

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2668 of 1999

New Delhi, this the 2nd day of May, 2001

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

Shri Udai Singh
S/o Shri Raghbir Singh
Technician Grade-I
under Divisional Railway Manager,
Northern Railway,
Moradabad.

...Applicant

By Advocate Shri B.S. Maine.

Versus

Union of India : Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

..Respondents

By Advocate Sh.R.P. Aggarwal.

O R D E R

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

The applicant in this case has assailed the order dated 19.11.1999 passed by the General Manager, Northern Railway, New Delhi issued by the Divisional Railway Manager, Moradabad vide which the applicant has been transferred from Moradabad Division to Bikaner Division which is stated to be illegal, arbitrary and discriminatory.

2. The facts in brief are that the applicant was appointed as a Khalasi on 1.7.1972. Thereafter he was promoted as Technician Grade-I under Deputy Controller of Stores, Moradabad. On 18.9.98 while he was working on the seat of one Shri Ram Chander Meena, Depot Store

Keeper, some Vigilance Inspectors took search of the applicant's various drawers and found some blank letter heads of some firms on account of which the applicant was placed under suspension on 23.10.1998 which was later on revoked on 18.1.1999. Thereafter instead of holding and completing the enquiry regarding discovery of four blank sheets of the letter head of different firms, the respondents issued the transfer order of applicant from Moradabad Division to Bikaner Division vide impugned order dated 19.11.1999. The applicant alleges that this order of transfer is a punitive one and it is a stigmatic order and the same is not permissible without giving an opportunity of hearing to the applicant. In fact if there was anything against the applicant, the same should have been enquired into and if found guilty only then the applicant should have been punished, but this transfer order, particularly the inter-divisional transfer, was itself a punitive one and the same is liable to be quashed.

3. The applicant further claims that the seniority list of Technicians is being maintained only division wise so the respondents could not have made any inter divisional transfer particularly to punish the applicant and the respondents have thus violated the rules for making inter divisional transfer with regard to the applicant.

4. The OA is being contested by the respondents. The respondents pleaded that an order was received from the General Manager, Headquarters office, Baroda House,

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New Delhi stating therein that the applicant may be transferred to Bikaner Division on administrative grounds and in compliance of the said order, the impugned order was issued. It is denied that the order transferring the applicant from Moradabad Division to Bikaner Division is illegal, arbitrary and discriminatory or it is made with a view to punish the applicant, rather it has been passed on administrative grounds permissible under the rules. It is further denied that the transfer order relate to surprise check but it is made on administrative grounds.

5. It is also denied that the staff who are subjected to inter division transfer will not lose their seniority in the new division under the rules. It is denied that the transfer is a punishment.

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

7. The counsel for the applicant referred to a circular which stated that the transfer of Railway staff whose conduct is under investigation should not normally be transferred from one Railway/Division to another Railway/Division.

8. The counsel further submitted that in this case also since there was a surprise check by the Vigilance Department and some bank sheets of the letter head of different firms were recovered from the drawer of the applicant on the basis of which he was suspended. But the order of suspension was later on withdrawn, however, the order of transfer has been passed consequent

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thereupon which show that the department instead of proceeding against the applicant for any alleged misconduct had found a convenient way to punish the applicant by means of inter divisional transfer so the same cannot be sustained since it is a stigmatic order and the same is liable to be quashed.

9. The counsel for the applicant has also referred to a judgment given in OA 2061/98 which was decided along with OA Nos. 2062/98 and 2063/98 wherein three railway employees who were transferred on inter divisional basis and after a vigilance check was made upon them.

10. The only short question which requires consideration is whether the impugned order has been issued in pursuance to the Vigilance Check and is punitive in nature or a simpliciter order of transfer on administrative grounds. A perusal of the impugned order Annexure A-I shows that the transfer has been made on administrative grounds and this order has been issued on 30.11.99. As far as Vigilance Check is concerned, according to the applicant himself, the Vigilance Inspector had taken search of the applicant's various drawers on 18.9.98. On 23.10.1998 the applicant was placed under suspension and the suspension was revoked on 18.1.99 vide Annexure A-2. So it appears that the matter with regard to the Vigilance Check and consequential action thereupon had culminated on 18.1.1999 itself whereas the impugned order of transfer was issued on 30.11.99, i.e., almost after a period of 10 months after the revocation of suspension. So this transfer order does not seem to

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have any nexus with the Vigilance Check and consequent order of suspension and revocation thereof. The impugned order of transfer appears to be an independent action.

11. As regards the judgment cited by the applicant is concerned, in that case the transfer order was stayed and the court was of the view that this transfer order has been passed on the basis of a vigilance check against the applicant. Paragraph 7 of the judgment also shows that the facts, as alleged by the applicants, had not been denied by the respondents that in all the cases of three applicants there were certain vigilance checks and the applicants were suspected to have indulged in corrupt practices and in that background the impugned transfer orders were passed which were alleged to be stigmatic. But here in this case I find that there is no allegation that the action was taken on the basis of the vigilance check or that the passing of the impugned order has any nexus with vigilance check. Moreover the impugned order has been passed after about 10 months of revocation of suspension order, so I find that the judgment relied upon by the applicant is not at all applicable to the facts of the case. Since it is the prerogative of the management and the management is the best judge as to where an employee is to be posted and how best his posting can serve the interest of the organisation. As in this case the transfer order is within the permissible rules,

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hence, I am of the considered view that the OA does not call for any interference and the same is dismissed. No costs.


(Kuldip Singh)
Member (A)

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