is impugned in this O.A., has been passed. In this reasoned and speaking order dated 26.8.2002, it has been clearly stated that there were no vacancies available at Ujjain in the relevant cadre.

3.1 The applicant had also filed O.A.No.431 of 2000 which was decided by this Tribunal vide order dated 26.6.2001, in which he had challenged the order of refusal of permission to retain the residential accommodation at

Ujjain on his transfer to Ratlam. The detailed facts have been taken note of by this Tribunal in paragraph 5.1. of the order dated 26.6.2001 wherein it has been stated that the performance of the applicant was not satisfactory and, therefore, in the interest of administration, he was transferred ignoring the junior most employee. It has also been observed that the applicant was transferred on grounds of unsatisfactory performance of work. The learned counsel, therefore, urged that the order of the respondents in transferring the applicant from Ujjain to Ratlam is in the interest of administration and the same may not be interfered with by this Tribunal.

4. We have heard the learned counsel of parties and have perused the material available on record.

5. So far as the applicant's relief regarding charging of damage rent in respect of the residential accommodation is concerned, the same has already been adjudicated by this Tribunal by order dated 26.6.2001 in O.A.431/2000. Therefore, the claim of the applicant is hit by the principle of res judicata and we need not express any opinion on that claim. However, so far as the request for cancellation of transfer from Ujjain to Ratlam is concerned, we find that the placement of an employee is the prerogative of the administration. This Tribunal can interfere only if it is found that the transfer is against the statutory rules and guidelines and has been made with malafide. In this case, none of these considerations are involved. The applicant was found surplus at Ujjain. Therefore, he has been transferred. The claim of the applicant is that he was the senior most and should not have been transferred is also not based on any statutory rules or guidelines. The discretion has been given to the employers. There is a categorical assertion by the respondents that the performance of the applicant at the place of posting at Ujjain was

not satisfactory. In support of this assertion, the learned counsel of respondents has invited attention to the disciplinary proceedings initiated against the applicant. In any case, this Tribunal has no jurisdiction to substitute its decision as an appellate authority of the administrative department. It has been held by the Hon'ble Supreme Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & another, 2002(1) SLJ 86 that transfer is an incident of service and none has right to continue at one place. The Apex Court has further observed that the Courts or the Tribunals cannot interfere with such orders as a matter or 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.

6. For the reasons mentioned in the preceding paragraph, this application being devoid of any merit is dismissed without any order as to costs.

(R.K.Upadhyaya)
Member (Admnv.)

S. Raju
(Shanker Raju)
Member(Judicial)

rkv.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि
(1) सचिव, उच्च ... जबलपुर
(2) आवेदक ... जबलपुर
(3) प्रत्यर्थी ... जबलपुर
(4) ...
सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार 2/4/03

M.N. Pethia Adv
M.N. Banerji Adv

Issued
On 2.4.03