

Central Administrative Tribunal
Principal Bench

O.A. 2401/98

New Delhi this the 19 th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Suresh Kumar Bhola,
S/o Shri Bansi Lal Bhola,
Chief Parcel Clerk,
Northern Railway,
Meerut Cantt. Applicant.

By Advocate Shri B.S. Maine.

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. Respondents.

By Advocate Shri R.P. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 7.10.1998 at the instance of Respondent 1, that is the General Manager, Northern Railway, transferring him on administrative grounds from Delhi Division, CPC/MUT to Ambala Division.

2. Shri B.S. Maine, learned counsel for the applicant, has very vehemently submitted that the respondents cannot transfer the applicant from Delhi Division to Ambala Division and the impugned order is illegal, arbitrary and discriminatory. He has stated that the seniority of Parcel Clerks/Chief Parcel Clerks is division-wise and they can only

B

be transferred within the Division. The applicant was working as Chief Parcel Clerk (CPC) at Meerut Cantonment, Delhi Division when an incident had occurred on 21.8.1998. A person had approached him to book his cycle from Meerut Cantt to Swai Madhopur. A sum of Rs.40/- was paid towards freight for the cycle and the applicant had booked it for transportation and gave the receipt to the person concerned. According to him, soon after some persons identifying themselves as Vigilance Inspectors came to the office of the applicant and had checked his person and recovered Rs.23.50P which, he says, is his personal cash. The respondents have, however, alleged that a sum of Rs.50/- had been given to the Porter, named, Shri Ramesh Chander which was done at the instance of the applicant. The applicant was placed under suspension on 2.9.1998 which was revoked by letter dated 3.10.1998. The applicant's contention is that no charge-sheet had been issued against him though he states that he understands that the same is under preparation and the disciplinary proceedings are contemplated against him.

3. Learned counsel for the applicant has submitted that the respondents cannot make an inter-divisional transfer of Group 'C' staff to which the applicant belongs, which itself is a punishment and casts a stigma. According to him, as the seniority of Parcel Clerks and Chief Parcel Clerks is Division-wise, such a transfer is impermissible under the Rules. He has further very vehemently submitted that the transfer is no substitute to appropriate disciplinary action and the respondents ought to have conducted a disciplinary inquiry and not resorted to transfer which is, therefore, a punishment in the present case. He has also submitted that

18

the same has not been influenced by any administrative grounds as such in the impugned order. He has also referred to a number of judgements of the Supreme Court and the Tribunal in **Hari Ram Gupta Vs. State of U.P.** (1999(1) SLJ 162), **Mrs. P.K. Sandhu Vs. Shiv Raj V. Patil** (1997(3) SLJ 17), **Anand Parkash & Ors. Vs. Union of India & Ors.** (1999 (2) SLJ (CAT) 500 and **State of Gujarat & Anr. Vs. Suryakant Chunilal Shah** (1999(2) SLJ 28) and **Ashok Kumar Mouria Vs. Union of India & Ors.** (OA 286/99), decided on 20.5.1999, copy placed on record. His contention is that the transfer which has been made against the Rules cannot be upheld, as held by the Supreme Court in **S.C. Shah's case (supra)**. The involvement of a person in any criminal act has to be established by the truth being found out. He has, therefore, submitted that the impugned transfer order may be quashed and set aside with costs.

4. The respondents have stated in their reply that the applicant has been transferred from Delhi Division to Ambala Division vide G.M.(P) order dated 9/98 which has been conveyed in the impugned order dated 7.10.1998. According to them, the staff of Commercial Department may be transferred in ^{cases of} decoy check and trap while taking bribe/ over-charging or conniving in such activities for eradication of malpractices and corruption in Mass Contact Areas. Shri R.P. Aggarwal, learned counsel, has submitted that such transfers are done on administrative grounds. He has further submitted that the staff who are transferred in such circumstances do not lose their seniority in the new division in terms of Paragraph 311 of the IREM Vol.I. He has also relied on Rule 226 of IREC Vol.I under which the competent authority i.e. the General Manager has been vested the power in the exigencies of

B:

service to transfer Group 'C' and 'D' Railway servants. He has stated that under this provision, the competent authority has issued circular dated 2.11.1998 on the subject of inter-divisional transfer of ticket checking staff and other staff in Mass Contact Area. He has submitted that in the circular, it is noted that the decision had been taken by the Ministry of Railways on 10.7.1998 i.e. before the impugned order was passed in the present case on 7.10.1998 to effect inter-divisional transfer of staff in mass contact areas who were indulging in mal-practices and corruption. He has also referred to the letter dated 30.10.1998 dealing with the question of effecting inter-divisional transfer of staff repeatedly figuring in vigilance cases.

5. Shri Maine, learned counsel for the applicant, has vehemently submitted that neither the circular dated 2.11.1998 issued by the respondents and relied upon by them would apply in this case with retrospective effect nor the circular dated 30.10.1998 as it has nowhere been alleged that the applicant had repeatedly figured in vigilance cases. He has, therefore, submitted that the impugned transfer order is arbitrary and illegal. He has also submitted that he is unable to comprehend as to what is achieved by the respondents' action in transferring the applicant from one division to another because if as alleged the applicant is indeed corrupt, he would also spread corruption in the Ambala division. His submission is that if the respondents wanted to, they could initiate disciplinary proceedings against the applicant instead of passing the inter-divisional transfer ^{order} which is by way of punishment and against the laid down policy, rules and instructions. He relies on the Railway Board's letter dated 25.3.1967 which provides that

non-gazetted staff whose conduct is under investigation for charges meriting dismissal or 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. It has been stated in this circular that the Board has 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.

6. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. The respondents have relied on the circulars issued by the Railway Board dated 2.11.1998 and 30.10.1998. According to them, they have acted in accordance with the rules and instructions as the applicant is said to have demanded Rs.50/- after booking the cycle and taking the freight charges, which was asked to be paid to the Parcel Porter for quick disposal of the cycle. According to them, as no extra money was required for clearance of the consignment, there was no ground for acceptance of Rs.50/- which was in the possession of the Parcel Porter and the same was accepted by him and paid to him by the decoy as per the direction of the Parcel Clerk. It is also relevant to note that the impugned order dated 7.10.1998 had not been given effect to by the respondents till the interim order was passed by the Tribunal on 2.12.1998 for which no reasons have been given. Thereafter, the applicant has continued in the

same division. It is further noted that the applicant's suspension w.e.f. 2.9.1998 had been revoked by order dated 3.10.1998. In the suspension order, it has been stated that a disciplinary proceeding against the applicant has been contemplated/pending and the authorities have not even cared to indicate the correct position, which in this case could have been only contemplated at that time. The respondents have stated in their reply that no charge-sheet has yet been served on him.

8. The reliance placed by the respondents on the circular dated 2.11.1998 which permits inter-divisional transfer of staff, including Ticket Checking Staff, in mass contact areas will not be applicable to the facts in the present case. The submission of Shri R.P. Aggarwal, learned counsel that because the Ministry of Railways has taken a decision on this subject on 10.7.1998 i.e. prior to the issuance of the impugned order, it will be sufficient cannot be accepted, as it is settled law that an order can take effect only from the date it is issued which in the present case is 2.11.1998. No doubt, the impugned transfer order states that the GM(P), Northern Railway, has taken a decision to transfer the applicant from Delhi Division to Ambala Division on administrative grounds. The case of the respondents is that the applicant had been caught in a decoy check and he has been transferred from one Division to another by the GM(P) order for taking bribe/over-charging and indulging in such activities and this was done for eradication of mal-practices and corruption in mass contact areas. No doubt, the policy is laudable, but as submitted by the learned counsel for the applicant, by merely transferring the applicant from one Division to another, where he can also

spread the same mal-practice and corruption, the authorities cannot hope to eradicate this malady. In the present case, the respondents have not even initiated any disciplinary proceedings to justify the transfer of the applicant on urgent basis on administrative grounds, on the ground that otherwise he may influence the witnesses or otherwise tamper with evidence. In the present case, nothing has been brought on record by the respondents to show that the Railway Board circular dated 25.3.1967 dealing with the transfer of non-gazetted Railway staff whose conduct is under investigation has been either superseded or is not applicable. This circular provides, *inter alia*, that non-gazetted staff whose conduct is under investigation or 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. So in the facts of the case, it appears that the respondents have acted against their own laid down policy circulars on transfer matters.

9. It is settled law that normally the Courts and the Tribunal should not interfere with a transfer order which is a matter for the appropriate authority to decide unless the order of transfer is vitiated by *mala fides* or is made in violation of any statutory provisions (See. *Union of India Vs. S.L. Abbas* (1993(2) SLR 585), *N.K. Singh Vs. Union of India & Ors.* (1994(28) ATC 246)). In the present case, according to the respondents' own version given in the reply, the reason for transferring the applicant from Delhi Division to Ambala Division is that he has indulged in malpractice and corruption by demanding/taking bribe for booking the cycle, which was paid by the decoy as per his direction to the

Parcel Porter. After placing the applicant under suspension, the same has been revoked in about a month and no disciplinary proceedings have also been initiated against him till date. As the transfer order is against the laid down transfer policy in the Railway Board's letter dated 25.3.1967, and having regard to the judgement of the Supreme Court in S.L. Abbas's case (supra), the same is vitiated. In similar circumstances, the Tribunal in order dated 20.5.1999 in Ashok Kumar Mouria Vs. Union of India & Ors. (OA 286/99) had also come to a similar conclusion that the transfer order should be quashed and set aside.

10. In the result, for the reasons given above, the O.A. succeeds and is allowed. The impugned transfer order dated 7.10.1998 is quashed and set aside. However, it will be open to the respondents to take any appropriate action to transfer the applicant on administrative grounds within the Division in accordance with the relevant rules and instructions and also proceed against the applicant in accordance with law. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'