

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2595/2001

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New Delhi this the 28th day of April, 2004

Hon'ble Shri S.K.Naik, Member (A)

Shri Ishwar Dass,
S/O Late Shri Singh Raj,
Head Booking Clerk,
Under Sr. Station Manager,
Railway Station, Delhi.

..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,
State Entry Road,
New Delhi.
3. The Senior Station Manager,
Northern Railway, Railway Station,
Delhi.

..Respondents

(By Advocate Shri Rajeev Bansal)

O R D E R

Shri Ishwar Dass working as Head Booking Clerk at Railway Station, Delhi has filed this OA on 27.9.2001. When the matter came up before the learned Single Bench on 4.10.2001, the learned counsel for the applicant had submitted before the Tribunal "that the applicant reasonably apprehends his transfer during the pendency of disciplinary proceeding" and had requested for an order of status quo as on that date i.e. on 4.10.2001. The Tribunal had on his request ordered as under:

"In this view of the matter, having regard to the issue whether this Tribunal has jurisdiction to entertain an apprehended grievance, more particularly, in the matter of transfer, issue notice to the respondents,

Issued

returnable on 11.10.2001. Till then status quo, as of today (4.10.2001) shall be maintained by the respondents Issue dasti".

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2. Records of the case indicates that the respondents failed to file any short reply to the issue as to whether the Tribunal has jurisdiction to entertain an apprehended grievance on which status quo had been granted by the learned Single Bench on 4.10.2001. They have, however, filed their counter reply to the OA on 6.3.2002 in which the issue as to whether this Tribunal has jurisdiction to entertain the apprehended grievance particularly in the matter of transfer has not been commented upon. During the interregnum period, the status quo order however continued to be extended.

3. The matter dragged on, on one pretext or the other by filing of some MAs while the interim order of status quo continued and it has now been finally heard for disposal today.

4. The brief facts of the case are that the applicant while working as Head Booking Clerk at Railway Station, Delhi was found to be selling old dated/altered tickets fraudulently on a check conducted by the Vigilance Wing of the respondents. Further he was not able to explain for Rs.101 short fall in the Government cash account. He was, therefore, issued chargesheet for a major penalty. He was also transferred to Mansa Station within the Division on administrative grounds. The applicant in Para 8 of the OA has sought the relief as under:-

"That this Honourable Tribunal may be

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pleased to allow this application and quash the impugned order which has been passed by the DRM New Delhi and have been sent to the Station Supdt., Delhi but have not yet been communicated to the applicant nor they have been implemented."

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As is clear from above the applicant had not enclosed any order of the respondents which he intended to impugn but at the same time request had been made to quash the non existent order. The applicant in fact wants to assail his transfer from Delhi to Mansa which has been stated by the respondents in their reply.

5. Shri B.S.Maine, learned counsel for the applicant has contended that the transfer of the applicant is not a routine transfer as the order of the transfer has been passed under the influence and pressure of the Vigilance Branch and is neither in public interest nor in the exigencies of service. Merely stating that the order has been issued on administrative ground, the counsel contends is not enough reason and the elements which constitute the administrative grounds should have been explained in the order. He has further argued that the respondents have resorted to the course of transfer to ease out the applicant whom they perceived to be uncomfortable and this was not permissible under Law. In order to buttress his contention the counsel has referred to SLJ 1998(3) 69 titled the U.C.Chaturvedy Vs. UOI & Ors. in which it has been held as under:-

"Transfer - Indiscipline- Transfer challenged on plea that it was not in exigencies of service but to ease out an indisciplined worker -Records show allegations of absence extorting money, disobedience etc. pending Held in such a case the correct way is to enquire into allegations and take action and not a transfer - Hence orders quashed".

7/10/2000

6. Further, he has heavily relied upon the case of Bhupinder Kumar Vs. General Manager and Ors. (OA 2081/1988 decided on 18.12.1998)

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7. Counsel further contends that similar and identical issues and facts had been raised in OA ~~on~~ 786/2002 titled the Deepak Kumar Vs. UOI and Ors. Based on the case of Rajeev Saxena Vs. Collector of Central Excise Gwarlior (ATR 1990 (1) 378) and SLJ 1995(3) 107 Rajinder Chaubey Vs. UOI, the Tribunal had held that the impugned order of transfer did not suggest if there was any other administrative reasons apart from the vigilance raid and it was held therein that the transfer has not been issued on administrative ground or in public interest and the order had been quashed.

8. Another limb of argument advanced by Shri Mainee pertains to the applicant having been discriminated. According to the applicant there are a large number of other Head Booking Clerks with a longer period of stay in Delhi and the applicant has been singled out for transfer which is blatantly discriminatory and arbitrary.

9. The respondents have contested the OA. Counsel for the respondents at the outset contended that the applicant has not been fair and transparent to the Tribunal from the very beginning. While order of status quo was obtained by the counsel stating that the applicant apprehended his transfer, his prayer under relief column in the OA refers to quashing of the transfer order which

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was within the knowledge of the applicant. The order of transfer had deliberately not been enclosed with the OA in order to mislead the Tribunal to believing that he apprehended a transfer where as the applicant had refused to accept the same. Further having refused to accept the order, to state in the OA that he came to know about it while undergoing treatment in the hospital, is a serious reflection on the conduct of the applicant. On this ground alone of misleading the Tribunal, the counsel contends that the OA needs to be dismissed.

10. On the merits of the case, counsel has contended that the transfer is not a punishment, neither does it form part of the CCS CCA Rules. As had been held in a catena of judgements of the Supreme Court, the Courts/Tribunal should refrain from interfering in the matter of transfer unless the same has been passed in exercise of power malafide or against any statutory rules or instructions. In the case in hand, the counsel has contended that the transfer order has been issued purely on administrative grounds as per the policy of the Railways. Giving background of the case, the counsel contends that during the course of a vigilance check the applicant was found indulging in corrupt practices in that he was selling old dated and altered tickets to illiterate or innocent passengers and further he was also found to be having Rs.101 short fall in his Government cash. For these irregularities and misconduct, the applicant had been chargesheeted for major penalty. His transfer to Mansa the learned counsel contends was in keeping with the

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policy of the Railways issued vide Circular dated 30.10.1998 followed by Circular dated 2.11.98.

11. Referring to the decision of the larger Bench in OA 1421/2002 Shri V.K.Gupta Vs. General Manager, Northern Railway and Ors. decided on 8.11.1002 which had arisen as a result of the conflicting views taken by various Single Benches in the matter of transfer of Railway Employees in the backdrop of Vigilance raid and corrupt practices wherein in some cases transfer orders were issued without initiating any disciplinary proceedings and yet in some other cases the transfer orders had been ordered after initiating the disciplinary proceedings keeping in view the policy decision of the Railway Board issued vide Circular dated 30.10.98 and 2.11.1998, the counsel has contended that learned Larger Bench had gone into the entire background of the matter and had discussed all the judgements which have been cited by the learned counsel for the applicant and had held that transfer in an identical situation was not punitive or comouflage and, therefore, had dismissed the OA.

12. Referring to the Full Bench judgment of the Tribunal in the case of Kamlesh Trivedi Vs. ICAR & Anr. (1988)7 ATC 253 in which the controversy with regard to whether the transfer is to be treated as punitive when the disciplinary proceedings were pending had been gone into and it has been held therein that it was not appropriate to say that the order is penal in nature merely because the Departmental proceedings were said to be pendings.

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13. Similarly, discussing the Apex Court judgement in State of Andhra Pradesh and Anr. Vs. ~~Sadanandam~~ and Others etc.etc. AIR 1989 SC 2060 the larger bench has stated "that ordinarily when the transfers are effected on the basis of the policy decision/instructions or rules then it has to be taken to be something falling exclusively within the purview of the executive. It could be quashed on the basis of arbitrariness or discrimination but otherwise, the judicial review of the same would not be permissible". The order in that OA has also discussed the judgement in the case of UOI and Ors Vs. S.L. Abbas AIR 1993 SC 2444 and had opined that the CAT is not an appellate authority sitting in judgement over the orders of transfer.

14. The Larger Bench had elaborately discussed the background starting with the Circular dated 13.4.1967 of the Railway Board by which restrictions had been imposed on the transfer of non gazetted staff whose conduct was under investigation for charges meriting dismissal /removal from service, during the pendency of the departmental proceedings which had subsequently by Circular dated 30.10.1988 and 2.11.1998 been liberalised to bring them under the purview of transfer order during the pendency of departmental proceedings arising out of vigilance case specifically with regard to employee i.e., ticket checking staff and those engaged in mass contact area so as to maintain the standard and reputation of Railways. The larger bench has also distinguished between transfers ordered without initiating any

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Deptt. proceedings and transfers after initiation of major penalty proceedings by exhaustive reference to number of cases cited by the counsel therein and had finally refused to interference in the matter. Absolutely identical are the issues involved herein, the counsel contends. 49

15. Learned counsel, therefore, has submitted that from all accounts the OA has no merit and deserves to be dismissed.

16. I have carefully heard the learned counsel for the parties and perused the records of the case. It may also be mentioned here that I had called for the file concerning the transfer of the applicant and had perused the same very carefully. On the point of Tribunal having been misled on the ground of the applicant only apprehending the transfer on 4.10.2001 when the interim order of status quo was obtained by him, I notice from the records of the respondents that Chief Booking Supervisor at page 35/C in his letter addressed to Commercial Divisional Manager dated 11.10.2001 has clearly reported that the applicant Shri Ishwar Dass had reported to him at 1600 hrs on 17.9.2001 when he was asked to accept the order of transfer which he refused to accept stating therein that he is going to report sick. Thus it does stand established that the applicant was in the know of the order but just to obtain an status quo order, appears to have withheld this information from the Tribunal. During the time of arguments learned counsel for the applicant had not answered as to how the relief has been

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sought to quash an order which was neither enclosed nor produced during the number of years the matter remained pending for final adjudication. This attempt on the part of the applicant is deplorable and deserves to be deprecated with the strongest terms.

17. On the merits of the case, I find that the grounds taken by the learned counsel for the applicant have no legs to stand. Transfer has been ordered by the respondents on administrative grounds and in keeping with the policy Circular dated 2.11.1998. In the identical case the same having been extensively discussed by the larger bench in OA 1421/2002 in the case of Shri V.K.Gupta (supra) on which the learned counsel for the respondents has placed full reliance, I do not think it necessary to discuss all the judgements relied upon by Shri Mainee, learned counsel as all of them stand fully discussed in the said judgement.

18. The ground on discrimination taken by the learned counsel for the applicant will in the backdrop of the transfer having been ordered on the basis of the policy will not amount to any discrimination and the question of any senior or employees with longer stay being compared with the applicant would not arise at all. In fact under the policy the respondents were at liberty to transfer him outside the Division but in the case in hand, he has only been shifted from Delhi to Mansa within the division as stated by the respondents in their reply.

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19. As dicussed above, I am in full agreement with the learned counsel for the respondents that the OA has absolutely no merit and deserves to be dismissed. It goes without saying that the order of status quo granted by order dated 4.10.2201 goes along with the dismissal of this OA. There will be no order as to costs.

S.K. Naik
(S.K. Naik)
Member (A)

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