

Central Administrative Tribunal
Principal Bench

OA No. 2563/2003

New Delhi this the 13th day of January, 2004

Hon'ble Shri Shanker Raju, Member (J)

Shri Girish Kumar
Divisional Railway Manager
South Eastern Railway
Adra, Distt. Purulia.

-Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India: through

1. The Secretary,
Railway Board
Ministry of Railways
Rail Bhawan, New Delhi.
2. The General Manager
South Eastern Railway
Kolkatta.
3. K.B.L. Mittal,
D.R.M. Adra,
Distt: Purulia (W.B.)

-Respondents

(By Advocate: Shri H.K. Gangwani and
Shri Rajinder Khatter)

O R D E R

4. Applicant impugns respondents' orders dated 3.10.2003 as well as 10.10.2003 wherein he has been transferred from Adra to Gorakhpur from the post of Divisional Railway Manager to South Eastern Railway to work in Mechanical Engineering Department quashing of the aforesaid has been sought with a direction to the respondents to allow him to work at Adra.

2. Factual matrix in brief is enumerated.

3. Applicant was appointed as Assistant

Mechanical Engineer in 1975 and was promoted to the post of Sr.. Administrative Grade in December 1994. On consideration committee of high officers in the Railway Board along with other SAG officers belonging to various services, applicant was found fit to be posted as Divisional Railway Manager (DRM) by notification dated 13.6.2003. As a consequence thereof applicant was posted at Adra where he joined in June, 2003. Though there is no difference between the pay scale of DRM and SAG Officer but DRM is a status promotion. On acquirement of few ACRs on the post, one is eligible in the higher post of AGM/GM of the Railways.

4. After working for less then six months through a wireless order dated 3.10.2003 a SAG officer of Mechanical Engineering Sh. K.B.L. Mittal was posted in place of applicant and vide order dated 10.10.2003 applicant was transferred to NE Railways to be posted as a SAG officer in mechanical cadre. Applicant proceeded on sanctioned leave from 1.10.2003 to 6.10.2003 and thereafter on being declared fit reported to the Railway Doctor.

5. Learned counsel for applicant contends that in emergent situation as applicant was transferred and relieved in absentia, no representation has been preferred against the transfer which is ordinarily to be preferred. Respondent No.4 Sh. K.B.L. Mittal has already been impleaded in the array of parties and despite service has not preferred a reply.

6. Learned counsel for applicant further contends that though the order is justified in public interest and administrative exigencies in a judicial review it does not preclude the Tribunal to find out reasons. According to him, transfer should contain reasons and he relies upon the decision of the High Court reported in SLJ 2003 (3) 151. It is further contended that the assigned reason is part of natural justice.

7. In so far as mala fides are concerned, it is stated that the same are to be considered on the basis of material on record and not only factual mala fides but legal mala fides also vitiate the transfer order. Sh. Mainee further contends, taking resort to the decision of Apex Court in E.P. Royappa Vs. State of Tamil Nadu AIR 1974 SC 555 and Hans Raj Vs. State of Maharashtra 1993 (3) SCC 334 that transfer cannot be ordered on extraneous reasons with oblique motives.

8. Referring to the posting order of applicant as DRM along with others, it is stated that though the same is a status promotion the others who have been posted as DRM along with the applicant have not been transferred and this is discrimination, violative of Articles 14 and 16 of the Constitution of India. Resorting to his promotional avenues being effected, it is stated that applicant had hardly worked for few months par excellance without any complaints there was no information in absence of any administrative exigency to shift the applicant though there may not be

a fixed tenure of posting. It is in this back drop stated that although under Rule-226 of IREC, the President has power to effect transfer on All India transfer liability but the same has to be justified either in the public interest or administrative exigency. The entire pleadings are silent and no reason has been assigned to justify the aforesaid. As such, not for being professed purpose, the transfer is vitiated by mala fides. Relying upon the decision of Apex Court in A.D. Dhande Vs. State of Maharashtra SLJ 1998 (1) SC 162 and also a decision of this Bench in OA-849/2003 in K.S. Gautam Vs. Union of India decided on 18.9.2003. It is stated that transfer with oblique motive cannot be sustained.

9. In so far as the contentions that the applicant had refused to Railway Medical Officer for his medical examination, the aforesaid pleading though does not find place in the pleadings of respondents yet the same has not been proved by tendering an evidence as Shri Mittal despite notice has not responded being made a party, there is no illegality.

10. The contentions taken in the rejoinder has not been controverted as rebuttal in the main reply filed by the respondents which has been filed after the rejoinder was filed by the applicant. In nutshell, what has been professed is the transfer cannot be sustained in law.

11. On the other hand, respondents' counsel Shri H.K. Gangwani along with Shri Rajinder Khatter

took objection of non-filing of representation under Section-20 of the Administrative Tribunals Act, 1985.

12. It is further stated that for a Group 'A' officer in terms of Rule-226 of IREC Vol.I on All India Transfer Liability, applicant has no right to be posted at a particular place. Further, it is stated that among the SAG officers the suitability and experience of an officer are one of the factors along with exigency of service etc. Applicant cannot be a judge of his own performance. In this backdrop, it is stated that no reasons are required to be assigned in the transfer order.

13. Regarding suppression of information is concerned, it is stated that as per Rule-521(1) of Medical Council as well as Leave Rules, i.e., 517(4) of IREC Vol.I 1985, a railway servant cannot take treatment from a private doctor if at a place railways doctors are available. Moreover, on return from leave, for want of specific orders, he cannot resume work of the post. It is in this backdrop stated that the applicant has suppressed that Shri K.B.L. Mittal joined on 13.10.2003 and plea of applicant's sickness is false as despite running on leave, he is present in the court. Applicant refused to get examined by the Railway doctor and insisted on endorsement of private medical record.

14. In so far as post of SAG is concerned, it is stated that the same is lying vacant at Gorakhpur.

Local arrangements have, however, be made by General Manager as the applicant had yet not reported for duty in Gorakhpur.

15. It is further stated by Shri Gangwani that vacancy is provided for posting the applicant as SAG and posting of Shri Mittal was approved by the President as no mala fides has been established by the applicant against Shri Mittal. Referring to the following decision, it is contended that in judicial review, it is not open to the court to sit as if in appeal:-

1. Union of India Vs. S.L. Abbas 1993 (2) SLR 385

2. N.K. Singh Vs. Union of India and others (1994 (28) ATC 246.

3. State of M.P. Vs. S.S. Kourav, 1995 SCC (L&G) 666

4. State of U.P. Vs. Sadanand AIR 1989 SC 2060

5. B. Vardha Rao Vs. State of Karnataka and others AIR 1986 SC 1955.

6. Shilpi Bose (Mrs.) and others Vs. State of Bihar and others (1991 Supp(2) SCC 659

7. Rajendra Roy Vs. Union of India (AIR 1993-SC-1236)

8. State Bank of India Vs. Anjan Sanyal (AIR 2001 SC 1748).

16. In the rejoinder, applicant reiterates his plea taken in the OA.

17. I have carefully considered the rival contentions of the parties and perused the material on record.

18. It is not disputed that under Rule-226 of IREC Vol-I being a Group 'A' officer, applicant has All India Transfer Liability and the President is empowered to effect transfer in the exigency of service as well as in public interest.

19. It is equally well settled by various decisions of the Apex Court that in a transfer matter, court cannot assume role of an Appellate Authority. A limited scope is provided in a judicial review, i.e., when the order is passed contrary to the statutory rules. However, another concept which has been added to the judicial review is a transfer without a professed purpose is to be treated vitiated by legal mala fides.

20. In *Rajendra Roy's* case(supra), the Apex Court has categorically held that mala fides are to be established in such a manner with a firm foundation and mere asseretion would not be its compliance. However, the concept of legal mala fides has emerged from various decisions and is also one of the factors in judicial review to be considered. A legal mala fide is when the transfer is ordered neither in administrative exigency nor in public interest but in an arbitrary manner with unprofessed purpose to accommodate another person.

21. Mala fides are to be judged in the conspectus of facts and circumstances of each case.

22. A Government servant has no right to be

posted at a particular place indefinately. I find that there is no tenure for posting as DRM which is only a status promotion to a SAG officer on his suitability in absence of any fixed period before which a SAG officer cannot be shifted. I do not find any violation of the statutory rules.

23. No doubt a SAG officer on a suitability is picked up for posting as DRM which on his continuance would be a determination factor for further upgradation in hierarchy of promotion as General Manager. However, few officers even could not make it as DRM's.

24. Applicant approached this court on 21.10.2003 when the transfer order was ordered to be stayed. Factually, the applicant had proceeded on sanctioned leave upto 6.10.2003 while posted as DRM, Adra but the President by an order dated 3.10.2003 posted Shri Mittal as DRM, Adra. Applicant had reported sick meanwhile on 10.10.2003 Railway Board issued orders on transfer of applicant. Shri Mittal took over as DRM, Adra, the present OA was filed on 17.10.2003 and the aforesaid facts were suppressed and not disclosed.

25. The release order of the applicant was issued and when the applicant approached for joining at Adra of 24.10.2003, the same had been handed over to him on 25.10.2003. In this factual matrix, applicant in view of his medical certificate from private doctor though the railway doctor was available at his native

place required endorsement. In view of paragraph-517 of Leave Rules, a railway servant on leave shall not return to the duty unless he produces the medical certificate from the competent authority as he had already been transferred on 10.10.2003.

26. Once the tenure of the posting is not provided, it is within the discretion of the authorities concerned under Rule-226 of IREC as the applicant was liable to be posted on All India basis to effect his transfer unless the discretion is used arbitrarily, the same cannot be questioned.

27. In so far as reasons are concerned, in my considered view, except for administrative exigency and public interest, it is not obligatory upon the respondents to assign reasons in the transfer order which is a condition of service and its incident is resorted to on the basis of All India Service liability in public interest as well as in administrative exigency. However, the mala fides are to be proved to its hilt with a firm foundation. The applicant has miserably failed to show any extraneous or irrelevant consideration in effecting his transfer. It is also not established that he has been replaced by Shri Mittal for an unprofessed purpose malafidely and arbitrarily by the respondents. No doubt factual mala fides are to be alleged but legal mala fides can also be imputed. In absence of any foundation or any credible proof, I do not see its violation.

28. Merely because the applicant has proved the suitability for posting as DRM will not be a conclusive fact for his retention till eternity. It is also not the case that the applicant can never be posted again as DRM. Merely because two or three ACRs are required as DRM to be elevated as General Manager, cannot be a ground for retention. Administrative exigency requires that once should not be posted at such a higher place for years together. It must have been certainly weighed in the mind of the competent authority which had affected the transfer. We cannot sit in appeal over the decision to stall the wheels of administration being run smoothly. In this manner, we are jeopardising the functioning of the Government at such a higher level.

29. The decision in K.S. Gautam's case (supra) cited before me is distinguishable as the mala fides writ large on the face which were implied and as the applicant therein being a honest officer was shifted by the concerned authorities to facilitate their oblique motives, the transfer was set aside.

30. In E.P. Royappa's case (supra) though it is stated that in public interest, we do not find any extraneous consideration or unprofessed purpose or oblique motive which would have been taken shape of any mala fides or colourable exercise of power. In that case frequent transfer and transfer for unprofessed purpose to accommodate another persons for undisclosed

reasons led to quashing of transfer order.

31. The other decisions cited by the applicant, i.e., where in public interest or transfer exigency is not proved, the transfer order is not sustainable. The same loose his significance in the light of decision of the Apex Court in S.S. Kourav's case (supra) where transfer cannot be reviewed by this court as an Appellate Authority. Moreover, the transfer being exclusive domain of the administration has limited scope in judicial review. I do not find any violation of the statutory rules or mala fides writ large to warrant any interference. However, I earnestly hope that as the respondents have stated that nothing precludes applicant from being posted against DRM, the same would be kept in mind.

32. In the result, for the foregoing reasons, I do not find any good ground to interfere: OA is bereft of merit and is accordingly dismissed. Stay granted is vacated. No costs.

S. Raju
(Shanker Raju)
Member (J)

cc.