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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1437 of 2002

New Delhi, this the 2nd day of January, 2003

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

Shri Jasbir Singh
S/o Shri Pritam Singh
Travelling Ticket Examiner,
Northern Railway,
Ambala Cantt.

APPLICANT

(By Advocate: Shri B.S. Mainee)

Versus

Union of India: Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Ambala Cantt.

-RESPONDENTS

(By Advocate: Shri B.S. Jain)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member (Judl)

The applicant has impugned an order dated 29.4.2002, passed by the General Manager (P), Northern Railway, Baroda House, New Delhi vide which he has been transferred from Ambala Division to Ferozepur Division (Annexure A-1) dated 17.5.2002.

2. In order to assail these orders the applicant has alleged that he had been earlier falsely implicated in a vigilance case although the applicant was absolutely innocent and was not concerned with any irregular financial transactions and proceedings are still pending.

3. The perusal of the order would show that the applicant has been transferred with post meaning thereby

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that there was no vacancy or demand by the Ferozepur Division but still the applicant has been transferred on inter-divisional basis.

4. The applicant further submits that his transfer order is bad in terms of the respondents own letter issued by the Railway Board dated 23.5.1967 which says that the non-gazetted staff against whom disciplinary proceedings are pending should not normally be transferred from one division to another division till the finalisation of the departmental proceedings.

5. Besides that it is submitted that the case of the applicant is fully covered by the various judgments of the Tribunal in the case of Bhupender Kumar and Others vs. Union of India and Others which is also upheld by the Hon'ble High Court of Delhi. The case is further fully covered by the recent judgment of the Tribunal in the case of Shri Sarvesh Singh Walia and Shri Ashok Kumar Chopra (OA Nos. 546 and 547 of 2000) and as such it is prayed that the impugned order is discriminatory against the instructions of the Railway Board itself and the same is liable to be quashed.

6. The respondents who are contesting the OA have taken a preliminary objection that this court has no jurisdiction as the impugned order has been issued by ADRM, Ambala. There is no application for his transfer, as such the OA does not lie under the territorial jurisdiction of the Principal Bench.



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7. The respondents further submit that though the applicant rely upon the circular dated 13.4.1967 but has conveniently ignored the circular dated 30.10.1998 and thus have made an effort to misguide the Tribunal.

8. The respondents have also referred to a judgment in the case of N.K. Singh Vs. U.O.I. and Others (1994 (28) ATC 246) wherein the court observed that the counsel of the applicant did not dispute that the scope of judicial review in matters of transfer of a Government servant on an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision or guidelines regulating such type of transfers meaning thereby that the respondents submit that it is only the ground of mal fide that the applicant can challenge the impugned order.

9. I have heard the learned counsel for the parties and gone through the records of the case.

10. The fact that the departmental proceedings are pending against the applicant is not denied. The interpretation of the Circular dated 13.4.1967, as relied upon by the applicant and subsequent circular dated 2.11.1998, as relied upon by the respondents are concerned, the court has to examine the same to see as to whether a person against whom the disciplinary proceedings are pending can be transferred during the pendency of the departmental proceedings. The reading of the circular dated 13.4.67 would show that it has been

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specifically stated that the Railway Board has considered the matter further and has now decided that non-gazetted staff against whom the disciplinary proceedings is pending or is about to start, should not normally be transferred from one Railway/Division to another till after the finalisation of the departmental or criminal proceedings, irrespective of whether the charges merit imposition of a major or a minor penalty. Thus the circular dated 13.4.67 creates an embargo for transfer of those non-gazetted employees who are facing departmental proceedings, the result is still awaited. Whereas the circular dated 2.11.1998 simply states that it has been decided that while the existing policy of inter-divisional/inter-railway transfer of ticket checking staff detected to be indulging in malpractices shall continue, other staff in mass contact areas detected to be indulging in malpractices can also be transferred on inter divisional basis. The interpretation of this clause would show that earlier the ticket checking staff detected to be indulging in malpractices could not be transferred but now even those staff in mass contact areas if found indulging in malpractices can be transferred on inter-divisional basis under the existing policy. This enables the authorities to transfer even the other staff who comes in mass contact areas but the policy remains the same that once the disciplinary proceedings are pending then the staff should not normally be transferred.

11. This circular was also subject matter in the case of Bhupender Kumar (Supra) wherein similar transfer order was passed which was challenged before the court

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and the same was quashed and the said order had been upheld by the Hon'ble High Court of Delhi. In the impugned order though the department has used the words that the applicants are being transferred on the basis of administrative order but the order also reads that the transfer is along with the post meaning thereby that there were no such administrative reason that the applicant along with the post should have been transferred. In their reply the respondents have not made clear that what was the reason for transfer of post to the Ferozepur Division from Ambala Division. No explanation have been given in the reply regarding transfer of post nor any reasons have been given that there was any demand from Ferozepur Division for an additional post and the applicant was chosen to be transferred for that purpose.

12. As regards the territorial jurisdiction is concerned, the applicant has pleaded that the impugned order has been issued by General Manager (P), New Delhi so the cause of action has arisen in Delhi and it is in accordance with Rule 6 the Principal Bench has territorial jurisdiction to entertain and try the application. A perusal of the order shows that the order has been issued by General Manager (P), New Delhi. Hence, there is no doubt that the part of cause of action has originated at New Delhi.

13. The next objection taken by the respondents is that the applicant has not exhausted the departmental remedies. But since this was a transfer and if he had

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made a representation he was supposed to wait for the reply and thereafter join at Ferozepur Division and the decision might have taken a long time so immediately the applicant approached the Tribunal without awaiting for any decision on his representations. Moreover the principle of exhausting the departmental remedies applies where statutory departmental remedies are available. The representation against the order of transfer passed by the General Manager (P) does not envisage any statutory appeal against the said order but there is no statutory remedy which may be said to be available to the applicant so this again has no force.

14. In view of the discussion above, I hereby quash the impugned order of transfer of the applicant. However, the department is at liberty to transfer the applicant after the conclusion of the departmental proceedings and if the administrative exigency so require. No costs.


(KULDIP SINGH)
MEMBER (JUDL)

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