

Central Administrative Tribunal
Principal Bench

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O.A.No.2061/98
O.A.No.2062/98
O.A.No.2063/98

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

New Delhi, this the 18th day of December, 1998

O.A.No.2061/98:

Shri Bhupenendra Kumar,
S/o Shri Raj Pal Singh,
Booking Supervisor,
Northern Railway,
Bulandhaahr. Applicant

(By Advocate: Shri B.S. Maine)

-Versus-

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradab ad.
3. The Station Superintendent,
Northern Railway,
Bulandshahr. Respondents

(By Advocate: Shri R.L. Dhawan)

O.A. No. 2062/98

Shri Om Pal Singh,
S/o Shri Kishan Singh,
Booking Clerk
Northern Railway,
Gajraula

under Commercial Inspector,
Northern Railway,
Hapur. Applicant

(By Advocate: Shri B.S. Maine)

-Versus-

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

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3. The Commercial Inspector,
Northern Railway,
Hapur.

Respondents

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(By Shri R.L.Dhawan, Advocate)

O.A. No. 2063/98

Shri Ajay Kumar Verma,
S/o Shri Radhey Shyam Verma,
Sr. Booking Clerk,
Northern Railway,
Dehradun.

Applicant

(By Advocate: Shri B.S. Mainee)

-Versus-

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

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

3. The Station Superintendent,
Northern Railway,
Dehradun (U.P.)

Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

All the three applicants in these three OAs while working as Booking Clerks have been transferred from Muradabad Division of Northern Railway to the Lucknow Division of the same railways by the impugned order, Annexure A1 dated 28.9.1998. The applicants have a common case that the impugned transfers have been made on the directions of General Manager, Northern Railway, Baroda House, New Delhi and that these transfers are punitive in nature and not in public interest.

2. The respondents in their reply have firstly raised two preliminary objections, namely, that the Principal Bench does not have territorial jurisdiction in the matter and the OAs are thus not maintainable and secondly that applicants have approached the Tribunal

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without exhausting the departmental remedy. On merits, they say that the transfers have become necessary on administrative grounds. They also submit that it is settled law that the transfers being an incidence of service the decision of the competent authority cannot be interfered with.

3. I have heard the counsel on both sides on the question of jurisdiction. The respondents have cited the orders/decision of the co-ordinate Bench in Filing No.1710 dated 25.8.1998 (of which I was also a Member). In that order the plea that the jurisdiction also lay with the Principal Bench was not accepted. Shri B.S.Mainee, learned counsel for the applicant has cited an order of the Full Bench of this Tribunal in OA No.458/90 decided on 8.1.1991. In this case the following point was referred to the Full Bench:

"Whether in the facts and circumstances of the case this Bench of the Tribunal has jurisdiction to entertain the petition of the Applicants (who want to offer their candidature for Civil Services Examination, 1990) on the ground that although the impugned order was passed by an authority located at Delhi but it affects their rights at the places they are residing?"

4. The Full Bench concluded that the cause of action arose both at Delhi as well as the place where the applicants were residing and thus both the benches had jurisdiction.

5. It appears that the afore mentioned decision of the Full Bench of the Tribunal in OA No.458/90 was not brought to the notice of the Co-ordinate Bench in Filing No.1710 dated 25.8.1998. I am therefore following the decision of the Full Bench and hold that as the impugned

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order was issued on the direction of the authority, General Manager, Northern Railway located in Delhi, the Principal Bench has also jurisdiction in these OAs.

6. The second objection raised by the respondents is that the applicants were required to exhaust departmental remedy before approaching the Tribunal. It is the respondents themselves who say that on issue of the impugned order the applicants were treated as having been relieved and they were to report at their new place of posting. In these circumstances, no scope was left to the applicants to seek departmental remedy since they had already been deemed to be relieved. I therefore find that this objection of the respondents is also without merit in the facts and circumstances of the case.

7. I now come to the crux of the problem. It is alleged by applicants and not denied, by the respondents that in the case of all the three applicants there were certain vigilance checks and the applicants were suspected to be indulging in corrupt practices. The learned counsel for the applicants in his arguments, in this background, submitted that the impugned transfers were punitive in nature and carried a stigma. He submitted that such transfers which have their basis in alleged misconduct amount to even a greater punishment than those under the disciplinary rules as it adversely affects an employee as well as his family. The learned counsel for the applicant highlighted the fact that the impugned transfers were of an extraordinary nature as the interse seniority of the cadre of Booking Clerk is

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maintained division wise and therefore the applicants were likely to have difficulties in their service prospects also.

8. The learned counsel for the respondents, on the other hand, apart from citing a number of judgments on the point that ordinarily the Tribunals and Courts should not interfere with transfers also produced a copy of the Railway Board's letter No.E(NG)I-90/TR/11 dated 2.11.1998 on the subject of inter divisional transfer of ticket checking staff and other staff in mass contact area. According to this letter it has been decided that ticket checking staff detected to be indulging a malpractices should be transferred on inter-divisional basis.

9. I have given careful thought to the submissions made on both sides. There is no doubt that the provocation for the impugned orders for transfer is the vigilance check against the applicants. In their reply the respondents have stated that on receipt of certain complaints of malpractices the vigilance organisation of Northern Railway conducted enquiries and prima-facie cases have been established against the applicants. There upon competent authority has decided that in public interest the applicants should be transferred to Lucknow Division, in terms of Rule 226 of Indian Railway Establishment Code Volume.I. It would thus appear that in the eyes of the respondents, the continuation of the applicants at their present places of postings is not desirable in view of the fact that prima facie cases have been found against them involving allegations of corrupt practices.

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10. The line between a transfer on administrative ground and a penal action becomes rather thin in certain circumstances. Where government servants of doubtful integrity mix with similar elements and use their friendship, contacts and association with bad elements to further their nefarious activities their transfer becomes a matter of urgent administrative necessity since they would otherwise use their influence to nullify disciplinary proceedings against them. However, when no disciplinary action is taken but the administration contents itself by transfer to an inconvenient station then the action of the authority begins to take the hue of a punishment with the sole object of teaching a lesson to the employee and of setting an example to others. In such cases there is a stigma and when the affected employee does not get to be heard, patently the right of natural justice has been denied to him.

11. In the present cases under discussion, it is an admitted position that vigilance checks were conducted against the applicants. Further the respondents themselves say that prima-facie cases have been established against the applicants. However, there is no whisper of any further action against the applicants except the impugned order of transfer. There is thus no allegation implied or otherwise that the continuation of the applicants at the present places of posting is likely to affect adversely the course of justice in that the applicants may try to win over the witnesses or in any other manner interfere with the enquiry. When the transfers are so unusual as to be against the current

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practice of continuing them within the Division, the punitive nature of such transfers become even more highlighted and in such cases the transfer becomes a stigma. Admittedly the scope of interference in the matter of transfers is limited and ordinarily no interference should be made. However where arbitrariness or malafide is writ large on the face of the order the courts can step to ensure that justice is done.

12. In the facts and circumstances of the case, finding that the impugned orders have not been issued in the ordinary course of administration but are a camouflage for an order of punishment the impugned orders in so far as the three applicants are concerned are quashed and set-aside. It is however made clear that the respondents, if they have not already done so, are free to initiate appropriate disciplinary proceedings against the applicants and thereafter if they consider that such transfers are necessary in public interest so that the applicants do not try to influence the witnesses, they can act accordingly. Needless to add that the respondents are free to consider the transfers within the Division if these are otherwise required in public interest.

All the three OAs are disposed as above. No order as to costs.

(R. K. Ahooja)
Member (A)

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Attest
Hansraj
18/11/1988