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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1346/2002

New Delhi, this the 23th day of May, 2002

HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

Gulshan Kumar
S/o Shri Mool Chand
Commercial Clerk posted at SBB
C/o DRM Office, Northern Railway
Chelmsford Road,
New Delhi.

... Applicant

(By Advocate: Shri Anis Suhrawardy)

V E R S U S

1. Union of India~
Through General Manager
Northern Railway
Headquarters Office Baroda House,
New Delhi.
2. Divisional Railwaay Manager
Northern Raailway, DRM Office,
State Entry Road,
New Delhi.
3. Divisional Personnel Officer
Northern Railway, DRM Office,
State Entry Road,
New Delhi.
4. Station Superintendent
Northern Railway
SBB, Ghaziabad.

... Respondents

O R D E R (ORAL)

Heard the learned counsel for the applicant at length.

2. Notice dated 2.5.2002 (A-1) issued by the respondent-authority by which the applicant has been transferred from Ghaziabad to Moradabad Division along with his post, has been assailed by the applicant in the present OA. Accordingly, he prays that the aforesaid notice be quashed and set aside and the respondents be prevented ^{from} transferring him from his parent Division, which is Delhi Division, to Moradabad Division.

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3. It appears that the applicant was proceeded against departmentally on a charge of demanding and accepting a higher amount than the amount of the fare for issuing tickets to a decoy passenger. The other charge against him related to creation of an artificial shortage in Govt. cash. A penalty of reduction in his pay from Rs.3285/- to Rs.3200/- for a period of six years with cumulative effect was imposed on him on 14.7.2001. The applicant is presently undergoing the aforesaid penalty. Nearly ten months after the aforesaid penalty was imposed upon him, the applicant has been transferred as above from Delhi Division to Moradabad Division.

4. The learned counsel appearing on behalf of the applicant has raised the plea of double jeopardy which I find myself unable to accept. The major penalty in question was imposed in July, 2001 whereas the impugned transfer order has been issued nearly ten months thereafter. Thus, both the actions taken against the applicant are separated from each other by a respectable distance of ten months and there is nothing in the impugned order to show that it is in any way linked with the order of penalty issued in July, 2001. There is nothing in the impugned order to show that it arises from the misconduct of the applicant for which the aforesaid major penalty has already been imposed on him. Notwithstanding the aforestated positions, the learned counsel for the applicant has drawn my attention to the order passed by this Tribunal on 2.6.1999 in OA-2234/98 to submit that where a transfer is made admittedly on account of the misconduct of an officer and the transfer order is

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passed in accordance with the provision meant for corrupt staff, it would be tantamount to punitive action and such an action taken without putting the officer to notice cannot be upheld. I have perused the aforesaid order and find that that case is distinguished. It appears that no disciplinary action had been initiated in that case and instead the respondents chose to transfer the officer under a provision meant for corrupt staff and they did so without affording an opportunity of being heard to the applicant.

1 dt 02-6-99

5. In the same order, a reference has been made to Railway Board's instructions dated 2.11.1998 which seem to provide that railway staff working in mass contact areas and found to have been indulging in malpractices should be transferred on inter-divisional basis even if such a transfer is ^{to be regarded as} an extra-ordinary measure which ought not to be resorted to in normal course. The applicant in the present case was clearly working in a mass contact area and was found indulging in malpractices and has been punished for the same. He is, at present, undergoing a major penalty imposed upon him. The aforesaid provision made in the Railway Board's instructions will, therefore, find application in the present case and I see nothing wrong if by taking advantage of the aforesaid instructions, the respondents have proceeded to send the applicant away from Delhi. Transfer orders can be successfully challenged only on the ground of malafide or when such orders are issued against statutory rules ^{at the material time} ~~enforce~~ or when the transfer is made as a measure of punishment. There is no malafide in the present case and

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the order of transfer has been issued in accordance with the Railway Board's instructions. There is nothing to show that the impugned transfer order has been passed by way of punishment. The respondents have simply exercised the discretion vested in them by the aforesaid instructions issued by the Railway Board.

6. The learned counsel appearing on behalf of the applicant has also, in my view, incorrectly relied on the provisions of Article 20 of the Constitution. Article 20 (2) provides that no one shall be prosecuted and punished twice for the same offence. The applicant in the present case has clearly been proceeded against and punished in July, 2001 and a major penalty has been imposed upon him. No penalty has been imposed on him thereafter in respect of the same charge. A transfer order is not a punishment order and cannot be treated as such. Moreover, the learned counsel has not shown as to how the applicant has been prosecuted and consequentially punished by way of transfer. In order to successfully to challenge a ~~the~~ transfer order by invoking the aforesaid constitutional provision, it will have to be shown that the applicant was both prosecuted as well as punished ^{and the punishment came} ~~in the form of~~ in the form of a transfer order. There is no prosecution here as the order of transfer has been passed straight-away without undertaking any proceeding against him in that regard. Besides, the order imposing the aforesaid major penalty and the impugned order of transfer being separated from each other by a long enough period of ten months, it is not possible, in my view, convincingly to argue that the impugned transfer order also arises directly and

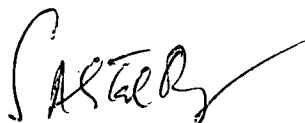
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exclusively from the misconduct for which a major penalty has already been imposed.

7. In the aforestated circumstances, I find little merit in the present OA and I proceed to dismisses the same.

8. During the course of his pleadings, the learned counsel appearing on his behalf has further submitted that it will be hard on the applicant to shift over to Moradabad Division at this stage in his career and the objective which the respondents wish to achieve will be adequately served by retaining the applicant in the Delhi Division itself though in a different location. I have considered this plea and find that the same deserves to be considered. I will, however, desist from passing a direction in this regard. I can only expect the respondents-authorities to apply their mind to the aforesaid plea raised on behalf of the applicant and to see for themselves whether they would like to adjust him within the Delhi Division. It goes without saying that it will be in the interest of Railways as well as the applicant if the respondents decide this matter as early as possible.

9. The present OA is disposed of in the aforestated terms. No costs.



(S.A.T. RIZVI)
MEMBER (A)

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