

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1887/99

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T.A. No.

(6)

DATE OF DECISION 26-10-99

R.K.Tandon

....Petitioner

Sh. S.P.Mehta

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent(s)

Sh.P.M.Ahlawat

....Advocate for the
Respondents.

CORAM

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

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1887/99

(7)

New Delhi this the 26 th day of October, 1999

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

R. K. Tandon,
S/o Shri Kanshi Rām Tandon;
C/o Shri S. C. Tandon,
223-C, Pocket J&K,
Dilshad Garden,
Delhi.

Applicant.

By Advocate Shri S. P. Mehta.

Versus

1. Union of India,
through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Ambala.

Respondents.

By Advocate Shri P. M. Ahlawat.

O R D E R

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

The applicant is aggrieved by the letter issued by the respondents dated 26.4.1999 transferring him as Guard from Ambala Division to Moradabad Division. In the letter, it is stated that this has been done on Vigilance advice.

2. As the issue involved in the case was regarding the validity of the impugned transfer order, the case was taken up for hearing at the admission stage. According to the applicant, there was a Vigilance check on 13.11.1998, when certain minor irregularities were pointed out. He was placed under suspension on 17.11.1998 which was revoked on 5.1.1999. He has stated that this was done because there was no suspicion on his integrity and no disciplinary action was taken against him. According to him, the impugned transfer

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order (Annexure A-1) has not been conveyed to him so far. Shri S.P. Mehta, learned counsel for the applicant, has very vehemently submitted that the applicant cannot be transferred on inter-Divisional basis. He has also submitted that this transfer would affect the educational careers of his children which has been done in mid-sessions. He has, therefore, submitted that the transfer order is by way of punishment and has been done contrary to the instructions he relies upon, namely, Railway Board's letters dated 25.3.1967 and 30.10.1998 (copies placed on record). He has submitted that this is not a repeated Vigilance case against the applicant and, therefore, the applicant should not be transferred from one Railway Administration to another, namely, from Ambala Division to Moradabad Division. Learned counsel has, therefore, prayed that the impugned transfer order may be quashed and set aside as it has been issued on the orders of the General Manager (P), Northern Railway, as mentioned in the letter itself.

3. The respondents in their reply have submitted that in addition to regular Vigilance checks made by the Vigilance Teams of the Railways in their Zones, ~~the~~ Special Decoy Checks are also made on receipt of complaints by the Department, which are kept confidential. They have stated that a Decoy Vigilance check was conducted by Vigilance Team and the applicant was transferred to Moradabad Division on administrative grounds, as a result of the Decoy Vigilance Check, by the Chief Operating Manager. They have submitted that this has been done after consideration of the material/charges laid down in Chief Vigilance Officer (T)'s Confidential letter dated 14.1.1999, vide Note No. OPG/Misc./25/SM/99 dated 10.3.1999. Accordingly, the General Manager (P) issued the transfer orders of the staff,

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including the applicant, as per decision taken by the competent authority as per the instructions of the Railway Board in their letters dated 11.3.1965, 6.2.1978 and 21.7.1988. Shri P.M. Ahlawat, learned counsel, has submitted a copy of the letter dated 20.7.1998 which he submits has been marked as 'confidential' (copy placed on record), on which the respondents also rely. He relies on Para 6.1 of the minutes of the meeting on malpractices in mass contact areas held on 10.7.1998, that in serious cases like fraud, embezzlement, successful decoy checks and other cases involving mal-practices, the staff should be suspended and served major penalty charge-sheets. On revocation of the suspension, they should be transferred out of ~~the~~ Division/Railway. Learned counsel has, therefore, submitted that in the present case, the applicant has been correctly transferred as a result of the decoy Vigilance check conducted by the Vigilance Team. The respondents have also placed on record the letter issued by G.M. (P) dated 12.3.1999 under the covering letter of 8.4.1999 (Annexure 'C-1') transferring ~~the~~ ^{the} number of persons, including the applicant, on inter-Divisional basis. In the case of the applicant it is from Ambala Division to Moradabad Division. Learned counsel has, therefore, submitted that the transfer order has been correctly passed in accordance with the relevant instructions, following the decoy Vigilance check.

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

5. The main contention of the learned counsel for the applicant is that the respondents cannot transfer the applicant on inter-Divisional basis as his conduct is under investigation and he is a non-gazetted staff. He has,

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therefore, submitted that as no disciplinary proceeding has been initiated against him nor the vigilance check conducted against him is a repeated one, it cannot enable the respondents to transfer him out of one Division to another. While these contentions may be correct in those set of facts, in the present case, the respondents have issued a separate set of Instructions dealing with serious cases, like fraud, embezzlement, successful decoy checks and other cases involving mal-practices. In this case, the applicant was admittedly suspended and later on his suspension had been revoked after a successful decoy check on mal-practices. These instructions provide that on revocation of suspension in such cases, the concerned person should be transferred out of the Division/Railway. The applicant has nowhere challenged the validity of these Instructions which apply to successful decoy checks. The contention of the learned counsel for the applicant that the action of the respondents is arbitrary, malicious and punitive in nature is without any basis, considering the facts and the relevant instructions issued by the Member Staff, Railway Board, which are applicable here. 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. Neither of these grounds is available to the applicant in the present case. The contention of the learned counsel for the applicant that the impugned transfer order dated 26.4.1999 is arbitrary and

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illegal and should be set aside, is without any basis and unsupported by the relevant Instructions.

6. In the result, for the reasons given above, I find no merit in this application. The O.A. fails and it is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'