

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3501 of 2017

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1. The Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
 2. The General Manager, East Central Railway, Hajipur.
 3. The General Manager (P), East Central Railway, Hajipur.
 4. The APO/Gaz for General Manager (P), East Central Railway, Hajipur.
 5. The Dy. General Manager/Law, O/o GM/Law, 5th Floor Biscomaun Tower, Gandhi Maidan, Patna - 1.

.... Petitioner/s

Versus

1. Harendra Prasad Gupta, S/o Shri Lal Mohan Prasad, resident of Powrganj, Godhana Road, Ara, District - Bhojpur.
2. Mr. Vijai Srivastava, Senior Law Officer, E.C. Railway under DGM/Law, O/o G.M./Law Biscomaun Tower, Gandhi Maidan, Patna - 1.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Kishore, Sr. Advocate
Mr. Nishi Nath Ojha, Advocate
For the Respondent/s : Mr. M.N. Parbat, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 20-03-2017

Order under challenge is dated 24.11.2016. By virtue of this order, passed by Central Administrative Tribunal, Patna Bench, Patna in OA 762/2016, the order of transfer dated 19.10.2016 of the present petitioner on the post of Senior Law Officer from Patna to Mughalsarai has been set aside with following direction :

“The administrative authorities are expected to exercise their power in a fair and judicious manner. In our opinion, this transfer order is a colourbale exercise of power as observed in the foregoing paragraphs. Therefore, the transfer order with respect to the applicant is quashed and set aside.



The respondents are at liberty to post him at either of the two places where the post of his level is available at the Headquarters. (emphasis mine) No order as to costs.”

The Hon’ble Apex Court has time and again laid down the law that transfer is an incidence of service unless the order of transfer is in violation of certain Rules or patently malafide. It is not the business of Courts to step into the shoes of the employer or the administrative authorities and take decisions on their behalf.

From the direction, which has been issued by the Tribunal and reproduced in earlier part of the order, this Court comes to the opinion that it is a case of overreach by the Tribunal. At the most, which the Tribunal should have done, is to quash the order of transfer and send the matter back for reconsideration. To give specific direction as to which post and place alone an employee is required to be posted, is a case of overreach.

The impugned order dated 24.11.2016 is quashed. Writ application is allowed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2017
Transmission Date	NA

