

Central Administrative Tribunal
Principal Bench

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O.A.No.845/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 30th day of May, 2002

Shri Mohd Aslam Khan
s/o Shri Late N.H.Khan
Chief Parcel Clerk
Northern Railway
Railway Station
Nizamuddin
New Delhi.

... Applicant

(By Advocate: Shri B.S.Mainee)

Vs.

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
New Delhi.
3. The Station Superintendent
Northern Railway
Nizamuddin
New Delhi.

... Respondents

(By Advocate: Shri B.K.Aggarwal, through Shri Rajeev Bansal)

O R D E R (Oral)

By Shanker Raju, M(J):

Applicant, who is working as Chief Parcel Clerk, impugns respondents' order dated 15.12.2000 wherein he has been transferred from Delhi to Bikaner Division.

2. Applicant, who was detained on 3.4.2000 at Railway Station, Nizamuddin to perform the duties of Weighment Clerk along with one Consignment Clerk Shri Ramesh Chander, when a vigilance decoy check was conducted, applicant was found to have demanded and accepted a bribe of Rs.100/- from the complainant, who

had come to book his Scooter from Nizamuddin to Hyderabad. After holding a preliminary enquiry, a charge sheet has been issued where the applicant has denied the charges. Thereafter no further action has been taken. In the meantime, applicant has been transferred vide impugned order against which the applicant made a representation which has not been disposed of.

3. Learned counsel for applicant placing reliance on a circular of Railway Board, dated 13.4.1967, which is reproduced as under:

"Reference Board's letter No.E(D&A)62RG6-15 dated 29.3.1962 wherein it was laid down that non-gazetted staff whose conduct is under investigation for charges meriting dismissal/removal from service, including those under suspension, should not be transferred from one Railway administration to another, till after the finalisation of the departmental or criminal proceedings against them. The Board have considered the matter further and have decided that non-gazetted staff against whom a disciplinary case is pending or is about to stout should not normally be transferred from one Railway/Division to another Railway/Division till after the finalisation of the departmental or criminal proceedings, irrespective of whether the charges merit imposition of a major or a minor penalty."

contended that the Railway Board has already taken a decision that non-gazetted staff against whom disciplinary proceedings are pending, should not be normally transferred from one Division to another Division till the departmental proceedings are finalised. Further placing reliance on a decision taken in the meeting of the respondents on 10.7.1998, and a consequent order dated 30.10.1998 providing that the staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed,

the transfer would be reviewed at the appropriate level and such staff transferred should be on inter divisional basis. According to him unless the disciplinary proceedings is concluded and penalty imposed it is not open for the respondents to resort to inter divisional transfer. Sh. Mainee relying upon a decision of the Co-ordinate Bench in OA 2061/98 in Bhupendra Kumar Vs. The General Manger, NR & Others, decided on 18.12.1998 where on the basis that applicant is involved in disciplinary proceedings which has been considered to be a stigma. In the transfer order has been set-aside and the respondents have been directed to consider transfer of the applicant therein within the division. It is also stated that Board's letter dated 2.11.1998 was issued in pursuance of the meeting of 10.7.1998. Further placing reliance on a decision in OA 546/2000, Shri Sarvjeet Singh Walia Vs. Union of India & Others, decided on 8.12.2000, it is contended that the decision in Bhupendra Kumar's case supra which has been upheld by the Delhi High Court and the Writ Petition filed by the respondents was dismissed. Accordingly, the Bhupendra Kumar's case as attained finality, the same covers, in all fours, the applicant's case also and the present impugned order is malafide and by way of punitive measure and against the guide-lines, this Court can interfere with and the same. The impugned order has not been shown to be either in the public interest or administrative exigency.

4. Learned counsel for respondents denied the contentions of applicant and referred to Railway Board's letter dated 2.11.1998 which envisages inter divisional transfer of Ticket Checking Staff and other staff in mass contact area. This has been arrived at in pursuance of a meeting held on 10.7.1998. It is mentioned therein that transfer of the Ticket Checking Staff and other staff in mass contact area, who are detected to be indulged in a malpractices should be transferred on inter-divisional basis. By placing further reliance upon the penalty order dated July, 2001, it is contended that the proceedings are over and applicant has been imposed a punishment of reduction by two stages with cumulative effect as such the Board's circular dated 1967 supra would have no application in the facts and circumstances of the present case.

5. Shri Rajeev Bansal stated that applicant who was involved in serious charge of corruption in the larger interest of department, as well as in public interest and in the interest of administrative exigency, has been transferred to Bikaner which is an inter divisional transfer, cannot be found fault with.

6. I have carefully considered the rival contentions of the parties and perused the material on record.

7. Learned counsel for respondents resorting to Railway Board's Circular dated 2.11.1998, has stated that the Circular of 1998 would have no application in the facts and circumstances of the

present case. I find that these orders dated 30.10.1998 and 2.10.1998 are the out come of the meeting held on 10.7.1998 by the Railway Bard to decide the inter divisional transfer of ticket checking staff and other staff in mass contact areas.

8. In letter dated 30.10.1998, this has been specifically provided that while effecting an inter divisional transfer, the matter would be reviewed, if the disciplinary proceedings are concluded and the penalty is imposed. This clearly shows that in case where the staff are in mass contact areas, who have been proceeded against in a disciplinary proceedings their transfer is to be kept in abeyance and would be taken after the completion of the disciplinary proceedings. Till then as held by the Co-ordinate Bench of this Tribunal in Bhupendra Kumar's case supra, which was upheld by the High Court, it is open for respondents to transfer applicant within the Division in public interest. As Railway Board's Circular dated 2.11.1998 does not deal specifically with the issue of pending disciplinary proceedings as both these orders referred to above, are the outcome of the meetings, letter dated 30.10.1998 would hold the field. Moreover, prior to 30.10.1998, respondents have issued Board's letter dated 13.4.1967 specifically precluding them to transfer the staff in case of pending disciplinary proceedings. Nothing has been brought on record to indicate that this instruction has been modified or substituted by any other instructions. In this view of the matter, the case of the applicant, in all fours is covered by Bhupendra Kumar's case supra, already upheld by the

High Court and also covered by the ratio in Ashok Kumar Chopra's case (OA No.547/2000). As the transfer resorted to is not in consonance with the guide-lines, the same cannot be upheld.

9. At this stage, the learned counsel for respondents pointed out that order dated 30.10.1998 would apply to the present case as the applicant has been found repeatedly involved in a vigilance cases, the inter divisional transfer is justified.

10. I have considered the contention for the learned counsel for respondents. I find that the aforesaid contention has already been dealt with in Bhupenendra Kumar's case supra and after considering the same, the Court has come to the conclusion that transfer order is a sham and camouflage and is not in administrative exigency. In pursuance to the vigilance enquiry, respondents have made statement that charge-sheet has been issued but no final outcome has been arrived at in the disciplinary proceedings till date. In this view of the matter, the present order of transfer being a camouflage, is punitive. Admittedly, the enquiry is yet to be finalised by issuance of a penalty order.

11. In the result, for the reasons recorded above, the impugned transfer order is quashed and set-aside. It is however open for the respondents, in case of apprehension that applicant shall tamper the records and influences the witnesses, to consider the transfer within the division in public interest. The OA is disposed of accordingly. No costs.

S. Raju

(Shanker Raju)
Member(J)