

Central Administrative Tribunal
Principal Bench
New Delhi

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O.A. No. 2257/98

Decided on 28.4.99

Shri T.C. Kataria Applicant
(By Advocate: G.D. Gupta)

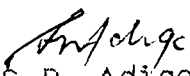
Versus

Union of India & Ors. Respondents
(By Advocate: Shri Rajeev Sharma)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not ? No.


(S.R. Adige)
Vice Chairman (A)

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No. 2257/98
Dated, this the ~~28th~~ 28th April, 1999

(6)

Hon'ble Mr. S.R. Adige, Vice Chairman (A)

Shri T.C. Kataria,
S/o Shri T.D. Kataria,
R/o C-26K, Railway Colony,
Gulabi Bagh,
Lajpat Nagar,
New Delhi-110024.

.... Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. Union of India through the
General of India,
Northern Railway Headquarters,
Baroda House, New Delhi.
2. The General Manager (Personnel)
Northern Railway Headquarters,
Baroda House, New Delhi.
3. The Administrative Officer,
Northern Railway,
Central Hospital, New Delhi.
4. Dr. Sudhir Kumar Sharma, D.M.O.,
Northern Railway, Lajpat Nagar,
Health Unit, New Delhi. Respondents

(By Advocate: Shri Rajeev Sharma)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant is aggrieved by the impugned order dated 24.6.98 (Ann. A-1) transferring him from New Delhi to Udampur, and the order dated 6.11.98 (Ann. A-2) rejecting his representation against the aforesaid transfer order, pursuant to the Tribunal's order dated 4.9.98 (Ann. A-28) passed in O.A. No. 1319/98 challenging the aforesaid order dated 24.6.98.

2. The facts and circumstances leading upto the impugned orders dated 24.6.98^{are} discussed in detail in the Tribunal's aforesaid order dated

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4.9.98 disposing of the O.A. No. 1319/98, in which applicant had impugned the transfer order. After noticing that applicant had represented against the impugned transfer on 7.7.98, O.A. No. 1319/98 was disposed of by order dated 4.9.98 with a direction to respondents to dispose of that representation by a detailed and reasoned order within two months of receipt of a copy of the order under intimation to applicant. 7

3. Respondents have passed impugned orders dated 6.11.98 rejecting the representation, against which the present O.A. has been filed.

4. Amongst the grounds urged in the O.A. it has been contended that the impugned transfer order is malafide, arbitrary, punitive, violative of the principles of natural justice and the result of prejudice on the part of respondent No. 4 Dr. S.K. Sharma, who it is alleged, prevailed upon the authorities to get the transfer order issued. It is contended that only applicant has been picked out for the transfer, while those Pharmacists with even longer stay have not been touched. Applicant alleges that he is being victimised for his Union activities and seeks to draw support from the fact that just before the impugned order dated 24.6.98, he was transferred from Lajpat Nagar to Basant Lane Health Unit, on 10.6.98. It has been contended that the impugned transfer is in contravention of respondents circular dated 27.3.65 (Ann. A-31) that those Railway employees whose

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conduct is under investigation for charges meeting dismissal/removal should not be transferred from one Railway administration to another. Personal difficulties, including the fact that applicant's wife is working in Delhi and his son is studying in Class III have also been pleaded. Applicant has urged that the ground taken by respondents that applicant was picked out for transfer on 24.6.98, because he was the best man available, is inconceivable when they were fully aware that a charge sheet had been issued to him on 9.6.98. Other grounds have also been taken.

5. Respondents in reply challenge the O.A. and deny the allegations ^{that the impugned orders are} arbitrary, malafide, punitive or violative of principles of natural justice. They contend that the post of Pharmacist, Udhampur Health Unit to which applicant has been transferred, is sanctioned for a period of one year only and is need based and work charged, and applicant will continue to retain his lien in Central Hospital, New Delhi. They contend that the transfer has been made purely in the administrative interest, and the representation was therefore rightly rejected.

6. I have heard applicant's counsel Shri G.D. Gupta and respondents' counsel Shri Rajeev Sharma. Both sides reiterated the stand taken in their respective pleadings. While Shri Gupta relied upon the rulings in 1993 (1) SCC 148, Shri Sharma relied ^{on} 1989 (2) SCC 602; 1989 (3) SCC 445, 1992 (1) 306;

1993 91) SCC 54; 1993 (4) SCC 357; and 1995 (5) SLR 97. The rulings relief upon by Shri Sharma reiterate the well established legal principle that transfers are an incident of service and Courts/Tribunals should be loathe to interfere, unless the transfer orders are illegal on the ground of violation of statutory rules, or on grounds of malafides, and for an inference of malafide to be drawn, there must be a firm foundation of facts pleaded and established and not merely on the basis of insinuation and vague suggestion. (9)

7. I have considered the matter carefully. Respondents have not denied the specific averment made by applicant in ground 5(T) of the O.A. that it is inconceivable that he, against whom a charge sheet was issued on 9.6.98, could be transferred on 24.6.98 on the ground that he was the best person available. Respondents were fully aware that applicant had been charge sheeted for gross misconduct on 9.6.98. Yet in their composite reply to grounds 5(A) to 5(P) of the O.A. they assert (at Page 26 of their reply), and have sought to justify the impugned transfer on the ground that applicant was chose for the transfer because of his ability and good record. Nothing has been shown by respondents to me to establish that despite being charge sheeted for gross misconduct, applicant's work and conduct was indeed so exceptional that he had to be picked up for the transfer while those with much longer periods of stay in Central

Hospital, New Delhi whose names have been mentioned in ground 5(H) of the O.A., and which has also not been specifically denied by respondents, were left untouched. Respondents have also not shown me anything to establish that it is applicant alone who possessed the necessary knowledge and skills¹ which necessitated his transfer to Udhampur in the public interest.

8. Under the circumstances the conclusion is irresistible that the impugned transfer~~has~~ not an order simpliciter, ^{but,} ~~that~~ was made for achieving a collateral purpose and involves colorable exercise of power² and to that extent is malafide.

9. In the result the O.A. succeeds and is allowed to this extent that impugned orders dated 24.6.98 and dated 6.11.98 are quashed and set aside. The interim orders dated 19.11.98 restraining respondents from compelling applicant to proceed in accordance with the impugned orders are made absolute. It is made clear that this order will not preclude respondents from proceeding with the departmental enquiry against applicant in accordance with law, or from filling up the post of Pharmacist Health Unit, Udhampur in accordance with rules and instructions. No costs.

Anfchq
(S.R. Adige)
Vice Chairman (A)

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