

10

Central Administrative Tribunal
Principal Bench.

O.A. No. 255/96

New Delhi on this 9th day of September, 1996.

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

Shri R.K. Gautam,
Sr. Parcel Clerk,
N. Rly. Tundla,
C/o Shri H.K. Gangwani,
Advocate,
CAT Bar Room, New Delhi.

..Applicant

By Advocate Shri H.K. Gangwani.

Versus

Union of India -through:

1. Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway,
Allahabad.
4. Station Superintendent,
N. Rly. Tundla,
Tundla.

..Respondents.

By Advocate Shri B.S. Jain.

O R D E R

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

The applicant is aggrieved by the impugned transfer order dated 22.12.1995 transferring him from Tundla to Madrak station and he has prayed for quashing this order.

JS

2. I have heard both the learned counsel for the parties and perused the records.

3. The main allegation made by the applicant against the transfer which he alleges is illegal and arbitrary, is that it has been made with ulterior motives and mala fide intention at the behest of the complainant, who had lodged a complaint about him to the respondents by letter dated 25.10.1994. Shri H.K. Gangwani, learned counsel for the respondents, submits that as requested in the complaint lodged by S.B. Singh & Co. that the applicant may be shifted from Tundla to other place, the respondents had carried out that request in terms of the impugned order. He further submits that on the same facts and allegations made by S.B. Singh & Co., the applicant has also been issued a chargesheet for major penalty on 12.9.1995, in reply to which he had asked for certain documents on 23.9.1995 which he alleges, have not been made available to him. In the circumstances, the learned counsel submits that by way of punishment, the respondents have transferred him from Tundla to Madrak station thereby disturbing his family and school going children. He submits that since the disciplinary proceedings are still pending, the impugned transfer order is also contrary to the Railway Board's letter No. E(D&A) 65RG-6-10 dated 4.3.1965 which, according to him, bars the respondents from making the transfer till after the finalisation of the departmental proceedings. He, therefore, submits that the impugned order of transfer is in colourable exercise of powers besides being discriminatory and punitive. He has relied on

js

12
a number of judgements, namely, T. Abdulkader Vs. Union of India (ATC 1994(27)40), R. Sadashiv Nair Vs. Union of India, (ATC 1993 (24) 308), P.S. Ahuja Vs. Union of India (SLR 1991(7) 461 and G.R. Gupta Vs. Union of India & Ors. (ATR 1992(2) 317).

2. The respondents have controverted the claim of the applicant that the impugned transfer order is illegal and arbitrary. They have submitted that the same has been issued on administrative grounds / ^{but} they have not denied the fact that a major penalty chargesheet has been issued to the applicant on 12.9.1995. They have further submitted that the applicant has been posted at Tundla for the last 10 years. Shri B.S. Jain, learned counsel for the respondents, has also relied on a number of decisions (list placed on record) and he has also submitted that the judgements relied upon by the applicant are not relevant in the facts and circumstances of the case.

3. It is settled law (See Supreme Court's decisions in Union of India Vs. H.N. Kirtania (JT 1989(3) SC 131), Union of India Vs. S.L. Abhas (1993 (2) SLR 585) and N.K. Singh Vs. Union of India (ATC 1994(2) 246), that the jurisdiction of this Tribunal to interfere in orders of transfer is very much limited and such interference is justified only in limited cases where mala fides have been shown or the order of transfer is made in violation of the mandatory statutory provisions when the Tribunal can interfere and quash the same. In this case, the applicant has relied upon the Railway Board's letter dated 4.3.1963 which stipulates that in case of non-gazetted staff whose conduct is under investigation, they should not be transferred

17

from one Railway Administration to another till after the finalisation of the departmental or criminal proceedings against them. During the arguments, the learned counsel for the applicant admitted that both Tundla station and Madrak station are within the same Railway Administration, i.e. the Allahabad Division. Therefore, this letter will not assist the applicant and the transfer is not invalid on this account.

4. Regarding the other ground of alleged mala fides, admittedly the applicant has remained in Tundla for more than 10 years. His allegation is that since there are other persons who have remained for longer periods, therefore, they should be transferred instead of him. This by itself does not show that the respondents have acted in abuse of their powers. It is for the competent authority to decide who is to be transferred and where. This Tribunal cannot sit as an appellate authority over the order of transfer passed by the competent authority which is otherwise valid. It cannot also be stated that the transfer has been done with ulterior motives only at the behest of the complainant S.B. Singh & Co. on which separate disciplinary proceedings have been taken. The case of T. Abdulkader (supra) is distinguishable on the facts, as in that case the alleged mala fide was against the 4th respondent who was the Minister of the Union Cabinet. In P.S. Ahuja's case (Supra), the Tribunal held that the applicant cannot resist the order of transfer merely on the ground that the departmental inquiry initiated against him has not been concluded and this case also does not help the applicant. In the circumstances of the case and on the materials on record, it is not possible to come to the conclusion that the transfer

14

order is either punitive, ^{or arbitrary} ~~or~~ mala fide, which justifies any interference in the matter. I have also considered the other arguments. Admittedly, the applicant holds a transferable post and since no statutory rules/instructions have been violated or mala fides have been established in this case, the claim of the applicant to quash the transfer order is rejected.

5. In the result, the O.A. fails and is accordingly dismissed. No order as to costs.

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

'SRD'