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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.3061 OF 2002

New Delhi, this the 30th day of May, 2003

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Jagdish Kumar Khurana
S/o Shri Dharam Vir
Senior Booking Clerk
Northern Railway,
Delhi Sadar Bazar,
Delhi.

....Applicant

(By Advocate : Shri P.S. Mehandru)

Versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

....Respondents

(By Advocate : Shri D.S. Jagotra)

ORDER

Impugned herein is the transfer of the applicant effected by an order dated 13.5.2002 posting him to Firozpur Division along with the post. Also impugned is the order on representation dated 5.11.2002 turning down the request for cancellation of transfer of the applicant. The applicant has sought quashment of the aforesaid order with all consequential benefits.

2. Applicant, who was working as Senior Booking Clerk, was served with a Memorandum for a major penalty alleging demand and acceptance of 15 rupees over and above for issuing the lodging ticket from the passenger and also recovery of excess cash from the the said passenger. After the completion of enquiry, enquiry officer held the applicant guilty of the

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charge. By an order dated 30.5.2001, a major penalty of reduction of pay in the grade for five years with cumulative effect was imposed upon the applicant. On an appeal, by an order dated 21.8.2001 punishment was maintained. On 13.5.2002, the applicant was transferred to Firozpur in pursuance of the order of General Manager (Personnel).

3. The impugned orders were assailed in OA 1464/2002 and as the applicant has not exhausted the remedy of preferring representation, the said OA was disposed of on 30.5.2002 directing the applicant to make a representation, which he accordingly complied with. By an order dated 5.11.2002, the representation of the applicant was rejected giving rise to the present OA.

4. Learned counsel for applicant, Shri P.S. Mahendru, assails the impugned orders on the ground of being punitive, malafide and in violation of statutory rules. It is further stated that no administrative exigency has been reflected in the impugned transfer order and transfer from one division to another division with a different seniority and grade is not sustainable under rules. It is also stated that under Rule 226 of IREC Vol.I though General Manager is competent to transfer the Railway employee from one place to another, the same should be done in administrative exigency, which is lacking in the present case.



5. It is also stated that both the instructions dated 2.1.1998 which have been resorted to in transferring the applicant cannot supersede and overrule the statutory rules contained in IREC. He has also placed reliance of a decision in Bindeshwari Ram Vs. State of Bihar 1989 ATC (11) 875.

6. It is further contended that having failed to produce the General Manager's confidential letter that it is on administrative exigency as alleged is not established. It is, in this conspectus, stated that in an inter-divisonal transfer along with post, it is to be asserted whether the post at Delhi had been abolished or a new post at the transferred place has been created.

7. Lastly, it is alleged as the instruction of the Railway Board envisaged repeated involvement in malpractice on a solitary understanding, the same cannot be resorted to. It is stated that though the applicant has been imposed a penalty in disciplinary proceedings and the transfer imposed is the second penalty to be resorted to. Thus, no show-cause notice was given.

8. On the other hand, learned counsel for respondents Shri D.S. Jagotra vehemently opposed the contentions of the applicant and placing reliance on a Division Bench decision on a Full Bench reference in OA 1421/2002 decided on 8.11.2002 in the case of Shri V.K. Gupta Vs. Union of India and others, contended that vires of Railway Board's instructions dated



2.11.1998 has already been upheld and as the applicant was in mass contact area having dealing with the public as he has been punished for corruption charges, malpractices are reflected and established as such the applicant's transfer is in accordance with the policy decision, the same cannot be assailed in judicial review. However, it is contended that as neither mala fide has been established nor the transfer is punitive, the same as passed by the competent authority cannot be interfered.

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

10. Contentions put forth by the applicant is that as Rule 226 of IREC envisaged transfer on administrative exigency and no exigency of service shown, the administrative instructions in the form of Board's letter dated 2.11.1998 cannot override or being inconsistent with the statutory rules cannot be countenanced. What has been laid down in Rule 266 of IREC is an empowerment to the General Manager to effect inter-divisional transfer in administrative exigency. As no broad guide-lines have been laid down by way of Railway Board's circular dated 2.11.1998 which has been made applicable to staff in mass contact areas on being detected to be indulging in malpractices, transfer is to be resorted. This has a rational object sought to be achieved behind it, as the corrupt staff should not be kept at a particular place to perpetuate their ill motives. In so far as malpractices are concerned, the same are defined in



the case of Smt. Santosh Meena Vs. Union of India and another (OA 1587/2002) decided on 24.1.2003 as to whether the inter-divisional transfer include the bad conduct, which is a matter of dishonesty by a conduct with a view to have illegal gains. As the applicant was admittedly in mass contact area working as Senior Booking Clerk, the malpractices with the allegation of corrupt practices has been amply proved for being awarded the major punishment and the same was confirmed in appeal. There is no doubt that his transfer is well covered under the Board decision of the Railway Board laid down under circular dated 2.11.1998. The Division Bench in V.K. Gupta's case (supra) while discussing the import of instructions dated 2.11.1998, have made the following observations:

"15. But while reading the instructions of the department that have been issued from time to time and reproduced above, it is obvious that the circulars of 13.4.1967 and 30.10.1998 do not provide that inter-divisional transfer would be conducted against persons who have repeatedly figured in vigilance cases but where penalty had been imposed to say that the circular of 2.11.1998 flows from the same meeting and must have the same effect would not be correct. On basis of the said circular, an exception has been drawn. Ticket Checking staff detected to be indulging in malpractices had been taken to be an exception and it was provided that in terms of the existing instructions, such staff is required to be invariably sent on inter-divisional/inter-railway transfer as a matter of policy. The expression "invariably sent on inter-divisional/inter-railway transfer" is the colour and strength of this circular. The words, "in terms of the existing instructions" seem to be redundant. Otherwise, there was no occasion for providing for invariable transfers on inter-divisional/inter-railway basis. The said circular necessarily has to be read so as to find out the true meaning of the same. It is obvious that what was provided was that so far as Ticket Checking staff detected to be indulging in malpractices is concerned, they could be transferred on inter-divisional/inter-railway basis. This becomes clear from paragraph 3 of the said circular which provides that existing



policy of inter-divisional/inter-railway transfer of ticket checking staff detected to be indulging in malpractices shall continue and other staff in mass contact areas detected to be indulging in malpractices should also be transferred on inter-divisional basis. Therefore for such type of staff working with the Railways, it is not necessary that in terms of the instructions of 30.10.1998, penalties must have been imposed before conducting the transfers. The view to the contrary, therefore, so taken cannot be said to be correct.

11. As regards the issue of instructions being inconsistent, it is settled by various pronouncements of the Apex Court. The administrative instructions supplementing the rules are valid as well as enforceable as per Rule 226 of IREC does not lay down or define administrative exigency. Board's letter dated 2.11.1998 which supplement the rule cannot be declared inconsistent as held by the Apex Court in Union of India Vs. H.R. Patankar 1984 Supp. SSC 359. I do not find any inconsistency in the Railway Board's letter with that of statutory rules.

12. Transfer is also an incidence of service and cannot be termed as penalty. There is no requirement of issuance of show-cause notice before the transfer is effected which is in the interest of the administration.

13. The Board's letter has been issued laying down the policy guide-lines of which vires is upheld by the decision of the Division Bench, which is binding on me. The contention put forth on issue of inconsistency of the instructions with statutory rules



has already been dealt with by the Division Bench cannot be countenanced ex facie. The instructions are in accordance with rules.

14. In the result, for the foregoing reasons, as the transfer is in accordance with the rules, in a judicial review it does not lie within the jurisdiction of the Tribunal to sit as an appellate authority over it and stall the wheel of administration being run smoothly. The aforesaid observation gain support from the decision of the Apex Court in the case of State Bank of India Vs. Anjan Sanyal, 2001 (5) SCC 508. OA is accordingly dismissed. Interim order granted on 28.11.2002 is vacated.

S. Raju

(SHANKER RAJU)
MEMBER (J)

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