

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.285/2001

New Delhi, this the 24th day of August, 2001

Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Mahender Kumar
S/o late Shri Ram Babu Ojha,
Helper Khallasi under
Senior Section Engineer (Telecom) East,
Northern Railway, Aligarh
R/o House No.2, near Railway Crossing,
Hathras Junction ..Applicant
(By Advocate: Shri M.L. Sharma)

Versus

1. Union of India through
General Manager,
Northern Railway Headquarters Office,
Baroda House, New Delhi
2. Divisional Rail Manager,
Northern Railway,
Allahabad
3. Shri U.S. Kamthania,
Senior Section Engineer (Telecom),
Northern Railway, ... Respondents
Aligarh
(By Advocate: Shri Rajinder Khatter)

O R D E R

The applicant, a Helper Khallasi under the Senior Section Engineer (Telecom), Northern Railway, Aligarh, respondent No.3 herein, impugns the order of transfer dated 17.11.2000 (Annexure A-1) issued by the Divisional Personnel Officer, Northern Railway, Allahabad by which amongst others the applicant has also been transferred, on the ground of malafide on the part of the aforesaid respondent No.3. The applicant has been transferred by the aforesaid order from Aligarh to Mirzapur after having stayed on at Aligarh for nearly 16 years right from the date of his first appointment in the department on compassionate basis in January 1985. He was firstly appointed as

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Khallasi and thereafter promoted as Helper Khallasi on which post he has been working ever since.

2. I have heard the learned counsel on either side at length.

3. The learned counsel appearing in support of the OA has vehemently argued that the applicant's transfer impugned in this OA is the out-come of malafide on the part of respondent No.3 and accordingly the aforesaid order deserves to be quashed and set aside in accordance with the ratio of several judgements rendered by the apex court and some of the other courts as well. He has also relied on the judgment rendered by this Tribunal (Allahabad Bench) in the case of Rajindra Chaubey Vs. UOI & Anr in which, according to the learned counsel, it was held that "when a disciplinary proceeding for a cause is pending it is not proper to transfer on the same cause without completing procedure" (para 5.4 of the OA). On the point of transfer during the pendency of the enquiry, the learned counsel has further relied on the judgement rendered by the Andhra Pradesh High Court in the case of R. Sudhakar vs M/s. Immunological Hyd. 1997 (2) ATJ 405 in which, according to him, it has been held that "where an order of transfer is passed due to pending enquiry and not in exigency of service such an order is bad in law". The further plea taken by him is that while the applicant has been singled out for transfer there are many similarly placed Helper Khallasis who have been left out.

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4. Insofar as the issue of malafide is concerned, the applicant has submitted that he had raised the matter involving corrupt practices indulged in by respondent No.3 with the higher authorities and had also forwarded a copy of the complaint to the CVC, New Delhi. This action has not been liked by the aforesaid respondent and accordingly he has managed to secure his transfer to Mirzapur. The learned counsel appearing on behalf of the respondents has categorically denied the allegation of malafide and has submitted that, as shown in the impugned transfer order, the applicant has been transferred on administrative ground. According to him, the allegations made against respondent No.3 are baseless and unwarranted. According to him, it is the applicant who was responsible for the news item (Annexure A-4) in which unfounded allegations of corruption have been levelled against the aforesaid respondent. The complaint in question has been thoroughly investigated by the Vigilance Department in October 2000 and the various charges mentioned therein have been found to be incorrect and no member of staff was found guilty of any of the charges brought out in the complaint.

5. The learned counsel appearing for the respondents has drawn my attention to the details contained in the letter placed at Annexure R-1 (page 34 of paper book). I have perused the same and find that on several occasions in the past the applicant was found guilty of mis-behaviour and was punished by

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imposing minor penalties and sometimes by administering warnings. As many as seven events of applicant's mis-behaviour have been listed in the aforesaid document. The first event took place in January 1992. Thereafter he was found responsible for mis-behaviour in September 1996, July 1997 and so on. On this basis, the learned counsel has argued that the applicant has been an inconvenient person, administratively speaking. Furthermore, the applicant has shown no sign of improvement in his behaviour and was punished as late as in October 2000 by an order passed by the competent authority stopping his increment at the stage of Rs.3235/- for two years. That matter is presently under the consideration of the appellate authority. Similarly, again as late as in January 2001 the applicant has been charge sheeted for unauthorised absence from 27th September, 2000 onward. The related disciplinary proceedings are under way. In the circumstances, according to the learned counsel, the applicant has been justly and correctly transferred on administrative ground and, according to him, it would be incorrect to say that the applicant has been transferred for the reason that disciplinary proceedings are pending against him.

6. The learned counsel appearing on behalf of the applicant has sought to assail the transfer order by also contending that in the manner stated by the respondents in the counter reply, the applicant cannot be said to have been transferred on being found to be surplus. The fact of the matter, according to him, is

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that while several Khallasis found surplus in Allahabad Division have been transferred by the impugned order, in respect of the applicant there is a clear mention in the same order that he was being shifted/transferred on administrative ground. Thus, there is an obvious contradiction in the stand taken by the respondents. I have considered this matter and find that in reality there is no contradiction inasmuch as while filing their reply, the respondents could not have made a statement contrary to what is contained in the impugned order. The fact that most of the Khallasis have been transferred on being found surplus has been incorrectly incorporated by the respondents in their reply unwittingly implying that the applicant too was a member of the surplus staff. I find that, in the circumstances of this case, it is not possible to make any capital out of the aforesaid averment incorrectly made by the respondents though without any deliberations. I do not agree that thereby an attempt has been made by the respondents to mislead this Tribunal.

7. The transfer order under challenge has been issued by an authority higher than and different from the respondent No.3 who is allegedly biased against the applicant. The applicant has not shown as to how the respondent No.3 has succeeded in influencing the judgement of the said higher authority in the matter of applicant's transfer. Respondent authorities, at all levels, are supposed to act and decide in their best judgement without fear or favour.

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That is precisely what the transferring authority/respondent is presumed to have done in this case. The allegation of malafide cannot, therefore, be sustained on this ground also.

8. The respondents have clearly stated that transfer is an incidence of service and like all employees, the applicant also has no right to be posted at a particular place. The transfer of the applicant has been made in the exigencies of service and in the interest of administration as also to adjust the other staff declared surplus. The applicant has been an unsatisfactory worker. Several warnings both verbal and written have been issued to him. The respondents have not committed any illegality by transferring the applicant and have not committed violation of any of the statutory rules, nor is their act arbitrary in nature. The ground of malafide also does not exist. The applicant's mis-behaviour dates back to 1992 whereas the complaint of irregularity/corruption against the respondent No.3 was made in October 2000. Besides, the aforesaid complaint has been found by the respondents, after investigation, to be without basis, and the applicant has not succeeded in controverting that position beyond merely stating that the respondents should have produced the material connected with the aforesaid investigation before the Tribunal for its satisfaction.

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9. On consideration of the various issues raised by the learned counsel on either side, and having regard to whatever has been mentioned in the preceding paragraphs, I have no hesitation in concluding that the impugned transfer is not malafide nor is it arbitrary in any respect nor has it been made in violation of any statutory rules. Transfer is not a punishment. Public officials/Government servants are often and sometimes frequently transferred on administrative grounds. The applicant has mis-behaved on several occasions in the past and has been warned/penalised for the same. Very recently, a penalty of stoppage of increment has been imposed on him by the disciplinary authority. He has also been charge sheeted for unauthorised absence. An officer against whom disciplinary proceedings might be pending can also be transferred on administrative ground other than for considerations leading to the initiation of the disciplinary proceedings. The impugned order has been passed in the exigencies of service and on administrative ground and the same cannot be said to have been occasioned by the departmental action pending against him. Several Khallasis have been transferred and, therefore, the contention raised that the applicant alone has been singled out is also without basis. Above all, the present OA has been filed without exhausting the available remedies in terms of Section 20 of the A.T. Act. That section clearly provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the

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remedies available to him under the relevant service rules as to redressal his grievances. The present case, I find, is not an extra-ordinary case of transfer and, therefore, the applicant should have, in the first instance, approached the respondents seeking cancellation of the transfer order. He has not done so and, therefore, the present OA is not maintainable under section 20 of the A.T. Act.

10. For all the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit. On being found to be non-maintainable as well, the same is dismissed. There shall be no order as to costs.

S.A.T. RIZVI

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

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