

**CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH**

O.A.No.2024/98

New Delhi, this the 16th day of October, 1998

**HON'BLE SHRI N. SAHU, MEMBER(A)**

Shri Narender Singh Negi,  
S/o Shri G.S.Negi,  
Sr.Booking Clerk,  
Northern Railway,  
Railway Station,  
New Delhi.

....Applicant

(By Advocate: Shri B.S.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 Divisional Personnel Officer,  
Northern Railway,  
State Entry Road,  
New Delhi.

....Respondents

(By Advocate: None)

**O R D E R (ORAL)**

**BY HON'BLE SHRI N. SAHU, MEMBER(A)**

The applicant is aggrieved by the order of the Divisional Personnel Officer dated 24.9.98 issuing instructions in terms of the directives of the General Manager(Personnel), Northern Railway, Baroda House, New Delhi for transferring the applicant who finds place at serial no.4 in the position of Senior Booking Clerks, New Delhi Station to a post at Moradabad. This was only an internal correspondence and no order has been issued and served on the applicant so far. It is unnecessary to narrate at length the circumstances leading to this order except the fact that there was a decoy check at the counter

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manned by the applicant and a sum of Rs.100/- was over-paid to test the integrity of the applicant by a decoy. The applicant claimed to have returned back the G.C. Note of Rs.100/-. Even so it was pushed back and the check continued resulting in the suspension of the applicant on 17.8.98. Thereafter the impugned order was passed on 23.9.98.

2. The submissions of the ld. counsel for applicant are that transfers from one Division to another violate the departmental instructions and for this purpose, he cited the Railway Board's letter No.E(D&A)65RG-6 dated 25.3.67 addressed to the General Managers, All Indian Railways and others. This is an instruction of the Board and in terms of the judgement of the Hon'ble Supreme Court in Subramaniam's case, has a statutory effect. The instructions are very short and they deserve to be extracted hereunder:-

"Reference Board's letter No.E(D&A)62RG6-15 dated 29.3.1962 wherein it was laid down that non-gazetted staff whose conduct is under investigation for charges meriting dismissal/removal from service, including those under suspension, should not be transferred from one Railway administration to another till after the finalisation of the departmental or criminal proceedings against them. The Board have considered the matter further and have now decided that 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 merit imposition of a major or a minor penalty."

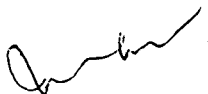


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3, Shri Mainee further states that the correct procedure when an officer is under cloud is to have the matter investigated and transfer is not the solution. The transfer is challenged on the plea that it was not in the exigencies of service but to ease out an inconvenient worker. He cited the judgement of the Lucknow Bench in the case of U.C.Chaturvedi vs. Union of India & ors. - SLJ 1998 (3) C.A.T. 69. He thereafter cited the decision of the Jabalpur Bench of the C.A.T. (Circuit Camp Gwalior) in the case of Rajiv Saxena vs. Collector of Central Excise, Indore & ors. - ATR 1990 (1) C.A.T. 378. In that case, the Bench held that transfer is not the substitute for a proper disciplinary action and, in fact, whenever there is a serious allegation against the Govt. servant, he should not be transferred but his conduct properly investigated. He cited the following other decisions:-

1. SLJ 1996(1) CAT 620 - R.P.Gupta vs. Union of India, through its Secretary, Min. of Communications & anr.
2. 1993 (1) SLJ (CAT) 18 - S.B.Rao & ors. vs. Union of India & anr.
3. ATJ 1996 (1) 85 - Ashim Kumar Chattopadhyay vs. Union of India & ors.

4. The sum and substance of the above decisions is that when an order of transfer has caused stigma, such an order cannot be sustained. In the case of Kamlesh Trivedi vs. I.C.A.R. - (1988) 7 ATC 253 the proposition laid down is that no inquiry need to be made if no finding of guilt,



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misconduct or stigma is attached to an order of transfer simplicitor and that transfer may be on administrative grounds and source of the ground could very well be some complaint or allegation. It was further held that if the transfer is ordered in exigencies of service without giving any finding on the allegation, it would not be vitiated.

5. I have carefully considered the submissions of the ld. counsel for applicant. I don't have on record a transfer order. Admittedly, no such order was served on the applicant. Without the transfer order, there is no immediate cause of action. Annexure A-1, however, at page 11 gives a direction for transfer. That direction emanating from the G.M. has to be complied with and thus gives a valid ground to agitate in this O.A.

6. The decisions quoted by the ld. counsel have to be read in terms of the Full Bench judgement in Kamlesh Trivedi's case (supra) and to the extent they are inconsistent with the Full Bench judgement in Kamlesh Trivedi's case, they do not lay down the correct law.

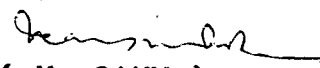
7. That apart the law laid down by the Hon'ble Supreme Court in the case of Gujrat Electricity Board vs. Atmaram Sungomal Poshani - AIR 1989 SC 1433, referred to consistently by the apex court itself in other judgements, states that a transferred employee has no other right except the right of representation. No legal rights of an employee are affected by an order of transfer. The Hon'ble Supreme Court in Atmaram Sungomal Poshani's case (supra), however, emphasised that the right of representation is

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also embedded in the Central Service Rules and it is elevated to the role of an alternative remedy as far as a transferred employee is concerned.

8. I would therefore dispose of this O.A. by directing the applicant to file a representation with a copy of this order to the competent authority, the moment he receives the order of transfer. He shall, in particular, draw the attention of the competent authority to the Railway Board's instructions that no transfer can be made from one Division to another Division. This representation as and when it is filed, shall be disposed of by the competent authority in a reasoned speaking order within a period of four weeks from the date of its receipt and it is hereby directed that till the representation is disposed of, the applicant shall not be relieved and the existing status quo shall continue. This direction has become necessary in view of annexure A-1 which gives a categorical order to the concerned authority to transfer the applicant and also to relieve him. If however Annexure A-1 is not acted upon or the order of transfer is modified in a manner consistent with the Railway Board's instructions, then this direction also need not be considered by the competent authority.

9. The O.A. is disposed of as above. No costs.

  
( N. SAHU )  
MEMBER(A)

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