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CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH

O.A.NO.473 of 2005

21st Dec
December 21, 2005

CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN.

Jagpal Singh son of Shri Ghanshyam Singh, by caste Jat, aged 59 years, resident of now-a-days C/o S.K.Jain, Advocate, Nanaji Ka Bash Jaipur, working as Mechanical Signal Maintainer (MSM) Grade-I, West Central Railway, Bara, Kota Division, Kota.

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Applicant

By : Mr.S.K.Jain, Advocate.

Versus

1. Union of India through the General Manager, West Central Railway, Jabalpur.
2. Shri Piyush Mathur, Senior D.S.T., West Central Railway, Kota Division, Kota.
3. Shri V.S.Srivastava, Assistant Divisional Signlar & Telecom Engineer, West Central Railway, Kota Division, Kota.
4. Shri P.K.Saxena, Junior Engineer Signal, West Central Railway, Baran.

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Respondents

By : Mr.T.P.Sharma, Advocate.

ORDER

KULDIP SINGH, VC

The applicant is working as Mechanical Signal Maintainer (MSM) Grade I. He assailed the order dated 1st September, 2005, vide which he has been transferred from Baran to Uparmal Station within Kota Division itself on an equivalent post with same pay scale on administrative grounds.

The applicant alleges that while he was working as MCM Grade I at Baran, respondent no.4 had misbehaved with him and gave beating to him and also hurled filthy abuses on which the

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applicant lodged FIR No.90 of 2005 dated 27.8.2005. In the said case challan has been presented before the Railway Magistrate, Kota and the case is pending there. The respondent no.4 got himself bailed out and is facing trial.

It is submitted that respondent no.4 is close to respondent no.2 and is related to him inasmuch as the daughter of maternal uncle of Shri Piyush Mathur was married to the respondent no.4, Shri P.K.Saxena and now said daughter is dead. Son of Shri P.K.Saxena resides with Shri Piyush Mathur.

He states that the respondent no.4 pressurized the applicant to file a compromise in the above case under section 323 and 341 IPC pending before the Railway Magistrate, Kota. He refused to do so on which respondent no.4 threatened the applicant to be transferred to a very remote place with a view to punish him.

Applicant submits that earlier also a complaint was made on 23.1.2004 by Staff of Signal & Maintenance against the respondent no.4 in which the applicant was also a party and said complaint is Annexure A-2. It is further stated that respondent no.4 threatened one Shri Sunder Dass, ESMI, Baran for giving evidence in his favour and against the applicant which is evident from complaint dated 28.8.2005 (Annexure A-3).

It is submitted that when all the efforts failed, the respondent no.4 asked his relative, respondent no.4 to transfer the applicant to a very remote place as a punishment. Thus, the applicant was transferred by order dated 1.9.2005 (Annexure A-1) passed by the respondent no.2.

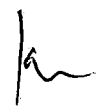
It is further stated that at Uparmal Station there is no post

of MSM Grade I and the applicant has been transferred by respondent no.2 to such a station at the behest of respondent no.4. The applicant further submits that he has not yet been relieved from the post of MSM Grade I, Baran. He is also getting the passes and PTOs from Kota to Bharatpur and he has not handed over the charge.

The applicant further submits that charge sheet has also been issued to the applicant on 28.7.2004 wherein it has been alleged that applicant misbehaved with his superiors who had filed a complaint dated 20th May, 2004. The applicant had been ultimately punished in the charge sheet without hearing.

It is further stated that order of transfer has been passed only against the applicant and the above post has been left vacant showing that the transfer of the applicant was not in the exigency of service at all but was for the purpose of punishing the applicant and harassing him. Thus, it is prayed that the order is wholly illegal and liable to be quashed.

Respondents are contesting the O.A. Respondents in their reply submit that the impugned order of transfer against the applicant from Baran to Kota in the same grade and pay scale has been issued on the administrative grounds. Since the applicant is holding the transferable post, he can be transferred in the exigency of services where services of the applicant are required. Applicant has no solid or legal ground to challenge the order. Therefore, the prayer of the applicant for quashing the transfer order has no substance in the eyes of law. It is further submitted that present O.A. has been filed without exhausting the remedies available to him under the rules, so it is not maintainable. It is further submitted that the behaviour of the



applicant towards staff is quite abusive and insulting towards staff members which was the cause of his earlier transfer from Jahajpati to Bharatpur and again the applicant has been transferred to Upparmal.

Respondents deny that the respondent no.4 has close relation with respondent no.2. Rather it is submitted that the respondent no.4 is working under the control of respondent no.2, therefore, he is duty bound to follow the instructions given by the respondent no.2. With regard to allegation of applicant that daughter of maternal uncle of Shri Piyush Mathur was married to respondent no.4, P.K.Saxena and she has died and daughter of respondent no.4 is living with respondent no.2, the respondents have given a vague reply in para 4 (3) of their reply and it is very difficult to make out as to what they want to say. However, it is admitted that some members of the staff had made complaint against the respondent no.4 who was called by the railway authorities concerned and thereafter the working place of Railway remained peaceful. Thereafter no complaint was received by the railway authorities against the respondent no.4.

It is further stated by the respondents that behaviour of the applicant is quit disturbing as he himself has forged his presence inasmuch he frauded his presence instead of absence by his own hand in the Time Book which is evident from the complaint made by the respondent no.4 and since the Railway Administration found that keeping the applicant at Baran would not be appropriate and in the interest of the Railway, thus, considering the entire service record as well as other record received from the concerned staff and the officers, the Railway Administration has transferred the applicant in the interest of railway from Baran to Upermal.



The applicant has also pleaded that his transfer is mid-term transfer as his grand son Durgesh Kumar Choudhary, who is son of late son of the applicant Virendra Singh is also studying in Central School at Baran in Class I. Said child is staying with the applicant only because the child has no other person to look after. Besides that one son of the applicant is studying in ITI. There is neither any ITI nor any Central School at Baran.

I have heard the learned counsel for the parties and perused the material on record.

At the outset I may mention that when the case was heard on 16.11.2005, during the course of arguments it transpired that no specific reply has been filed by the respondent no.4 with regard to his relationship with respondent no.2, as mentioned in the O.A. nor there was a reply regarding the post on which the applicant has been transferred and the post which has been left vacant. So, counsel for respondent no.4 prayed for and was granted time to file reply with regard to his relationship with respondent no.2 as mentioned in the O.A. Counsel for the respondents also gave an undertaking to produce the record to spell out the administrative exigency on which the applicant has been transferred to Upamal Station from Baran.

Despite number of opportunities given, no additional affidavit or reply has been filed and reply on behalf of respondent no.4 has also not been filed to rebut the specific allegations of relationship of respondent no.2 with respondent no.4. The same could have been done either by filing an additional reply on behalf of respondent no.2 or on behalf of respondent no.4 but none of these respondents filed reply to rebut the allegations of relationship.

Learned counsel for the applicant submits that since the applicant has specifically alleged that respondent no.4 is related to respondent no.2, inasmuch as the daughter of maternal uncle of respondent no.2 was married to respondent no.4 and since the said daughter is now dead and son of respondent no.4 is residing with respondent no.2, in the absence of denial of these allegations, these are deemed to have been admitted and this relationship shows that respondent no.2, being interested in respondent no.4, with the malafide intentions had passed an order of transfer so that the applicant may not pursue the criminal case which he had got registered against the respondent no.4, in which the respondent no.4 had been bailed out and is facing trial. The fact regarding registration of a case against the respondent no.4 has also not specifically been denied by the respondents.

The counsel for the applicant further contended that the applicant is presently working as MSM Grade I at Baran whereas there is no such post in Uparmal Station i.e. Why in the impugned order itself it has been mentioned that he has been posted against an equivalent post with same grade and and in the reply it is not suggested that post of MSM is available at Uparmal Railway Station. This further supports the plea of the applicant that the transfer order is issued with malafide intentions as the applicant has been transferred to such a station where even the post on which he is working is not available.

The learned counsel for the applicant further contended the malafide is writ large on the face of the record because no substitute has been posted against the post which is stated to have been vacated

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by the applicant on his transfer to Uparmal rather post of MSM Grade I has been left vacant by the impugned order whereas the post of such a nature could not be left vacant. Lastly it is also submitted that the transfer is in mid academic term. Son of applicant is studying in ITI at Baran whereas there is no such institute of ITI in Uparmal and secondly grand son of applicant (who is son of deceased son of applicant) is studying in Central School where such facility is not available at Uparmal. So, atleast the transfer should not have been done during the mid academic term.

In reply, learned counsel for the respondents was unable to explain as to why despite the order passed by this Court and time given, no additional reply has been filed to rebut the allegation of relationship between the respondent no.2 and 4, as alleged by the applicant. Though learned counsel for the respondents was called upon to bring the record to show the Court as to what is the administrative exigency which caused transfer of the applicant but no such record has been placed on record or shown to the court. On the other hand, some complaints filed against the applicant have been shown and it is only argued that applicant has been transferred on the basis of such complaints. There is no rebuttal to the averment of applicant that post of MSM is not available at Uparmal, rather in reply to para 4 (vii), it is only stated that applicant has been transferred on the basis of complaints which have come against him because of his misbehaviour.

Learned counsel for the applicant submitted that perusal of the reply of the respondents shows that the applicant has been transferred on the basis of complaints made against him. Merely

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because of the complaint he could not be transferred without giving him any opportunity of hearing. Learned counsel for the applicant referred to a decision in the case of Hem Chand & Others Vs. Union of India & Others, 1996 (2) ATJ, Page 96, wherein it has been held that transfer cannot be resorted to as a softer option to avoid taking disciplinary action for the misconduct if it is so warranted in the circumstances. In the said case also a complaint was received against the employee alleging that he had created obstruction and was misbehaving with the staff and so on the basis of such complaint he was transferred. The transfer order in his case was quashed.

On the said lines the applicant has also relied upon another judgement titled Shri Chattar Singh Vs. Union of India & Others, 1996 (2) ATJ, Page 222, wherein it has been held that when a transfer is ordered with a view to punish the employee or for a collateral purpose then the same is malafide, arbitrary and is a colourable exercise of power. In that case the transfer was made as the employee had failed to vacate the government quarter. Thus, the transfer order was quashed and set aside.

On the same lines, there is another judgement given by the Lucknow Bench of the Tribunal titled Bhagwan Bux Singh Vs. Union of India & Others, reported as 1996 (2) ATJ, Page 297, wherein transfer order was issued on account of complaints against the employee and as such the Tribunal had quashed the transfer order. Similarly applicant has also cited judgement given by the Jodhpur Bench of C.A.T. Reported as 2003 (3) ATJ Page 602, T.D.Soni Vs. Special Secretary to Government of India. In this case the transfer order was ordered on account of drunkenness of the employee during the office

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hours. No enquiry was held nor any opportunity of hearing was given and as such transfer order was quashed.

In this case also the transfer order has been passed on the ground of complaint made against the applicant but no enquiry was conducted nor any opportunity of hearing was granted to the applicant. So, following those judgements, I find that in this case also instead of showing any administrative exigency, the reply as filed by the respondents shows that the applicant has been transferred merely on the basis of certain complaint. So, this transfer cannot be sustained as no opportunity of hearing has been given to the applicant to explain his conduct on the allegation levelled against him in the complaints. Besides that when this Court had directed the respondents to file a specific affidavit of respondents no. 2 and 4 with regard to the allegations made by the applicant, no affidavit / reply has been placed on record either of respondent no.2 or of the respondent no.4 and the fact also remains that on the complaint of the applicant a criminal case was registered against the respondent no.4 which fact has not been denied and the fact also remains that the respondent no.4 has been bailed out in that case. So, it can safely be inferred that the respondent no.2, may on the prompting of the respondent no.4, who is related to him, has passed such transfer order. Moreover, the applicant has worked as MSM Grae I at Baran and there is no such post at Uparmal. So, the order does not appear to be free from malafide action of the respondent no.2&4 and the same cannot be sustained and has to be quashed. Besides that, we may also mention that the allegation of the applicant is that transfer order has come in the mid academic session when his grand son,



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whose father has died, is school going and is studying in class I in Central School and secondly one son of the applicant is also persuing ITI at Baran which facility is not available at Uparmal. So, he should not have been transferred during mid-academic session.

So, keeping in view the facts and circumstances of this case, I find that it is a fit case where transfer order cannot be sustained and it is quashed and set aside with direction to respondents to allow the applicant to serve at Baran. However, this order will not be a bar to pass fresh order of transfer as per rules and policy.


(KULDIP SINGH)
VICE CHAIRMAN

December 20, 2005.

HC*