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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1850/1999

New Delhi this the 25th day of April, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Dinesh Kumar Jindal,
S/O Shri Jawala Prasad Jindal,
Station Supdt./Northern Rly.,
Railway Station,
Raj Ghat, Narora,
Distt. Bulandshar

R/O Dinesh Kumar Jindal,
Railway Quarter,
Raj Ghat, Narora,
Distt. Bulandshar.

..Applicant

(By Advocate Shri G.D.Bhandari

VERSUS

1. Union of India through
the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.
3. The Traffic Inspector,
Northern Railway,
Railway Station,
Chandausi (UP),
Distt. Moradabad.

..Respondents

(By Advocate Shri R.L.Dhawan)

O R D E R (ORAL) :

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

This application has been filed by the applicant in which he has impugned the transfer order issued by the respondents dated 12.8.1999 transferring him from Moradabad Division to Ambala Division. This order states that this has been done in terms of the instructions contained in General Manager (P), New Delhi's office letter dated 23.6.1999. In pursuance of Tribunal's order dated

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3.5.2002, learned counsel for the respondents has submitted a copy of the letter dated 23.6.1999 referred to in the impugned transfer notice (copy placed on record). The same has also been shown to the learned counsel for the applicant who has also confirmed that he has a copy of the same.

2. On 25.8.1999 an ad interim order directing status quo to be maintained was passed by this Tribunal against the aforesaid impugned transfer order till 8.9.1999, which has been continued from time to time. In spite of the aforesaid ad interim order, it is noted from the counter affidavit filed by the respondents dated 3.2.2000 wherein they have stated in Paragraphs 4.16 and 4.17 that "the applicant has already made over the charge to the other Station Master on his transfer to Ambala Division". This has been disputed by the applicant in the rejoinder wherein he has, inter-alia, stated that the statement made by the respondents "that the applicant has already handed over the charge to some other Station Master" is incorrect. He has alleged that such an act on the part of the respondents tantamounts to contempt of the stay order granted by the Tribunal on 25.8.1999 whereby status quo had been ordered to be maintained.

3. Neither of the learned counsel is able to state the present position of the applicant clearly as to whether he continues in Raj Ghat station of Moradabad Division or actually stands transferred to Ambala Division in terms of the impugned transfer order dated 12.8.1999. Shri

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R.L.Dhawan, learned counsel has drawn my attention to the averments made by the applicant in his MA 1338/2000 filed by him on 29.5.2000. In this MA, the applicant has, inter-alia, stated that he is a resident of Rajghat Narora, District, Bulandshahar and, therefore, learned counsel has contended that in view of the aforesaid ad interim order the applicant has not actually been transferred to Ambala Division.

4. Shri G.D.Bhandari, learned counsel has submitted that the impugned transfer order is punitive in nature and does not show any basis as to why the transfer has been carried out. According to him, Vigilance Inspector had conducted a decoy checking on 10.11.1998 which was the date of the incident but he has submitted that there was no question of 'caught red handed'. He has stressed on the fact that after all there was only Re.1 short in the Govt. Cash and rest of the amount of Rs.2437/- was applicant's personal cash. He was having this amount because he had attended the Civil Court in a personal case at Moradabad that evening, for which the respondents cannot make the case ^{out of} _{of} malpractice on the basis of which they can take further action. He has also submitted that the respondents have filed ^a _{an} vague counter affidavit simply reiterating that the applicant was 'caught red handed' without specifying what actually happened and the details thereof. In the circumstances, he has contended that the impugned transfer order can only be termed as a punitive order which has not been passed on any administrative exigencies and,

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therefore, the same has to be quashed and set aside. He has further relied on the judgement of the Tribunal in **Bhupenendra Kumar Vs. General Manager, Northern Railway and Ors** (OA 2061/1998 with two other connected cases) decided on 18.12.1998 (Annexure A-11-A).

5 On the other hand, Shri R.L.Dhawan, learned counsel has submitted that the transfer order has been passed by the competent authority, in terms of the provisions of Rule 226 of the Indian Railway Establishment Code(IREC), Vol.1. He has contended that under this Rule, the Competent authority can transfer Group 'C' and 'D' Railway Servants from one Division to another or even to other Divisions of the Railways in the exigencies of service. He has referred to the fact that the vigilance team of Northern Railway, while the applicant was on duty as Station Superintendent, caught him red handed in the decoy check conducted on 10.11.1998. The applicant was placed under suspension but that was revoked later on. He has also submitted that the applicant has since been charge-sheeted for the offence. He has relied on the Railway Board's instructions dated 2.11.1998 (Annexure R-2) under which other staff, besides Ticket Checking Staff, in mass contact areas detected to be indulging in malpractices should also be transferred on inter-divisional basis. In this connection, it is relevant to mention that Shri G.D.Bhandari, learned counsel has submitted that in ^{1/2} Moradabd Division, where the applicant was working, ^{there are 12} ~~has a~~

number of other stations and the applicant could have been easily transferred from one station to another in the same Division instead of transferring him to another Division, like Ambala Division. Learned counsel for the respondents has, however, submitted that taking into account the provisions of Rule 226 of the IREC, Vol.1 and the Railway Board's order dated 2.11.1998 and the facts relating to the incident which had occurred on 10.11.1998, which fact was also not denied by the applicant, there is no illegality in issuing the impugned transfer order which has been impugned in the present application. He has relied on the judgements of the Hon'ble Supreme Court in Mohd Sultan Ganai Vs. State of Jammu and Kashmir and Ors. (JT 1998 (3)SC 713); Chief General Manager(Telecom) N.E. Telecom Circle and Anr. Vs. Shri Rajendra Ch.Bhattacharjee and Ors (1995 (1) SCSLJ 303), the judgements of the Tribunal in Rakesh Kumar Vs. General Manager(NR) and Ors. (OA 2198/1998) decided on 15.10.1999 and Shri Prem Singh Vs. General Manager (N.R) and Ors (OA 285/99) decided on 25.2.2000. He has, therefore, prayed that the OA may be dismissed and the ad interim order may be vacated.

6. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. Rule 226 of the Indian Railway Establishment Code, Vol.1 reads as follows:-

" Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or

another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India, may be exercised by the General Manager or by a lower authority to whom the power may be re delegated".

8. The applicant was a Group 'C' employee as Station Superintendent at the relevant time when the aforesaid impugned transfer order was issued on 12.8.1999. The contention of the learned counsel for the applicant that the applicant was not a Ticket Checking staff and, therefore, he could not be transferred to another Division of the Headquarters or any other establishment cannot be accepted, having regard to Annexure R-2 order dated 2.11.1998. The relevant portion of Para 3 of the order reads as follows:-

" Pursuant to the above discussion, it has been decided that while the existing policy of inter-divisional/inter - railway transfer of ticket checking staff detected to be indulging in malpractices shall continue, other staff in mass contact areas detected to be indulging in malpractices should also be transferred on inter-divisional basis".

(emphasis added)

The Instructions include that "other staff" in mass contact areas detected to be indulging in malpractices should also be transferred on inter-divisional basis.

9. The applicant has stated in Para 4.5 of the OA that while he has been working at Raj Ghat Narora, Railway Station and was on duty on 10.11.1998, one Vigilance Inspector arrived on the scene and checked the Government cash and found Re.1/- short. Shri G.D.Bhandari, learned

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counsel has very vehemently argued that the amount of shortage of Govt. money being only Re.1 it cannot be the basis of the transfer. I am unable to agree with this contention because it is a question of principle and application of law. It is not denied that the applicant was placed under suspension which was later on revoked and he is also facing a charge-sheet on account of the incident which occurred on 10.11.1998. Rule 226 of the IREC, Vol.1 read with the provisions of Railway Board's order dated 2.11.1998 provides that the competent authority in such circumstances can transfer the concerned staff/applicant on inter-Divisional basis. In the circumstances of the case, the contention of the learned counsel for the applicant that the respondents could have very well posted the applicant to another station in Moradabad Division instead of transferring him to Ambala Division cannot be sustained as that is within the discretion of the competent authority. The question of issuing a transfer order is a matter of discretion of the competent authority and this exercise is done, taking into account the relevant facts and circumstances of the case in this case the power to transfer such staff on inter-Divisional basis is vested with the competent authority. Accordingly, the submissions of the learned counsel for the applicant to the contrary are rejected.

10. From the facts and circumstances of the case and having regard to the settled law, the impugned transfer order issued by the competent authority cannot be

interferred with by the Courts/Tribunal. (See the judgements of the Hon'ble Supreme Court in UOI Vs S.L.Abbas (1993(2)SLR 585) and Mohd. Sultan Ganai Vs. State of Jammu and Kashmir and Ors.(JT 1998 (3)SC 713) unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of settled rules or on the ground of malafides. The judgements of the Tribunal in OA 2061/1998 with two connected cases relied upon by the learned counsel for the applicant are distinguishable from the facts of this case. It is further relevant to note that in those cases, the Tribunal had noted that the respondents are free to initiate disciplinary proceedings against such persons and thereafter, they can consider such transfers as are necessary in public interest. In the present case this is also one of the reasons given by the respondents, which is not denied by the applicant, that disciplinary proceedings have been initiated against him. The allegations of mala fides against the impugned transfer order are baseless keeping in view the facts and settled law. I have also considered the other contentions raised by the learned counsel for the applicant but do not find any merit in the same.

11. In the above facts and circumstances of the case as I find no merit in this application, the OA fails and is dismissed. Accordingly, the ad interim order passed on 25.8.1999 also stands vacated.

No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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