

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(16)

O.A. No.2234/98

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

New Delhi, this the 2nd day of June, 1999

Shri Anil Kumar Tiwari
S/o Shri S.C. Tiwari
Sr. Booking Clerk
Northern Railway
Under Station Superintendent
MuradnagarApplicant

(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 Station Superintendent
Northern Railway
Muradnagar Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

The applicant, a Senior Booking Clerk in Muradnagar, Northern Railway, is aggrieved by the order of his inter divisional transfer by order at Annexure A-1 dated 23.9.1998. He submits that on 1.8.1998 there was a vigilance check and a shortage of Rs.138/- was found in his cash as compared to Daily Train Cash Book. The applicant was thereafter placed under suspension by an order at Annexure A-2 dated 17.8.1998. The impugned order of inter divisional transfer from New Delhi Division to Ambala Division was also issued. The applicant alleges that the said order of inter divisional transfer is punitive in nature and being arbitrary, discriminatory and mala-fide, has prayed that the same may be quashed.

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2. The respondents in their reply have firstly raised a preliminary objection that the Principal Bench has no jurisdiction to entertain this application as the cause of action arose at Muradnagar. They say that the impugned order has been passed by the competent authority in the exigencies of service and in accordance with rule 226 of Indian Railway Establishment Manual, Volume I which empowers the competent authority to transfer Group 'C' and 'D' Railway servants from one Division to another. They also rely on Railway Board's instruction No. E(NG)I-90/TR/11 dated 2.11.1998 (Annexure R-3) whereby Railway Board have desired that staff in mass contact area detected to be involved in mal-practices should be transferred on inter divisional basis.

3. During the course of the arguments, Shri R.L. Dhawan, learned counsel for the respondents, submitted that the present O.A. is not maintainable before the Principal Bench as the applicant was posted at Muradnagar where the cause of action arose. He further argued that alternatively the Bench having jurisdiction at Ambala, where the applicant had been posted, could take cognizance of the grievance of the applicant. In this connection he cited the orders of a Coordinate Bench (of which I was also a Member) in File No.1710 dated 25.8.1998 decided on 4.9.1998. In that order in similar circumstances the plea that the Principal Bench had jurisdiction was not accepted. However, as pointed out by Shri Maine, a similar question had also arisen in O.A. No.2061/98 which was decided by a common order dated 18th December, 1998. It was noted therein that a Full Bench of this Tribunal in O.A. No.458/90 Shri Alok Kumar Singh and Another v. Union of

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India and Another (Full Bench Judgments of CAT, Vol.III, p.7) decided on 8.1.1991 had held that the Bench having territorial jurisdiction over the place where the authority had passed the order could also exercise jurisdiction. On that basis it was held that the said O.A. was maintainable at Delhi. In the present case also the impugned order had been issued on the basis of the directions of the General Manager, Northern Railway, Baroda House, New Delhi. Following the ratio of Full Bench judgment the Principal Bench would have jurisdiction in the matter.

4. Shri Dhawan next submitted that the Hon'ble Chairman of the Tribunal, while deciding an application for transfer PT No.260/98 (copy at Annexure R-2 attached to M.A. No.2630/98), has held that the cause of action would arise only where the consequences of the order would fall, unless the application is transferred to another Bench under Section 25 of the Administrative Tribunals Act, 1985 read with Rule 6 of Central Administrative Tribunal (Procedure) Rules, 1997. He submitted that this Bench was bound to follow the interpretation of a Coordinate Bench presided over by the Chairman of the Tribunal. He also submitted that in case this Bench came to hold a contrary view, then the matter should be referred to a larger Bench. After hearing the learned counsel for the applicant, Shri B.S. Maine, the suggestion to refer the O.A. to the Division Bench was rejected by an Order dated 7.5.1999.

5. The contention of Shri Dhawan essentially raises two points; firstly, when there is a difference of opinion between various Coordinate Benches, the matter

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should be referred to larger Bench and secondly, that the decision of a Bench presided over by the Hon'ble Chairman takes precedence over the decision of any other Coordinate Bench, whether composed of one or more members. In the normal course as these are questions of law I would have referred these issues for being placed before a Division Bench. However, as the legal position on these questions is already well settled and is clear from the reading of the language of the Administrative Tribunals Act, 1985 itself, I do not consider it necessary to make such a reference. In so far as the first question is concerned, Hon'ble Supreme Court have in K. Ajit Babu & Others v. Union of India and others, JT 1997(7) S.C. 24 ~~etc.~~ already interpreted the legal position and I can do no better than to reproduce the observations of the Hon'ble Supreme Court:-

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6. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger bench/full bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches.. The larger Bench, then, has to consider the correctness of earlier decision in disposing of the later application. The larger Bench can over-rule the view taken in the earlier

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judgment and declare the law, which would be binding on all the Benches (see Jhon Lucas (supra))." (emphasis supplied).

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6. Thus the view taken by a Full Bench of this Tribunal would take precedence over all other decisions of single or division Benches. As already pointed out, a full Bench of this Tribunal in O.A. No.458/90 was asked to answer the following question:-

"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.

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7. In terms of the Division Bench decision quoted above, the present O.A. would be maintainable before the Principal Bench as the order was issued at the instance of the General Manager, (P), Baroda House, New Delhi.

8. As regards the second question, Section 5(4)(a) of the Administrative Tribunals Act, 1985 is unambiguous in its language.

It reads as follows:-

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"(4) Notwithstanding anything contained in sub-section (1), the Chairman -

(a) may, in addition to discharging the functions of the Judicial Member or the Administrative Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Administrative Member, of any other Bench;"

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9. Thus the Chairman, on judicial side,

discharges the function of a Judicial Member or the Administrative Member as the case may be. He has, under this sub-section, certain special powers, i.e. to transfer the Vice-Chairmen or Member from one Bench to another Bench, to order constitution of a larger Bench, to authorise Vice Chairmen or Members of a Bench to discharge functions of another Bench, etc. All these powers are essentially of an administrative nature to ensure proper functioning of the Tribunal and do not clothe him with extra-ordinary powers while functioning as a Judicial or Administrative Member of a Bench of the Tribunal. There can, therefore, be no question of the decision of a Single or Division Bench presided over by the Hon'ble Chairman taking precedence over the decision of a Full Bench of the Tribunal.

10. Coming now to the merits of the case, the position admittedly is that the impugned transfer had taken place on account of the vigilance check made by the Vigilance staff. The applicant was also placed under suspension though, as the respondents say in their reply, the suspension order was later revoked. As already mentioned, reliance has been placed by the respondents on the Railway Board's instructions dated 2.11.1998 that

staff in mass contact area detected in indulging in malpractices should be transferred on inter divisional basis. Inter divisional transfer is an extra-ordinary measure which is normally not resorted to. A staff member transferred under the aforementioned instructions would thus be regarded amongst his colleagues as a person against whom a charge of corrupt practices has been established. In this light a stigma is cast upon the affected Railway employee even though he had had no opportunity to establish his innocence. I agree with Shri Dhawan that transfer is an incidence of service and normally Courts and Tribunals should not interfere in such transfers. However, where such a transfer is against the statutory rules, is a result of mala-fide or is in the nature of punishment, the Courts/Tribunals can step in. Where the transfer is admittedly on account of the misconduct of the applicant and the respondents, instead of initiating disciplinary enquiry, have chosen to transfer him under a provision meant for corrupt staff it would tantamount to punitive action undertaken without giving an opportunity to the affected persons to show cause. It cannot, therefore, be upheld. The impugned order is, therefore, liable to be quashed.

11. 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 applicant is 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

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against the applicant and thereafter if they consider that such transfer is necessary in public interest so that the applicant does not try to influence the witnesses they can order the inter divisional transfer. Needless to add that the respondents are also free to consider the transfer of the applicant ^{within the Division} if it is otherwise required in public interest.


(R.K. AHOOJA)
MEMBER (A)

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