

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT AT INDORE

Original Application No. 441 of 1999

Indore, this the 12th day of November, 2003

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Gopal Gaikwad, S/o. Late
Kashiramji, Aged 45 years, Electric
Fitter Gr. II, Diesel Shed, Western
Railway, Ratlam. Postal Address :
281, Mhow Road, Ratlam (M.P.).

... Applicant

(By Advocate - None)

V e r s u s

1. Union of India,
through the General Manager,
Western Railway, Churchgate,
Mumbai.
2. The Divisional Rail Manager,
Office of the DRM Western Railway,
Ratlam.
3. The Divisional Mechanical Engineer,
Office of the DME (D), Ratlam.
4. Shri Harshwardhan Sharma,
The then Assistant Mechanical
Engineer, (T) Western Railway,
at present D.M.E. Diesel Shed,
Vatva (Ahmedabad) (Guj).

... Respondents

(By Advocate - Shri Y.I. Mehta, Sr. Adv. assisted by
Shri H.Y. Mehta)

O R D E R (Oral)

By G. Shanthappa, Judicial Member -

The above application is filed seeking the relief to
quash the Annexure A-5 i.e. order of transfer dated
31.05.1995 by considering the Railway Board circular dated
14.01.1975.

2. The case of the applicant is that he belongs to SC
community and there was a difference among the respondent
No. 4 and the applicant. The applicant states that as he



belongs to SC community he should not have been transferred vide Railway Board circular dated 14.01.1975. The applicant has not produced the said Railway Board's letter.

3. The applicant has submitted that the respondent No. 4 had alleged a false and fabricated complaint against the applicant to harass him and seek ^{revenge} under Section 307 of IPC. The applicant was acquitted by the Hon'ble Session Judge, Ratlam. In the application he has alleged allegations against the officials.

4. The applicant was transferred without showing the specific reason of the exigencies of service by the Railway Authority. It clearly shows from the facts and circumstances of the case that the respondent No. 4 managed to transfer the applicant because he was assaulted by unknown miscreants. The applicant was not supposed to be transferred to other places under the circular issued by the Railways. In the pleadings the applicant has stated that the order of transfer is punitive in nature without any actual Railway exigencies and ^{has} ~~does~~ not contented to the instructions of the Railway Board that the employees given the facility of the quarter at Happa and Fullera.

5. The applicant had approached the Hon'ble High Court in WP No. 1317 of 1998. The ~~same~~ was ^{as} ~~withdrawn~~ later withdrawn by the applicant. The operative portion of the order is as follows :

"Mr. G.L. Gupta with Lokesh Bhatnaga-r for the Petitioner.

While this matter was being considered, learned counsel for the petitioner prayed for withdrawal of this petition to enable the petitioner to file representation before the competent authority for reconsideration of his transfer to 'Fullera' in Rajasthan in the light of some circulars of the

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Railway Board regulating the transfer of S.C. and S.T. Employees.

This petition is accordingly dismissed as withdrawn, leaving the petitioner free to take whatever steps, he may want to take, for seeking redressal of his grievance. In case he approaches the concerned Authority, his representation would obviously warrant consideration on the basis of merits and rules and disposal, if any, within one month from the date of receipt."

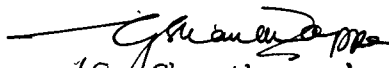
6. During the pendency of the OA the applicant has filed an amendment application amending the OA and alleging against the officers. The applicant has produced so many documents, only to ~~confuse~~ ^{raise} the issue regarding his transfer. Since the order of transfer was issued under malafides without mentioning the public interest, the impugned order of transfer should be quashed.


7. Per contra, the respondents have filed the reply denying the allegations and averments made in the OA. It is specifically submitted by the respondents that they have not violated the guidelines issued by the Railway Board. The allegations about respondent No. 4 ^{was} ~~had~~ not ^{working} ~~in~~ ^{under the} administrative control over the applicant at the relevant ^{cp} time. Earlier the applicant had filed OA No. 506/1996. The said OA was ^{disposed of} ~~allowed~~ and the ^{applicant was directed to join at} ~~transfer order to~~ Phulera. ^{cp} ~~was cancelled~~. The respondents have submitted that the applicant has approached the Hon'ble High Court of Madhya Pradesh in WP No. 1389/2001. On 21.01.2003 the Hon'ble High Court of Madhya Pradesh against the order of the Tribunal dated 09.05.2001, wherein the Tribunal directed the applicant to join his duties at Phulera, dismissed the writ petition with the following observation :

"In view of this order passed by the CAT, which is in favour of the petitioner, no interference is called for in this petition filed under Art. 227 of the Constitution of India. It is made clear that the petitioner, if wants to join his duties on the strength of the aforesaid order, he may join his duties within 15 days from today."

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8. After perusal of the records and after hearing the advocate for the respondents, the short question for our consideration for disposal of the said CA is whether the impugned order is an administrative order?, whether the applicant has legal right to challenge the said order, and whether this Tribunal has powers to interfere with the administrative matters of the respondents. Since the impugned order of transfer is in a administrative nature, normally the courts and Tribunals cannot substitute their own decision, in the matter of transfer in view of the law laid down by the Hon'ble Supreme Court in the case of National Hydro Electric Power Corporation Limited Versus S. Bhagwan and another reported in 2002 SCC (L&S) Page 21, In the said judgment the Hon'ble Supreme Court in para 5 has held that the applicant has no legal right to challenge the order of transfer. Since the impugned order of transfer is an administrative matter this Tribunal could not interfere in the administrative matters. Accordingly, in view of the law laid down by the Hon'ble Supreme Court our interference in cancelling the order of transfer is unwarranted. Accordingly, the above Original Application is dismissed. No order as to costs.

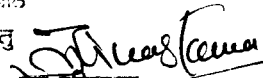

(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

पृष्ठान्त सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि जलपित:-

- (1) सचिव, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जबलपुर
(2) जलपित प्रो/डी.जी.ए. /कु..... के कार्डसल
(3) जलपित प्रो/डी.जी.ए. /कु..... के कार्डसल
(4) जलपित प्रो/डी.जी.ए. /कु..... के कार्डसल

सूचना एवं आवश्यक कार्यवाही हेतु


K.C. Raikwar, Advr
Y.D. Mehta, Advr
18.11.03

"SA"

Filed
18.11.