

Central Administrative Tribunal
Principal Bench

O.A.No.103/99

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 30th day of June, 1999

Shri Jagjit Singh Brar
s/o Shri N.S.Brar -
Station Superintendant
Northern Railway
Ferozepur Division. ... Applicant
(By Shri B.S.Mainee, Advocate) Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Ferozepur. ... Respondents
(By Shri R.L.Dhawan, Advocate)

O R D E R

The applicant, who was working as Station Superintendent, is aggrieved by the orders of inter divisional transfer, Annexure-A1 dated 6.1.1999 from Ferozepur Division to Jodhpur Division. The applicant submits that at the instance of his Goods Clerk, Shri Wazir Chand who was released by him on the basis of the transfer orders, the applicant was accused of charging extra money against purchase of two tickets by a passenger. The applicant submits that though he was innocent of the charge he was placed under suspension. Even though the order of suspension dated 29.10.1998 has been revoked, his grievance is that he is being punished by the impugned order of extra ordinary transfer to another Division.

2. The respondents deny the allegation. They also submit that the OA is not maintainable as the Principal Bench does not have territorial jurisdiction in

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the matter. The respondents also state that Rule 226 of the IREC, Volume(1) empowers the competent authority to order inter divisional transfers.

3. I have heard the counsel. As regards the preliminary objection raised by the respondents in regard to the territorial jurisdiction, it has already been held by this Bench in OA No.2061-2063 of 1998, decided on 18.12.1998 that the Principal Bench has territorial jurisdiction of the orders have been issued from Delhi. Since in the present case also the transfer has been affected on the instructions of the General Manager, Baroda House, New Delhi the objection as regard the maintainability of the OA is rejected.

4. The learned counsel for the applicant has relying on the decision of the Tribunal in OA No.2061-2063 of 1998, contended that the impugned order of transfer casts a stigma on the applicant as this extraordinary step is taken only when the staff working in mass contact areas is found to be indulging in malpractices. He also drew my attention to the instructions of the Railway Board contained in the Establishment Serial No.90/67, Circular No.P/R/14/141/Pt.XI, dated 13.4.1967, in which Railway Board had directed that Non-Gazetted staff against whom a disciplinary case is pending or is about to start 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 ^{require} ~~make~~ imposition of a minor or a major penalty. He also relied on a case of Naresh Kumar Vs. State & Others, SLJ 1995 (1) CAT(Shimla) 29 in which

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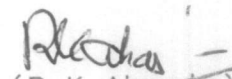
it was held that the bare assertion that the transfer order was passed in the public interest is of no value if respondents fail to lay any foundation for public interest. On the other hand, the learned counsel for the respondents pointed out that it is a settled position that transfer is normally an incidence of service and ordinarily the Courts and Tribunals should not interfere with transfers.

5. I have considered the matter carefully. Rule 226 of IREC, Volume (1) permits the transfer of Non-Gazetted Staff from one division to another division. In OA Nos.2061-2063/98, Bhupendra Kumar Vs. General Manager, Northern Railway & Others, decided on 18.12.1998, it was found that there was a Railway Board letter E(NG)I-90/TR/11, dated 2.11.1998 on the subject of inter divisional transfer of ticket checking staff and other staff in mass contact areas. According to this letter it had been decided that ticket checking staff detected to be indulging in malpractices should be transferred on inter-divisional basis. Noting that the transfer in those cases had been made without initiating disciplinary proceedings and without giving an opportunity to show cause a stigma has been cast on the affected employee. On that view of the matter the transfer was found to be punitive and the transfer orders were consequently quashed.

6. In the present case the position is different. The learned counsel for the respondents has produced a copy of the Chargesheet dated 19.4.1999 on the basis of which disciplinary proceedings have since been initiated against the applicant. It cannot therefore be

said that the inter-divisional transfer has resulted in casting a stigma upon the applicant without giving an opportunity to show cause as the transfer has been followed by the issue of the charge-sheet and initiation of disciplinary proceedings. As regards the contention of the learned counsel that instructions dated 13.4.1967 require that the Non-Gazetted staff against whom the disciplinary proceedings are initiated or contemplated should not be normally transferred to on divisional basis. I find that it cannot be read as totally prohibiting such transfers. In any case the instructions given vide letter of the Railway Board dated 2.11.1998 virtually supersede the 1967 instructions. Clearly the issue of the charge sheet in the present case has brought about a material difference in facts as compared to the applicants in OA No.2061-2063/98.

6. In view of the above facts I do not find that the impugned transfer orders can be regarded as an arbitrary exercise of power or against the principles of natural justice. Accordingly, the OA is dismissed. No costs.


(R.K. Ahooja)
Member(A)

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