

Central Administrative Tribunal
Principal Bench

O.A.No.287/99

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 4th day of June, 1999

Shri Moolchand
s/o Shri Lakshmi Chand
Sr. Booking Clerk
Northern Railway
Haridwar (UP). ... Applicant

(By Shri B.S.Mainee, Advocate)

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Moradabad.
3. The Station Superintendent
Northern Railway
Haridwar (UP). ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

The applicant while working as a Senior Booking Clerk at Railway Station, Haridwar at Muradabad Railway Division, on the basis of a vigilance inspection on 3.6.1998, was accused of committing an irregularity of over charging from a passenger. He was also placed under suspension by order dated 26.6.1998, Annexure-A2 but these orders were revoked on 9.9.1998. The applicant submits that thereafter he has been transferred by the impugned order dated 27.8.1998 by way of punishment from Muradabad Division to Bikaner Division.

2. The respondents in their reply have stated that on the basis of the vigilance check disciplinary proceedings have been initiated against the applicant. They also state that Rule 226 of the Indian Railway

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Establishment Code, Vol.(1) empowers the competent authority to order inter divisional transfers. They further state that as per Railway Board's letter No.E(NG)I-90/TR/11, dated 2.11.1998 a Group 'C' and 'D' staff detected to be indulging in malpractices should be transferred on inter-divisional basis.

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3. I have heard the counsel. The learned counsel for the applicant has contended that as per Establishment Sr. No.90/67, Circular No.P/R/14/141/Pt.XI, dated 13.4.1967 Non-Gazetted staff against whom a disciplinary case is pending or is about to start should not normally be transferred from one Railway/Division to another Railway/Division till after the finalisation of the Departmental or Criminal proceedings, irrespective of whether the charges require imposition of a major or a minor penalty. He also relied on the Judgment of this Tribunal in OA No.2061-2063/98, Shri Bhupendra Kumar Vs. General Manager, Northern Railway and Others, decided on 18.12.1998 in which the transfer of a Senior Booking Clerk on inter Divisional basis was found to be punitive in nature and the transfer order was consequently quashed.

4. I find that the ratio of Bhupendra Kumar (Supra) does not apply to the present case. In the former case no disciplinary proceedings had been initiated even though the Government employee had been placed under suspension. Since the orders of transfer were in pursuance of the Government instructions dated 2.11.1998, which related to the transfer of staff found to be indulging in malpractices, it was held that the transfer was punitive and in contravention of principles

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of natural justice as no opportunity to show cause had been afforded. Here however the respondents have initiated disciplinary proceedings against the applicant. In so far as the instructions dated 13.4.1967 are concerned they do not constitute a total prohibition against inter divisional transfers. Further more, these instructions can be deemed have been superseded by the instructions dated 2.11.1998 as both have been issued by the Railway Board. Consequently it cannot be said that the transfer of the applicant herein is by way of punishment by-passing the proper and appropriate course of initiating disciplinary proceedings.

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5. In the result the OA fails and is accordingly dismissed. There shall be no order as to costs.

R. K. Ahuja
(R. K. Ahuja)
Member (A)

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