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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.912/95

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

New Delhi, this 6th day of February, 1996

Shri Chattar Singh
s/o Shri Tika Ram
H.S.Fitter
Grade-I
Ticket No.48, C.W.S.
Delhi Division, Northern Railway
Tughlakabad, New Delhi. ... Applicant
(By Shri A.K.Bhardwaj, Advocate)

Versus

Union of India through:

1. The General Manager
Northern Railways
Baroda House
New Delhi.

2. The Divisional Railway Manager
Railway Division
Northern Railways
D.R.M.Office
New Delhi.

3. Shri R.P.Kaushik
Carriage & Wagon Superintendent
Tughlakabad
Northern Railways
Delhi Division
Tughlakabad
New Delhi.

4. Shri Ram Kumar Har, D.E.N.
Asstt. Engineer
Chairman
Area Housing Board
Tughlakabad
New Delhi. ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

The applicant has come before the Tribunal aggrieved by the order of his transfer from Tughlakabad to C.D.O., Bhiwani. He assails the transfer order on the ground of malafide and alleges that it is the outcome of an ulterior

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motive to deprive him of the allotment of Quarter and the same is therefore, malicious, discriminatory, arbitrary and stigmatic and the result of colourable exercise of power.

2. The case of the applicant is that he is a member of the Territorial Army and thus entitled for a better posting. He also claims that the transfer to far off place will disturb the education of his children and that he has been transferred even though similar employees with longer stay have been allowed to continue in Tughlakabad. More specifically, he alleges that the transfer is the result of a dispute over the allotment of a quarter to him. His Commanding Officer had recommended his case for allotment of a suitable quarter and had also claimed priority on the ground that lesser entitled persons had been already allotted accommodation. Initially, he was allotted a quarter No.104, which was on the third floor of building in the Railway Colony which he refused being an Asthma patient. Ultimately he filed an application before this Tribunal (OA No.741/94). At that time, he was allotted Quarter No.21(A). The applicant occupied the same on 05.10.1995 under intimation to respondent No.3 but the latter informed the applicant that the quarter had since been allotted to some Shri Ashok Kumar, whereafter his occupation of Quarter No.21(A) was declared unauthorised and he was informed that disciplinary proceedings will also be initiated against him. He alleges that the impugned order dated 14.5.1995, of his transfer to Bhiwani is the out come of the same. Since a number of persons mentioned by him in the Original Application have longer stay in Thughlakabad and as the transfer order has come in the wake of the dispute over Quarter No.21(A), he alleges that the transfer order is malafide and with a view to punish him for not acceding to the demands of the respondents to vacate the disputed quarter.

3. The respondents deny the allegations of the applicant and contend that the transfer of the applicant is purely on administrative grounds and in public interest. They have also denied that being a member of Territorial Army he is under any rule entitled ^{nr} him to any so called better posting.

4. I have heard the Counsel on both sides. The learned Counsel for the applicant has drawn my attention to the order of this Tribunal in OA No.741/94 in which directions were given that in terms of notice dated 31.10.1994 inviting objections, if any, to the allotment of quarter No.21(A), Railway Colony, Tughlakabad to the applicant, the respondents should allot that Quarter or any other Quarter to the applicant within one month. He submitted that the Tribunal's orders were issued on 25.4.1995. Thereafter, the applicant had approached Respondent No.3 with a copy of the order of the Tribunal and since no objection had been received he was advised that he could occupy the quarter. The learned counsel submitted that in any case the person to whom the quarter was allegedly allotted, Shri Ashok Kumar, did not belong to the entitled category and hence the action of the respondents to allot the quarter to ^{one} ^{nr} some, else was only with a view to make the Tribunal's order ineffective and inoperative. Thereafter, because of the applicant's failure to vacate the quarter the respondents resorted to the impugned transfer order by way of harrasement and to make him leave the quarter.

5. The learned counsel submitted that on the basis of case law cited by him the plea of public interest could not provide a cover to a transfer made on extraneous and malafide grounds.

6. The learned counsel for the respondents on the other hand argued that the order of this Tribunal in OA No.741/94 only consisted of a direction to the respondents to take a decision in the matter within a week to allot either Quarter No.21(A) or any other suitable Quarter. As the said quarter in the mean while, had been allotted to another person on compassionate ground by the higher authority, the applicant could not take law into his own hand and occupy the quarter forcibly. It was for this reason he had been directed to vacate the quarter. He denied that the impugned transfer order was an outcome of the notice given to him for vacation of the Quarter and in this context he pointed out that so far as the applicant's misdemeaner in occupying the quarter forcibly was concerned, the respondents were fully empowered to take action against him under the disciplinary rules as indeed had been done by them.

7. Having considered the matter carefully, I do not find much force in the explanation given by the respondents. The respondents have not denied that there are other persons of the same category as the applicant who have longer stay in Tughlakahbad. They also do not deny the assertion of the applicant that he is one of the 150 H.S.Fitters in Thuglakahbad and he has been transferred neither because he has the longest stay nor because he had any special skills for which his services ^{were} ~~are~~ needed at Bhiwani. The respondents have showed no guidelines whereby it could be established that the transfer of the applicant was in the normal course.

8. While, as the learned counsel for the respondents has stated, transfer is a normal incidence of service, it can nevertheless be questioned in judicial review if it is not made in public interest but on the basis of extraneous

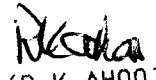
considerations. It has been held by the H.P. Administrative Tribunal in Naresh Kumar Vs. State and Others (SLJ 1995(1) Vol.55 P-29) that bare assertion that orders of transfer had been passed on public interest is of no value if respondents fail to lay any foundation for public interest. In Rohit Kumar Yadav Vs. Union of India and Another (ATJ 1994(1) Vol.16 P-115) the transfer order was quashed when the applicant had been singled out of 96 similarly placed employees and no evidence had been shown as to how the applicant had been picked upon ~~transfer was arbitrary~~. In Rajendra Chaubey Vs. Union of India & Others (ATJ 1995(18) P-460) it was held that it was a colourable exercise of power when the transfer order had been issued not on account of administrative exigencies but on the main consideration of alleged misconduct which should have been the subject matter of a disciplinary proceeding. In Mukesh Kumar Bagga Vs. Union of India and Others (ATJ 1994.2 Vol.17 P-141) - the transfer order was struck down when it was passed on account of the use of unfair means by the applicant in a selection test. In a recent case Brijinder Vs. Union of India & Others (in OA No.2565/94 decided on 30.11.1995) the transfer orders were struck down by the Tribunal since these were based on a decision to cancel the allotments which were allegedly obtained in a fraudulent manner.

9. It is clear in the present case that the transfer orders had followed closely on the heels of the allegedly unauthorised occupation of the Quarter by the applicant and the action taken against him for eviction. It is also seen that respondents have failed to lay atleast some basis to show the administrative exigencies or public interest served by the transfer of the applicant who is only one amongst many similarly placed. In fact, the nexus between the alleged

misdemeanor of the applicant and his transfer comes out and clear. When a transfer is ordered with a view to punish loudly. When a transfer is ordered with a view to punish the employee or for a collateral purpose then the same is malafide, arbitrary and is a colourable exercise of power, and hence liable to be set-aside. The impugned order is therefore, liable to be set-aside.

10. The learned counsel for the applicant has sought to rely on G.S.Tandal and Others Vs. Union of India (1955(2) 562 ATJ) to show that it is the administrative discretion of the respondents to post any employee anywhere and even if there are any instructions in the subject, they are only in the nature of guidelines and have no statutory force. In the case of Mrs. Shilpi Bose & Others Vs. State of Bihar and Others (AIR 1991 SC 532) the Supreme Court has held that the courts should not interfere with transfer orders which have been made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of malafide. The discretion exercised by the respondent cannot thus be sustained if it is based on malafide reasons or collateral purposes, in order to punish the applicant.

11. In view of the above discussion, the application is allowed and the impugned orders are quashed and set-aside. There shall be no order as to costs.


(R.K.AHOOJA)
MEMBER(A)

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