

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

Original Application No. 2186 of 1999

New Delhi, this the ^{25th} day of May, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL).

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Shri Rajender Singh Rana
Parcel Marker
Northern Railway,
Railway Station,
Hazrat Niramuddin
New Delhi.

-APPLICANT

(By Advocate: Ms. Meenu 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 Station Superintendent,
Northern Railway,
Hazrat Niramuddin, New Delhi.

-RESPONDENTS

(By Advocate: Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has assailed an order dated 4.10.99 passed by the Divisional Railway Manager whereby the applicant has been transferred from Delhi Division to Jodhpur Division. The transfer is alleged to be illegal, arbitrary and discriminatory.

2. It is stated that, in fact, the orders have been passed as a punishment on the recommendation of the vigilance branch without holding any enquiry and without giving any opportunity of hearing although inter

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divisional transfer of Group 'C' and 'D' staff is not permissible as seniority being on the basis of division only.

3. The applicant alleges that on 7.8.99 when he was working as a Parcel Marker on Railway Station at Hazrat Nizamuddin, a vigilance raid through a decoy was conducted and the applicant was falsely implicated where it was alleged that he has accepted Rs.100/- through the decoy for loading two wheeler scooter in the Goa Express.

4. It is further stated that this raid was a sad failure but in order to make it look like successful raid, the vigilance staff made out a false case to transfer the applicant from Delhi Division to Jodhpur Division.

5. It is further stated that the applicant was suspended and while he was under suspension, the vigilance branch put pressure on the Divisional Railway Manager to seek transfer of the applicant from Delhi Division to Jodhpur Division. The applicant also says that the Railway Board in terms of their letter dated 25.3.67 as laid down that the non-gazetted staff against whom disciplinary case is pending or it is about to start, should not be transferred from one division to another division till the finalisation of the departmental or criminal proceedings. Subsequently another letter has been issued on 30.10.98 in which it has been laid down that inter-divisional transfer should be resorted to in respect of employees who are repeatedly figuring in vigilance cases and where penalties have been imposed after substantiating the charges. It is stated that in the case of applicant no vigilance enquiry



has been held nor any penalty has been imposed yet the respondents have taken the drastic step of transferring the employee.

6. It is further submitted that even in the present case neither any charge-sheet has been issued nor any enquiry has been held.

7. It is further stated that if any misconduct is alleged to have been committed by the applicant the respondents ought to have treated this as an act of misconduct and could have proceeded in accordance with law by issuing a charge-sheet to hold an enquiry and not arbitrarily transferring the applicant from one division to another division.

8. He also stated that in similar circumstances such type of orders have been held to be punitive and have been quashed, so it is stated that the order is in violation of the rules on the law and as such the same should be quashed.

9. The respondents are contesting the OA. The respondents submit that this transfer order has been passed in exigencies of service on administrative grounds. They also submitted that in terms of para 313 of the IREM Vol.I a Railway Servant can be transferred from one division to another but his seniority remains unaffected.

10. It is further submitted that after the raid was conducted by the vigilance team the competent authority found that there was no justification in keeping the applicant at the Hazrat Nizamuddin Station where he was caught by the vigilance team and as such it is submitted that the applicant may try to intimidate the witnesses in disciplinary proceedings in case he is

allowed to continue at the Hazrat Nizamuddin Station, therefore, the authorities passed the order transferring the applicant on administrative grounds and in the exigencies of service.


11. It is further stated that the order of transfer has been passed in terms of the Railway Board instructions dated 2.11.1998 which says that the staff detected to be indulging in mal-practices should be transferred on inter-divisional basis and these instructions have been issued by the Railway Board as a result of a deliberation in the conference on mal-practices and corruption in mass contact areas organised by the Ministry of Railways on 19.7.98.

12. As regards initiation of disciplinary proceedings is concerned, it is stated that it has been decided to initiate disciplinary proceedings against the applicant for the alleged charges.

13. I have heard the learned counsel for the parties and gone through the records of the case.

14. The fact that a vigilance raid was conducted is undisputed by both the parties but the only question to be seen is whether the transfer order has been passed on administrative grounds in exigency of service or the same has been passed as a punitive measure to teach a lesson to the applicant for indulging in malpractices.

15. The fact that the Railway Board had issued circular and instructions that inter-divisional transfer should be resorted to in respect of employees who are figuring in the vigilance cases vide letter dated 30.10.98, but the validity of the said instructions has not been challenged at all so it is to be seen whether it can be said that the order of transfer has been passed as



a punitive measure with regard to the particular facts of accepting of Rs.100/- by the applicant for clearance of two wheeler scooter.

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16. The respondents have also referred to a letter of the Railway Board dated 2.11.1998 wherein in similar circumstances it has been mentioned that in terms of the existing instructions ticket checking staff detected to be indulged in malpractices are required to be invariably sent on inter-divisional inter-railway transfer as a matter of policy. Thus a reading of Annexure A-5 placed on record by the applicant and Annexure R-1 placed by the respondents do show that the Railways have adopted a policy to transfer a person indulging in corrupt practices so the transfer order passed in this case also seems to have been passed in consonance with this policy and it cannot be said to have been passed as a punitive measure with regard to a particular incident because the department still says that it has been decided to initiate disciplinary proceedings against the applicant for the alleged charges levelled against him, as indicated in para 4.10 and 4.11 of the counter-affidavit which means that the department is contemplating to start disciplinary proceedings against the applicant for the particular incident. The transfer order has been passed in consonance with the policy which states that the persons who are indulging in malpractices, they may be transferred on inter-divisional inter-railway basis. In the entire OA there is no challenge to the said policy by the applicant.

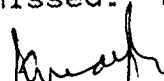
17. Applicant has nowhere alleged that the above letters issued by the Railway Board are violative of any statutory rules or any other provision of the

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Constitution of India.

18. Hence I am of the considered opinion that since for the alleged individual incident the department is taking separate departmental proceedings under the Railway Servants (Discipline and Appeal) Rules, so this transfer order cannot be said to be punishment with regard to the said incident whereas the transfer order can be said to be in consonance with the policy as indicated in Annexure A-5 and R-1 which has not been challenged by the applicant at all, so I do not find that there is any infirmity with the transfer order.

19. In view of the above, OA does not call for any interference and the same is dismissed. No costs.


(Kuldip Singh)
Member (J)

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