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Central Administrative Tribunal
Principal Bench

O.A. 1646/99

New Delhi this the 28th day of February, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Mahender Singh,
S/o Shri Hari Singh,
Liftman Gr. III,
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 Sr. Section Engineer (Electrical)(Power),
Northern Railway,
Railway Station,
Delhi.
- Respondents.

By Advocate Shri P.M. Ahlawat.

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Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the transfer order passed by the respondents dated 1.7.1999 transferring him from Delhi Division to Allahabad Division.

2. The brief relevant facts of the case are that the applicant while working as Liftman, which is a Group 'C' post, on Platform No. 8-10 was checked by the Vigilance Staff of the respondents on 13.2.1999. According to him, he had nothing to do with the public or in acceptance of any illegal gratification. He was suspended w.e.f. 24.2.1999.

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According to him, while he was under suspension, Respondent 1 had issued a letter dated 1.7.1999 to Respondent 2 transferring him from Delhi Division to Allahabad Division. Shri B.S. Mainee, learned counsel has submitted that the transfer order has not been passed in the exigency of service, but has been passed under pressure of the Vigilance Branch in violation of the Railway Board's instructions. He has very vehemently submitted that being a Group 'C' employee, the applicant could only be transferred within the Division where the seniority is maintained and in this case the respondents have committed illegality by transferring him to another Division. He has relied on the instructions issued by the Railway Board dated 25.3.1967 which provide that non-gazetted staff against whom disciplinary proceedings are pending or about to start should not normally be transferred from one Division to another Division till after the finalisation of the departmental proceedings irrespective of the kind of penalty that may be finally imposed. He has also submitted that subsequently the Railway Board have issued further instructions on 30.10.1998 in terms of which all the General Managers of Indian Railways have been advised that inter-Divisional transfer should be resorted to in respect of staff who are repeatedly figuring in vigilance cases. According to him, the applicant does not come within this condition. His main contention is that the applicant who holds a Group 'C' post can only be transferred within the Division and when there are as many as 100 stations within the Division, there was no reason for the respondents to transfer him to another Division.

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3. Shri Mainee, learned counsel has also submitted the written submissions which are placed on record in which he has cited a number of judgements which he relies upon. The learned counsel has also submitted that the transfer order is punitive in nature and has been passed without holding any inquiry or even issuing a charge-sheet which cannot, therefore, be done. He has referred to the judgement of the Tribunal in **Sheo Raj Singh Vs. Union of India** (OA 2322/93) which order he has submitted, has been stayed by the Hon'ble High Court. He has submitted that the respondents are placing their reliance on the Railway Board's circular dated 2.11.1998 which has to be read with the letter dated 30.10.1998 and according to him, inter-Divisional transfer should be ordered only after disciplinary proceedings are finalised which is not the present case. Learned counsel has, therefore, submitted that the impugned transfer order may be quashed and set aside with consequential benefits.

4. I have perused the reply filed by the respondents and heard Shri P.M.Ahluwat, learned counsel.

5. The respondents have denied the applicant's version that he has been falsely implicated by the Vigilance Team. According to them, he had been found involving himself in mal-practices of a serious nature in a successful decoy check, and as such he was suspended on 24.2.1999 under the relevant Rules. They have submitted that the competent authority has taken a decision and sent a confidential letter, dated 1.7.1999 to the Divisional Railway Manager which order has been impugned by the applicant. The applicant himself has stated that he has not been communicated this letter. The respondents have submitted that this order is valid and is in accordance with the instructions of the Railway Board.

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They have submitted that the applicant is being transferred along with the post which is also in accordance with the extant instructions of the Railway Board on successful decoy checks. They have submitted that such inter-Divisional transfers are admissible as per the confidential instructions issued by the Railway Board on which they are relying upon, on administrative grounds. They have also stated that the charge-sheet will be issued immediately on his joining the Allahabad Division. Learned counsel has also submitted that the judgement of the Tribunal in **R.K. Tandon Vs. Union of India & Anr.** (OA 1887/99) decided on 26.10.1999 is fully applicable to the present case as the facts in both the case are identical (copy of the judgement placed at Annexure C-1). For these reasons, the respondents have prayed that the interim order passed by the Tribunal to stay the operation of the impugned transfer order dated 28.7.1999 may be vacated and the O.A. may be dismissed.

6. I have also seen the rejoinder filed by the applicant in which he has reiterated the submissions made in the O.A. He has also submitted that the respondents are wrongly interpreting the confidential instructions and in any case they cannot act arbitrarily and in a punitive manner. Shri Mainee, learned counsel has emphasised that the impugned order cannot be upheld because it is punitive and casts stigma on the applicant.

7. After careful consideration of the pleadings and the submissions of the learned counsel for the parties, I find that the submission of the respondents that the facts and issues in this case are similar to those dealt with in **R.K. Tandon's case** (supra) is correct. In that case, the

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submissions made by the applicant's counsel were similar to those submitted by Shri B.S. Mainee, learned counsel in the present case. In that case, it has been held, inter alia, that it is settled law that a transfer order in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of mala fides. The separate set of instructions dealing with serious cases like fraud, embezzlement and successful decoy checks and other cases of mal practices had been placed before the Court in that case and have been referred to in the order dated 26.10.1999. It was further noted that the applicant had nowhere challenged the validity of those instructions, like also in the present case. The Supreme Court in **Karam Pal & Ors. Vs. Union of India & Ors.** (1985(2) SCC 457) has held that in the absence of challenge to the Rules and Regulations, the resultant situations flowing from compliance of the same are not open to challenge. In view of the fact that the facts in the present case are almost identical to the facts in **R.K. Tondon's case** (supra), the conclusions arrived at in that case are fully applicable to the present facts also. In addition, the reasoning and orders of the Tribunal in **Rakesh Kumar Vs. Union of India & Ors.** (O.A.2198/98), **Ramesh Chand Vs. Union of India & Ors.** (O.A.2454/98) and **Prem Singh Vs. Union of India & Ors.** (O.A.285/99) are also fully applicable to the present case and accordingly judicial propriety requires that

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those judgements need to be followed, in which case the present O.A. is also liable to be dismissed.

8. In the result, for the reasons given above, O.A. fails and is dismissed. Interim order dated 28.7.1999 is vacated. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

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