

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 850 of 2002

Jabalpur, this the 31st day of October, 2003.

Hon'ble Mr. M.P. Singh, Vice Chairman (Administrative)
Hon'ble Mr. G. Shanthappa, Judicial Member

Anand Kumar Yadav
S/o, Shri Mahaveer Yadav.
Aged about 25 years,
R/o, Parvat Bhavan,
Yadav Colony, Jabalpur (M.P.)

APPLICANT

(By Advocate - Shri A. K. Tiwari)

VERSUS

1. Union of India,
Through it's General Manager,
Central Railway, C.S.T. Mumbai
Maharashtra.
2. Divisional Railway Manager,
Central Railway,
Jabalpur (M.P.)
3. Shri R.K. Mishra
Sr. Divisional Mechanical Engineer
Central Railway, Jabalpur (M.P.)

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman (Administrative)-

The applicant has filed this Original Application challenging order of his transfer dated 16.10.2002 (Annexure-A-5) by which he has been transferred from Jabalpur to Sagar.

2. The brief facts of the case are that the applicant who was working as a bungalow peon was promoted & posted to the post of Helper-II in the grade of Rs.2550-3200 on 26.4.2001. He was transferred from Jabalpur to Sagar vide order dated 16.10.2002. He challenged this order of transfer by filing O.A.No.721 of 2002 before this Tribunal. The Tribunal vide its order dated 28.10.2002 disposed of the said OA directing the respondent no.2 i.e. the Divisional Railway Manager, Central Railway, Jabalpur to dispose of the pending representation of the applicant within a period of four

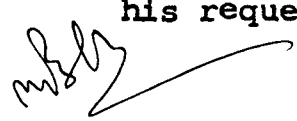
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weeks by a speaking order. It was also directed that till the representation dated 21.10.2002 is disposed of, status quo as available on that day be maintained. In pursuance to the order of the Tribunal, the Divisional Railway Manager has passed an order dated 28.11.2002 rejecting the request of the applicant for cancellation of the transfer order. Hence the applicant has filed this OA challenging the transfer order as well as the order passed by the Divisional Railway Manager in pursuance to the directions of the Tribunal.

3. Heard the learned counsel for both the sides at length and carefully perused the pleadings available on record.

4. The learned counsel for the applicant argued that the order of transfer passed by the respondents is arbitrary and punitive in nature. He has also submitted that as per the policy, the junior-most person should be transferred, and as the applicant is not the junior most person, the respondents have passed the order of transfer as a measure of punishment and with a view to harass the applicant. He has also submitted that one of the reasons for transferring the applicant is that he had participated in the enquiry of one S.K.Pandey and supported the contentions of Shri S.K.Pandey. He has further submitted that one Govind Das Shobha Ram, who has applied for transfer to Sagar from Jabalpur on his own request has not been transferred to that place and instead the applicant has been transferred to Sagar just to harass him.

5. On the other hand, the learned counsel for the respondents stated that the applicant has been transferred to Sagar in the administrative exigencies and the transfer order issued by the respondents is neither arbitrary nor punitive in nature. He has also submitted that the applicant has applied for his transfer to Varanasi and his request has been forwarded to the concerned authority



for transferring him to Varanasi. Therefore, it is clear that there is no malafide or any punitive action on the part of the respondents while transferring him from Jabalpur to Sagar.

6. We have carefully perused the pleadings and heard the learned counsel of both sides. Transfer of an employee appointed against a transferable post is not only an incident of service but a condition of service. The Hon'ble Supreme Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & Shiv Prakash, 2002(1)ATJ 108 = 2002 SCC(L&S) 21 has held that Courts or Tribunals cannot interfere with an order of transfer unless such an order is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer. In this case we find that the applicant who was working as bungalow peon has not been performing his duties properly and creating indiscipline in Class-IV cadre in the office of respondents. We also find from para 4.3 of the OA that the applicant himself has stated the fact that he had denied to work as a Bungalow peon because it was very difficult to work in two places at the same point of time.

7. On a careful consideration of the submissions of the learned counsel of the parties and the facts mentioned above, we do not find any merit in this OA. The same is accordingly dismissed, however, without any order as to costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman(A)

rkv.

प्रमाणित सं ओ/न्या.....जबलपुर, दि.....

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(1) प्रमाणित सं ओ/न्या.....जबलपुर, दि.....

(2) प्रमाणित सं ओ/न्या.....जबलपुर, दि.....

(3) प्रमाणित सं ओ/न्या.....जबलपुर, दि.....

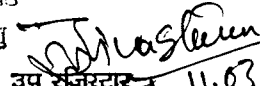
(4) प्रमाणित सं ओ/न्या.....जबलपुर, दि.....

सूचना एवं प्रचारित कार्यवाही हेतु

उप सचिव

Sh. AK Tiwari, Adm.

MN Banger, Adm.


4-11-03

Final
4/11/03