

ORAL**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD****This the 23rd day of March, 2018.****ORIGINAL APPLICATION NO. 330/00256/2018****HON'BLE MR. JUSTICE DINESH GUPTA, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)**

1. Dinesh Chand Tiwari s/o late Rekha Tiwari r/o Village –Sonari, Post Office- Machhati, District- Ghazipur.
2. Hanuman Prasad Tiwari s/o Mithlesh Saran Tiwari r/o Village Jhalwa P.O. NCR (Subedarganj) District- Allahabad.
3. Chedi Lal Singh s/o Siya Ram Singh r/o Patanikapura, P.O. Ranipura, District- Kaushambi.
4. Satya Prakash Upadhyaya s/o Chotu Upadhyay r/o Village Sabbalpur Khurd, P.O. Jamania, District- Ghazipur.
5. Raj Kishore s/o of Doodh Nath r/o Angurihan, P.O. Poorar Nara, District- Allahabad.
6. Yogendra Prasad s/o Ram Swaroop Yadav r/o village Sonbarsha , P.O. Paibagh, District- Gaya (Bihar).
7. Kishori Lal s/o Genda Lal r/o Village and Post Hush Bihar Colony (Shishu Mandir Road, Bilramgali, District- Kashganj U.P.

.....Applicants

Advocate: Sri S.K. Upadhyaya

VERSUS

1. Union of India through its Secretary, Department of Railway, New Delhi.
2. Chairman, Railway Board, New Delhi.
3. General Manager, North Central Railway, District- Allahabad.

4. Senior Divisional Signal and Telecom Engineer (Coordination), NCR, Allahabad.
5. Senior Divisional Personal Officer, North Central Railway, District- Allahabad.
6. Assistant Personnel Officer- III, North Central Railway, District- Allahabad.

.....Respondents

Advocate: Sri S.M. Mishra

O R D E R

The applicant has filed the present O.A. u/s 19 of the AT Act with the following reliefs:-

- a) To issue a direction or order setting aside the impugned order dated 28.12.2017 passed by the respondent No. 3 to the extent of transfer to the different places in respect of the applicants only.
- b) To issue a direction commanding the respondent authorities not to compel the applicants to join their duties after requisite course of 3 months at the place mentioned in the impugned order dated 28.12.2017 passed by the respondent No. 3.
- c) The Hon'ble Tribunal may be pleased to issue any such other and further orders on direction in favour of the applicants as this Hon'ble Tribunal may deem to be just and proper in the facts and circumstances of the case and which the applicant may be entitled to under law, otherwise the applicants shall suffer irreparable loss and injury.

d) To award the cost of the application in favour of the applicants.

2. The brief facts emerging from the O.A. are that all the applicants were initially appointed in the Indian Army and have discharged their services.

2.1 After retirement, they joined the office of respondents i.e. Department of Northern Central Railway.

2.2 The respondents authority by orders dated 3.11.2017 and 4.11.2017 issued a list of eligible persons for appearing in the examination of Commercial Examination of 25 candidates and 10 candidates respectively in which applicants appeared and declared passed by order dated 20.12.2017.

2.3 It is very unfortunate for the applicants that they have been transferred after qualifying the examination at different places.

2.4 Applicants made a representation on 12.1.2018 against the impugned order dated 28.12.2017 before the respondents which is still pending.

2.5 It is further submitted that the minimum period for service at one place is 5 years. However, the applicants have been transferred below the length of service at one place.

2.6 It is further submitted that some of the employees working on different posts have been retained on their

original posts for more than 10-15 years. As such, the transfer of applicants is punitive in nature and is not sustainable.

2.7 It is further submitted that applicants were also relieved on the next date i.e. on 29.12.2017 on passing of impugned order.

3. With the consent of both the parties, we have heard learned counsel for applicants Sri S.K. Upadhyay and learned counsel for respondents Sri S.M. Mishra at admission stage.

4. Learned counsel for applicants submitted that some candidates, who have been appointed through direct recruitment, have not been transferred and allotted their original places whereas the applicants have been transferred which is discriminatory. It is further stated that applicants have not completed the minimum period of service at one place i.e. 5 years and persons who have completed more than 10-15 years have been retained. As such the transfer of the applicants is punitive in nature.

5. Learned counsel for respondents submitted that applicants have been transferred in an exigency of service and they have been transferred on promotion after passing the examination of Commercial examination and as such there is no illegality in the transfer order.

6. In the case of **S. C. Saxena Vs. Union of India** reported in (2006) 9 SCC 583, the Hon'ble Apex Court has been pleased to observe as under:-

"A government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Assuming there was some sickness, that did not prevent him from joining at T. Medical evidence proves that point. Therefore, there is no reason to interfere with the order made by the Tribunal and the High Court."

7. In pursuance of transfer order dated 28.12.2017, the applicants have already been relieved on 29.12.2017 for joining the new place of posting on 30.12.2017 but since applicant was under training and after completion of training there will be an interview and as such they were not relieved till today. However, tomorrow , there will be interview of the applicants and thereafter, applicant can be relieved.

8. Considering the facts and circumstances of the case, this Tribunal feels that no useful purpose will be served in keeping this O.A. pending. Accordingly, we dispose of this O.A. with the direction to the applicants that first they report for work where they are transferred and then make a representation as to what may be his personal problem and in case, the applicants moves a representation mentioning his personal problem and

grievance, if any, then respondents are directed to take a decision on the same within a period of one month on the representation received from the applicants considering the grounds and problems raised by them in their representations and decision so taken be communicated to the applicants. It is made clear that we have not entered into the merit of the case.

9. With the above observation, O.A. is disposed of. No order as to costs.

(GOKUL CHANDRA PATI) (JUSTICE DINESH GUPTA)
MEMBER (A) MEMBER (J)

HLS/-