

12

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TAA. No.889 of 1995

Decided on: 29.3.96

Shri Hem Chand & AnotherApplicant(s)

(By Shri B.S. Mainee Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri Rajesh Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

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


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 889 of 1995

New Delhi this the 29th day of March, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Shri Hem Chand
S/o Shri Charan Singh
Electric Fitter
2. Shri Dinesh Singh
S/o Shri Jaiveer Singh
Highly Skilled Fitter Grade.II .Applicants

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,
Allahabad.
3. The Senior Divisional Electrical
Engineer (TRS),
Northern Railway,
Ghaziabad. ..Respondents

By Advocate Shri Rajesh

ORDER

Hon'ble Mr. K. Muthukumar

This application is directed against the impugned order of transfer of the two applicants by a common order transferring them from Ghaziabad to Delhi on administrative grounds. The applicants allege that they have been illegally and maliciously

transferred as a punitive measure and have therefore, prayed in this application that this transfer order should be quashed and they should be allowed to continue to perform their duties in the Electric Loco Shed, Ghaziabad in which they were working. By an order of the Tribunal dated 1.6.1995, the respondents were directed to maintain status quo of the applicant in regard to that posting, and the interim order continued from time to time.

2. The brief facts in the case are that the applicants while working as Electric Fitters in the Loco Shed in Ghaziabad were stated to have been elected as office bearers of the Uttariya Railway Mazdoor Union (hereinafter referred to as URMU) of the Electric Loco Shed branch of the Union of Ghaziabad. The applicants allege that they have been transferred so as to deprive them of their right and privileges of the aforesaid Union and the above orders have been passed under pressure exerted by the General Secretary of the URMU as it is alleged that the election of the applicants as office bearers was not to his liking. The learned counsel for the applicant took me through the pleadings in order to highlight the background of the case which is briefly as follows:

(i) In the Electric Loco Shed at Ghaziabad there had been no election to the local branch of the URMU for at least 15 years and the Branch Secretary who was nominated for the said post had continued without taking any action to hold election and despite representation, no action was taken to hold

the elections. A suit was filed in the Munsif Court of Ghaziabad for declaring that the defendants in that suit were not office bearers and they should not be allowed to function as office bearers. An interim order was passed restraining the defendants from functioning as office bearers of the Ghaziabad Branch of the URMU till the disposal of the case or till elections were held. The suit was finally decided and with the consent of both the parties, the Hon'ble Munsif passed orders that the election of the Branch of URMU will be held through secret ballot in accordance with the provisions of the Constitution of the Union. Subsequently, the election was held in accordance with the above directions and the applicants were elected as Secretary and President of the URMU and the results of the elections were also notified. However, it is alleged that respondent No.2 did not allow the facilities as allowed to the elected office bearers of the URMU to the applicants and the charge of the Branch of URMU was also not handed over to the applicants by the previous office bearers. This matter was again agitated before the Munsif Court which by an interim order restrained the defendants from interfering with the functions of the plaintiffs in the suit and directing them to hand over charge. This order was passed on 5.4.1995. The learned counsel drew our attention to the fact that the impugned order of transfer was significantly passed on 6.4.95, in order to frustrate the interim order obtained by the applicants. The learned counsel argued that the aforesaid order was

brought about due the pressure exerted on Divisional Railway Manager, i.e., respondent No.2 by the General Secretary of the URMU and the respondent No.2 acting under such pressure had chosen to transfer these applicants when there was no administrative or public interest served by such transfer. Aggrieved by this, the applicants have moved this Tribunal with a prayer for quashing the impugned orders of transfer and for a direction to the respondents to allow the applicants to perform their duties as Railway employees as well as elected office bearers of the URMU of the Branch of the Loco Shed, Ghaziabad.

3. In the short reply filed by the respondents opposing grant of interim relief, the respondents have averred that the applicants were transferred on administrative grounds and such a transfer on administrative grounds is beyond the scope of any judicial review by this Tribunal. It is also submitted on behalf of the respondents that the applicants were held 'relieved' from Ghaziabad on 8.5.95 and this fact was not revealed before the Tribunal at the time of obtaining the order of status quo. In the main reply, the respondents have strongly denied that there was any pressure on the Administration from the General Secretary of the Union to transfer the applicants and the allegations of the applicants were baseless. The applicants had refused to accept the transfer order which was sent to them by Registered Post and they had moved the Tribunal without informing the Tribunal that they were actually relieved on 8.5.1995 itself. It is

also denied by the respondents that the transfer was made for extraneous reasons and have submitted that there had been no colourable exercise of power nor was the transfer intended as punishment in any manner. The transfer was purely on an administrative interest. The learned counsel for the applicant cited a catena of decisions to press the following points:-

- (i) Where there is discrimination or arbitrariness, the transfer can be subject matter of judicial review by the Tribunal (G.R. Gupta Vs. Union of India and Ors., ATR 1992 (2) CAT 316).
- (ii) Where the transfer on the alleged grounds of administrative exigencies which are in doubt and where the transfer was motivated by any extraneous considerations, it could be certainly looked into by the Tribunal (G.R. Gupta Vs. U.O.I. and Others, ATR 1992 (2) CAT 316).
- (iii) If there is colourable exercise of power, the transfer order would not be sustainable (ATR 1991(2) CAT 565 - Gunendra Chandra Debnath VS. U.O.I. and Others).
- (iv) The power of transfer is neither unaffected nor unguided. It is conditional because of the existence of the exigencies of service is a sine qua non for the exercise of power and it is absolute or uncontrolled (K.B. Shukla and Others Vs. Union of India and Others, SLR 1979 (2) page 58).
- (v) The order of transfer should clearly show the public interest and should not involve any arbitrariness or should not be punitive or mala fide in nature (Rajendra Chaubey VS. U.O.I. and

Another, A.I.S.L.J. (IX) 1993(3) CAT page 107).

(vi) Where the "public interest" is absent the order of transfer cannot be supported (Ramadhar Pandey Vs. State of U.P. and Others, JT 1993 (4) SC 72).

(vii) Absence of the disclosure on the part of the respondents as to what the administrative exigencies were and the transfer order was made as a sequel to some allegations against the applicant and when no enquiry was held, the transfer order becomes punitive and is liable to be quashed (Uma Shanker Vs. U.O.I. and Others, ATR 1990 (2) CAT 281).

The learned counsel for the applicant also contended that the transfer of the applicants out of the Division is beyond the jurisdiction of the authority and he is not competent to order interdivisional transfers. The learned counsel further argued that the respondents have, by ordering a peremptory transfer on the date succeeding the date applicants obtained a direction of the Munsif Court in their favour, would go to establish the motivation of the respondents behind this transfer and it can be obviously inferred that no exigency of service or administrative interest was served on such peremptory transfer. The learned counsel for the applicant argued vehemently that although the transfer is an incident of service, in this case, the transfer was clearly mala fide as the applicants were only Electrical Fitters and they were continuing in their present place of duty and no public interest is shown to have been served by an order of transfer so peremptorily issued and this

19

background of the entire matter relating to the election as office bearers and the orders passed by the Munsif Court in their favour directing the respondents not to interfere with their functioning were the extraneous considerations which were underlying the transfer and, therefore, cannot be said to be free from any bias and the transfer was clearly arbitrary. The learned counsel also argued that merely saying that the transfer will serve the public interest, particularly in the background obtaining in this case, is not sufficient. The learned counsel for the respondents on the other hand relied heavily on the decision in AIR 1993 (2) SC 224 Union of India & Others Vs. S.L. Abbas and argued that the Tribunal should not substitute its judgment for the judgment of the respondents and exercise its jurisdiction to question the competence of the respondents in effecting the transfer. He argued that as laid down by their Lordship in the aforesaid case that an order of transfer is an incident of Government service and unless the order of transfer is vitiated by mala fide or made in violation of the statutory provision, the Court should not ordinarily interfere with it. Even if there are some guidelines for such transfer and an order of transfer is made without following the guidelines, it cannot be interfered with because these guidelines do not confer on the employee any legally enforceable right. The Tribunal cannot substitute its judgment for that of the authority competent to transfer and cannot sit in appeal over the order of transfer.

4. I have heard the learned counsel for the

h

parties and have perused the record. On the earlier direction of the Bench, the learned counsel for the respondents produced the background papers relating to the transfer of the applicants for perusal of the Bench. He submitted that from the background papers it would be clear that a complaint was received from the Electric Loco Shed, Ghaziabad and on confirming that the complaint letter bears the signatures of the Supervisors, a report was called for from the Loco Shed. Ordinarily, the Tribunal does not interfere with the orders of transfer made in public interest unless some mala fide or arbitrariness is alleged.

5. From the background papers placed before me by the respondents, it is seen that a complaint was received from Electric Loco Shed, Ghaziabad and on confirming that the complaint bears the signature of the Supervisors, the complaint was forwarded by the Senior Electrical Engineer, Ghaziabad to the Railway Manager. These complaints were directed against the applicants alleging that they created obstructions and they were misbehaving with the officials in the Loco Shed. Subsequently, on the basis of the complaint, the Senior Divisional Personnel Officer was informed that the applicants were office bearers of the recognised Union and it was, therefore, proposed to transfer them out of Loco Shed, Ghaziabad in view of the problem being faced by the administration and office staff, as mentioned in the complaint. Subsequently, the consent of the Divisional Secretary of the Allahabad Branch of URMU was obtained and the impugned order of transfer was

issued. The learned counsel for the applicant has submitted that taking into account the background of the election of the applicants as office bearers and the orders obtained by them from the Munsif Court restraining the respondents from interfering with their functioning as office bearers, the order of transfer was clearly a mala fide one. It is alleged in the application that the election of the applicants as office bearers could not be frustrated, just because the election of the applicants as office bearers was not to the liking of the Divisional Secretary of the Union and, therefore, consulting him on the transfer of the applicants was clearly a mala fide action. It is not necessary to go into the question of motivation of rival members of the Union. All that is required to be satisfied is whether there is a reasonable foundation for the transfer and whether any public interest is served by such transfer and whether there was any arbitrariness or mala fide in such transfer. It is also to be seen whether the action to transfer has been taken as a punitive measure. On examination, if it is seen that there is no ostensible public interest that is served by such transfer and such an order is made for extraneous reasons, then the foundation for such a transfer can be looked into to see whether there is any arbitrariness or mala fide in this action. The learned counsel for the respondents refers to the complaints received against the applicants which resulted in the transfer of the officials. This has not been specifically averred in the written reply

of the respondents. The respondents have only averred that the transfer was made on administrative grounds and there had been no pressure of any kind and there had been no mala fide in the manner. It is, therefore, not necessary to go into the foundation for such transfer as submitted by the learned counsel for the respondents. Even if there had been some complaints against the applicants and the transfer was proposed, the respondents maintain in their reply that it was done purely on administrative interest. The applicants are admittedly Electric Fitters of the Loco Shed of Ghaziabad and their election as office bearers of the Union were notified. It is also an admitted position that by the interim direction of the Munsif Court, the respondents were restrained from interfering with the functioning of the applicants who were plaintiffs in that suit and this order was passed on 5.4.1995. Even admitting that there were complaints which were reported sometime in September, 1994, no action was taken by the respondents on this complaint till the matter was forwarded to the Divisional Railway Manager, Northern Railway on 20.02.1995 and later on, the Senior Divisional Mechanical Engineer, Ghaziabad proposed ^{in March, 1995} to transfer the applicants in the light of the complaints received earlier. Even then, no action was taken. However, immediately after the order of the Munsif Court was passed on 5.4.1995, the impugned transfer order was passed on succeeding date, viz. 6.4.1995 by the respondents. This cannot be held to be a mere coincidence in the light of the background of the case of the applicants; The

transfer does not appear to have been motivated entirely on the basis of administrative exigencies or purpose. The respondents have not shown how there was administrative exigency or interest served in the order of transfer of only these two 'selected' individuals from the Loco Shed at this point of time. It is also not clear whether the transfer has been necessitated on account of any administrative work or purpose required or due occurrence of vacancy at the other place of posting of the applicants and whether it was in accordance with any policy guidelines relating to such transfers and also whether these were the only two officials who could be transferred from the point of view of the work involved in administration etc. The respondents have not shown any such ground in their reply. Even if there is a background of complaints against the applicants, the proper course for the respondents would be to proceed against the applicants in accordance with the disciplinary procedure for any alleged misconduct. Transfer cannot be resorted to as a softer option to avoid taking disciplinary action for the misconduct if it is so warranted in the circumstances. Transfer is undoubtedly an incident of Government service but it should really be an incident and not a contrivance or a substitute for any other penal action for misconduct of the employee or for any other extraneous considerations. In the light of the above, the impugned order which appears to have been passed on extraneous considerations is to be held as arbitrary and,

therefore, cannot be sustained.

6. In the conspectus of the above discussion, the application is allowed and the impugned order of transfer is set aside. It is, however, open to the respondents to take such action as may be required under the conduct rules to proceed against any alleged misconduct of the applicants in the course of the discharge of the duties as employees of the Electric Loco Shed, Ghaziabad.

No costs.


(K. MUTHUKUMAR)
MEMBER (A)

RKS