

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./xxx. No. 1670/95. /19 Decided on: 1.2.1996.

Vikram Singh. APPLICANT(S)
(By Shri In Person. Advocate)

VERSUS

UOI & Ors. RESPONDENTS
(By Shri K.K. Patel. Advocate)

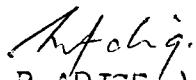
ORAM

THE HON'BLE SHRI S.R.ADIGE, MEMBER(A).

THE HON'BLE ~~XXX~~ / DR. A. VEDAVALLI, MEMBER(J).

1. To be referred to the Reporter or not? yes
2. Whether to be circulated to other Benches of the Tribunal? —


(DR. A. VEDAVALLI)
MEMBER(J).


(S.R.ADIGE)
MEMBER(A).

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1670/95

New Delhi: this the 1st February, 1996.

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

HON'BLE DR.A.VEDAVALLI, MEMBER (J).

Vikram Singh,
S/o Shri Budhai Dass,
Head Jamadar,
R/O Qr.No.179/C-4,
Basant Lane, Railway Colony,
Paharganj,
New Delhi

.....Applicant.

(Applicant in person)

Versus

1. Union of India through
the General Secretary,
Indian Railway Conference Association,
New Delhi.

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

3. The Chairman,
Railway Board,
Rail Bhawan,
New Delhi

.....Respondents.

By Advocate Shri K.K.Patel.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

In this application, Shri Vikram Singh, Head Jamadar, Office of the General Secretary, Indian Railway Conference Association, Headquarters New Delhi has impugned the order dated 28.3.95 (Annexure-A1) transferring him to Vijaywada, and has prayed for his posting to anyone of the various offices mentioned in the OA located in Delhi itself. He has also prayed for quashing of the Memo dated 6.4.95 (Annexure-A2) by which the departmental proceedings have been initiated against him, and has prayed for release of his pay and allowances w.e.f. 13.3.95 as well DA arrears from 1.1.95 together with other financial dues admissible to him. He has also prayed to restrain the respondents from evicting him from the

Railway Quarter in his occupation.

2. Shortly stated, the applicant who belongs to SC community was appointed as a Daily Wage Casual Labourers in the Construction Organisation, Northern Railway on 16.12.75 and was subsequently transferred to IRCA as Peon in July, 1984. He was proceeded against departmentally in September, 1987 on the minor charge of not cleaning the office premises properly, inspite of repeated verbal instructions which as his duty as ^{he} Farash, was required to do. The applicant submitted his reply to the above charge sheet wherein he did not accept his guilt, upon which on 29.9.87 the respondents imposed the minor penalty of stoppage of one increment for one year without further effect. The applicant filed an appeal against the aforesaid penalty before the aforesaid General Secretary, IRCA, but received no reply. Meanwhile on 23.3.88, the respondents issued another charge sheet to the applicant proposing major penalty under Rule 9 of the Railway Servants (D & A) Rules alleging that on 15.5.87 the applicant did not carry out the official business as directed by the CNI Headquarters Office and misbehaved and used abusive language. It is also alleged that he had put false charges on the Supervisors and the officials of the IRCA and had made a complaint direct to the higher authorities which was uncalled for and thus he had taken the law into his own hand. A little before, on 14.3.88, the applicant was placed under suspension. On 30.3.88, the applicant replied to the charge sheet denying the allegations. A departmental enquiry was conducted ex parte, in which the applicant was found guilty of the charge and on 23.5.88, he was dismissed from service. His appeal filed to the President, IRCA on 13.8.88 also did not give any result. Thereupon the

applicant filed an OA bearing No.1262/88 against the impugned order dated 23.5.88. An interim order was passed by the Tribunal directing the respondents to maintain status quo as regards the occupation of the Govt. accommodation. On 6.9.88 after the respondents contended that the IRCA, of which the applicant was an employee, was voluntary Association which did not come within the CAT's jurisdiction, the status quo in respect of the occupation of the Govt. accommodation was vacated. R.A.No.130/88 for review of the Tribunal's order dated 6.9.88 was disposed of on 7.4.89 holding that neither the OA 1262/88 nor was the RA 130/88 maintainable for want of jurisdiction. The applicant filed ^{an} SLP against the aforesaid order of the Tribunal. The Hon'ble Supreme Court, vide their order dated 18.5.89, stayed the applicant's eviction from the Govt. premises in question, and later, on 10.4.90, after finally hearing the SLP, set aside the Tribunal's order dated 7.4.89, and remanded the matter back to the Tribunal, directing that the OA No.1262/88 and R.A.No.130/88 be disposed of on merit and in accordance with law.

3. According to the said OA was heard and disposed of on merit by judgment dated 18.1.91, whereby in view of legal infirmities detected in the disciplinary proceedings, the impugned order of dismissal dated 23.5.88 was quashed and set aside, and the respondents were directed to reinstate the applicant forthwith with all consequential benefits.

4. According to the applicant, upon reinstatement he filed an application under Section 33-C(2) ID Act in the Central Govt. Industrial Tribunal-Cum-Labour Court, New Delhi, claiming a sum of Rs.43,881-50P as

difference of wages from 16.12.75 to 31.3.89. The Industrial Tribunal allowed the claim to the extent of Rs.28,146/- against which the respondents filed a revision application, but on 9.4.92, the Labour Court again ratified the claim of Rs.28,146/-. Thereupon he filed OA No.2479/92 in the CAT challenging the award of Rs.28,146/- and the Tribunal set aside the award vide order dated 22.4.94. The applicant filed RA No.218/94 on 6.6.94 for review of the judgment dated 22.4.94 but the same was rejected. Thereupon the applicant filed a SLP in the Hon'ble Supreme Court bearing No.23305-306/94 upon which the Hon'ble Supreme Court granted the leave and passed the order on 3.4.95 allowing the relief of Rs.15,000/- out of Rs.28,146/- which the applicant admits to receive on 18.5.95.

5. The applicant contends that after his reinstatement by the CAT's order dated 18.1.91 he discharge his duties and functions honestly and punctually but all of a sudden without any cause or reason, he was placed under suspension vide order dated 13.3.95 (Annexure-A3).

6. Thereafter equally suddenly the respondents revoked the suspension by order dated 27.3.95 (Annexure A4), upon which the applicant resumed the duty on 28.3.95. He states that on 29.3.95, when he approached the office for seeking three days' CL, it revealed to him by some employee that he had been transferred to Vijaywada and hence his leave application was returned to him at his residence. He states that the copy of the transfer order dated 28.3.95 was found pasted on wall of his neighbour's house. A

7. The applicant contends that this transfer has not been made in the exigencies of the service or in public interest but ^{is} ~~malafide~~, biased, illegal and arbitrary and has been made purely out of animosity on the part of the General Secretary, IRCA on account of the applicant's victory in various litigations referred to above.

8. The respondents in their reply have contested the OA. While they do not deny the factual aspect of the earlier litigations, they state that the applicant was transferred in administrative exigencies and no statutory rules have been violated while transferring him nor is his transfer illegal, arbitrary or malafide. They allege that on the morning of 10.3.95 he objected to the entry of Shri A.K.Sinha, Officer Grade II IRCA and misbehaved with him using filthy language. Shri Sinha had been called by the General Secretary for official work in his chamber. Upon Shri Sinha's written complaint, the applicant was placed under suspension w.e.f. 13.3.95 (Annexure-A3), but later that suspension order was revoked w.e.f. 27.3.95 (Annexure-A4) and on 28.3.95 (Annexure-A1) he was ordered to be transferred against an existing vacancy in the office of the Chief Neutral Inspector, Vijaywada. However, although the applicant was relieved on 28.3.95, he refused to receive the relieving orders, and signed the attendance register that date. He also did not collect the transfer passes. The respondents allege that the applicant by not performing his duties, misbehaving with the higher authorities violating the orders and acting in indisciplined manner, violated Rule 3(i), (ii) and (iii) Railway Servants (D & A) Rules for which he was charge-sheeted (Annexure-A2). The

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respondents further state that subsequently upon the applicant's representation, his place of transfer was changed from Vijaywada to Jhansi which falls within his home State of UP, but he neither took the transfer order nor proceeded to Jhansi.

9. We have heard the applicant who argued his case in person and Shri K.K.Patel for the respondents.

10. It is well settled that no employee has a right to remain at any particular station, or for any length of time at a particular station (Gujarat Electricity Board Vs. Atma Ram-AIR 1989 SC 1433; Shilpa Bose Vs. State of Bihar-1991 Supple. (2) SCG 659; UOI Vs. H.N.Kirtania-1989(3) SCC 447; UOI Vs. Thomas-1993 Supple (1) SCC 704 and UOI Vs. S.L.Abbas-JT 1993(3)678). On the other hand, a public authority cannot act arbitrarily or at whim in the matter of ordering transfers, and even in routine administrative matters, every public authority is required to act in accordance with the rule of law. In S.G.Jaisinghani Vs. UOI- AIR 1967 SC 1427, the Hon'ble Supreme Court has observed:-

"In a system governed by rule of law, discretion, when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view, means that decisions should be made by the application of known principles..... If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

11. In the present case, what public interest or administrative exigencies were served by transferring the applicant firstly from New Delhi to Vijaywada and subsequently to Jhansi, have not been clearly spelt out. In their short reply filed on 29.9.95, the respondents claim that the applicant was

transferred from New Delhi to Vijayawada as there was a constant demand from the Inspecting Officers there to fill up a vacant post of peon because the officials at Vijayawada were facing inconvenience while proceeding on official tour without being accompanied by a peon.

12. Various issues arise here. Firstly can the applicant who admittedly is a permanent Jamadar in the pay scale of Rs.775-1025 be called upon to discharge the duties of a peon in the lower pay scale of Rs.750-940 (Annexure A1) except as a measure of punishment pursuant to departmental proceedings? Secondly by revoking the applicant's suspension and the very next day transferring him to a distant place (Vijayawada) were the respondents in effect not intending to punish the applicant, and under the circumstance was this transfer not punitive in nature, and hence a colourable exercise of office and therefore liable to be interfered with? Thirdly was the public interest, or even for that matter administrative exigencies, best served by transferring the applicant to distant Vijayawada to fill up a vacant post of peon to accompany touring officers, when that post (being an unskilled Class IV post) could very well be filled up through local arrangement at Vijayawada itself and when Railway Board's as well as DPAR's instructions generally deprecate the practice of transferring SC employees to distant and remote places, (subject of course to the exigencies of service)? Fourthly, what public interest was served by transferring

the applicant to Vijayawada when the respondents themselves upon the applicant's representation agreed to cancel that transfer and post him to Jhansi instead? Fifthly, if the objective of the transfer was in fact the administrative exigencies of removing the applicant from the ICRA premises, was it a legitimate objective, and if it was, could not the same objective have been achieved by transferring the applicant to any one of the offices mentioned in the O.A. located within Delhi itself, more particularly having regard to the need to dispose of the pending D.E. against the applicant expeditiously?

13. No satisfactory materials are available on record to answer these issues which we have raised. As the applicant has made the G.M, Northam Railway as Respondent No.2 and the Chairman, Railway Board as Respondent No.3, we consider it fit and proper at this stage to direct the Respondents No.2 and 3 to consider each of these issues and dispose them of by a detailed, speaking and reasoned order within three months from the date of receipt of a copy of this judgment. If as a consequence of such consideration the respondents conclude that administrative exigencies could equally well be served by transferring the applicant to any of the offices mentioned in the O.A. within Delhi itself they will modify the transfer accordingly ^{in the light of relevant instructions/rule/s} _{Inter alia} the respondents will in their order also determine how the period of the applicant from 28.3.65 till the date of the order will be treated, and till such order is passed, not compel the applicant to vacate the premises presently in his occupation in Delhi.

14. The prayer for quashing the Memo dated 6.4.95 (Annexure A-?) by which the departmental proceedings were initiated against him is rejected, because in view of the allegations contained in the charge-sheet against the applicant no good grounds have been made out to warrant any interference in this case at this stage.

15. This O.A. is disposed of in terms of the contents of paragraphs 13 and 14 above. No costs.

A. Vedavalli

(Dr. A. VEDAVALLI)
Member (J)

Subba Rao
(S.R. SUBBA RAO)
Member (A)

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