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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXA~~. No. 2565/94

Decided on: 30/11/95

OA No. 2561/94

Shri Brij Behari Singh.. Applicant (s)

Sh. S. P. Singh.

(By Shri B.S. Mainee. Advocate)

Versus

UOI & OTHERS. ... Respondent (s)


(By Shri R.L. DHAWAN. Advocate)

CORAM:

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

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

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


(DR.A. VEDAVALLI)
MEMBER(J)


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

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

✓ O.A. No. 2565 of 1994
New Delhi, dated the 30th Nov., 1995

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

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

Shri Brij Behari Singh,
S/o Shri Jagmohan Singh,
parcel Clerk,
Parcel Office,
Northern Railway,
Delhi Junction,
Delhi.

..... APPLICANT

VERSUS

1. Union of India through the
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Delhi Division, Northern Railway,
State Entry Road,
New Delhi.

3. The Station Superintendent,
Northern Railway,
Delhi Junction,
Delhi.

..... RESPONDENTS

O.A. No. 2561/94

Shri Satpal Singh,
S/o Shri Karan Singh,
Ticket Collector,
Northern Railway,
Railway Station,
Delhi.

..... APPLICANT

VERSUS

1. Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

..... RESPONDENTS

Shri B.S. Mainee, Advocate for the applicants.
Shri R.L. Dhawan, Advocate for the respondents.

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JUDGMENT

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

As these two O.As involve common question of law and point they are being disposed of by this common order.

2. The two applicants S/Shri Brij Behari Singh and Satpal Singh both employed in the Northern Railway, Delhi have impugned the orders dated 8.12.94 (Annexure A-1 of O.A. No. 2595/94 transferring them from Delhi to Khatauli and Baraut respectively.

3. Their contention is that the transfer is arbitrary, discriminatory, unjust, mala fide and punitive, and has been made not in the genuine public interest, but to compel them to vacate the Govt. premises in their occupation.

4. The respondents in their reply to the O.A. as well as during hearing have denied the contents of the O.A. They state that the applicants hold a transferable job and the transfers are fully in the public interest. It is stated that the two applicants by fraudulent means secured out of turn allotment of the Govt. accommodation in their occupation and it was decided by the competent authority to conduct a detailed inquiry into the case. As their presence was likely to affect the inquiry proceedings the competent authority decided to transfer them out of Delhi.

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5. We had called from the relevant departmental records to satisfy ourselves whether the respondents' stand did find support from the materials contained therein. From the relevant File XI 758 E/41/XXII Admn.F2 shown to us we find the respondents contention do not find support. Placed at 31. No.1 of that file is a letter dated 2.9.94 addressed to the competent authority stating that as a result of preliminary investigation done by Northern railway, vigilance it has come to notice that twenty two railway employees (including the applicants) were given quarters on out of turn basis in the Delhi area on fake letters carrying the G.M., Northern railway's approval and the case was referred to the C.B.I. for investigation who have recommended cancellation of allotment of the quarters and in order to get the quarters vacated (emphasis supplied) it is recommended that the employees be transferred out of Delhi area immediately. It was also recommended in that letter that these employees be not allowed to retain the quarters on any basis whatsoever, after cancellation of allotment of quarter.

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From the note portion of that file it appears that on receipt of that letter the matter was discussed by the concerned authorities with the competent authority who desired that all those involved in the case, as brought out in the letter be transferred out of Delhi and pursuant to those directions, the transfer orders were issued. There is not even a whisper in the file that the applicants are being transferred because their presence is likely to affect the inquiry proceedings.

6. If the respondents believe that the applicants have committed fraud in securing allotment of the quarters in question, it is open to them to proceed against the applicants in accordance with law. If the respondents contend that the applicants as a result of fraud and manouvre have illegally secured occupation of the premises in question and they seek to recover vacant possession of those premises by evicting the applicants, it is open to them to initiate action against the applicants under the relevant law/rules/instructions on the subject. It is not open to the respondents to use the instrument of a transfer to ^{secure} ~~take~~ the vacant possession of the premises in the applicants present occupation.

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Such a transfer order would clearly be punitive in character, and a colourable exercise of power, and for that reason malafide. It is well settled in a catena of Supreme Court judgments, one such being U.O.I Vs. H.N. Kirtania JT 1989 (3) SC 131 that the Tribunal is fully competent to intervene where the transfer is malafide.

7. In the result this O.A. succeeds and is allowed. The impugned orders dated 8.12.94 in so far as it relates to the two applicants before us are quashed and set aside. However, as stated in paragraph 6 above, it will be open to the respondents to proceed against the applicants in accordance with the relevant law/rules/instructions if so advised. Connected M.As No. 697/95 and 706/95 also stand disposed of. No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
Member (J)

S. R. Adige

(S.R. ADIGE)
Member (A)

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