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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1786 OF 2002

New Delhi, this the 22nd day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Shri Hukam Chand
S/o Shri Sant Ram,
Coaching Clerk,
Northern Railway,
Deoband(UP)

.....Applicant

(By Advocate : Shri D.S. Mahendru, proxy
for Shri P.S. Mahendru)

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.
3. The Station Superintendent,
Northern Railway,
Deoband

.....Respondents

(By Advocate : Shri Rajinder Khattar)

ORDER

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed seeking a direction to quash and set aside the impugned order dated 2.5.2002 (Annexure-A1) which reads as follows:

"In pursuance to orders contained in Confdl. Letter No.E752/72-XVII/Comm1./Transfer/2002 dated 29.4.2002 of G.M./P, Northern Railway, New Delhi Shri Hukam Chand working as CC/DBD is transferred to FZR division along with post. He is directed to report to DRM/FZR for further posting.

He should be spared immediately under advice to this office."

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2. It is stated that the applicant was appointed as Commercial Clerk in the Delhi Division of Northern Railway. The applicant has further stated that while he was performing his duty as Commercial Clerk, he was subjected to vigilance check on 16.12.1999 and was proceeded departmentally. Vide order dated 6.8.2001, the applicant was awarded penalty of reduction of his pay from Rs.3,570/- to Rs.3,200/- for a period of four years with cumulative effect.

3. The claim of the applicant is that as per the provisions contained in Para 226 of the Indian Railway Establishment Code (IREC for short) Volume I, a railway servant shall be employed throughout his service on the railway or railway establishment to which he was posted on first appointment. The claim of the applicant is that by impugned order, he has been transferred to Ferozpur Division. Therefore, the impugned order deserves to be quashed and set aside.

4. The respondents have opposed the prayer of the applicant. They have stated that though as a result of vigilance check, the applicant was awarded punishment but that has attained finality as no challenge has been made to the punishment order. The applicant has been continuing at his present place of posting on account of interim order of this Tribunal dated 15.7.2002. They have further stated that the applicant has been transferred to Ferozpur Division on administrative ground along with the post in the public interest and exigency of work.

Amrinder Singh

5. The pleadings in the case has been perused carefully. Inspite of several calls, no one was present on behalf of the applicant. Shri D.S.Mahendru, Advocate initially informed that the counsel of the applicant Shri P.S.Mahendru would appear after sometime. However, the applicant's counsel Shri P.S.Mahendru did not turn up as promised by his proxy. In the circumstance, this application is being disposed of on the basis of material available on record with the assistance of the respondents' counsel.

6. The applicant states that he cannot be transferred because of the provisions contained in Para 226 of the IREC which reads as follows:-

"226. Transfers:- Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servant, the power of the President under this rule in respect of transfer, within India, may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."

7. There is no dispute that the applicant holds a transferable post and could be transferred by a competent authority. There having been conflict in the decisions of Single Member Benches regarding transfer of railway employees on complaints and vigilance grounds, the matter was heard in a similar case by a Division Bench in OA No.1421/2002 "V.K.Gupta Vs. Union of India & Ors." and this Tribunal by order

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dated 8.11.2002 decided the issue. In that case also the applicant V.K.Gupta was transferred from Delhi Division to Ferozpur Division as per the transfer order which was as follows:-

"In pursuance to orders contained in Confdl. Letter No.E752/72XVII/Comm1./Transfer/2002 dated 29.4.2002 of G.M./P, Northern Railway, New Delhi Shri Faqir Chand working as SBC/Delhi is transferred to FZR division along with post. He is directed to report to DRM/FZR for further posting.

He should be spared immediately under advice to this office."

8. It may be noticed that the wordings of the present impugned order and that in V.K.Gupta's case (supra) were almost similar. In that case, the disciplinary proceedings were still pending whereas in the present case, there was no challenge to the disciplinary proceedings and, therefore, they attained finality. While deciding V.K.Gupta's case (supra), this Tribunal referred to the Railway Board's Circular dated 30.10.98 as well as Circular of 2.11.98. These circulars contain the guidelines regarding inter-divisional transfer of the staff in mass contact areas who were detected to be indulging in malpractices. After referring to the various decisions of the Hon'ble Supreme Court, this Tribunal has held that since the transfer of Shri V.K.Gupta had been effected and the charge-sheet for imposition of major penalty had already been served, the same was in conformity with the Railway Board's Circulars and accordingly the OA was dismissed. Respectfully following the reasonings in the case of V.K.Gupta's case (supra), this OA is dismissed without any order as to costs.


(R.K.UPADHYAYA)

Administrative Member,

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