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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. 2036 of 1994 New Delhi, the 31st July 1995

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

Shri Om Prakash,
S/o Shri Mangu Ram,
House No. 412, Pocket I,
Paschimpuri,
New Delhi.
(By Advocate: Shri S.K.Sawhney)

APPLICANT

VERSUS

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

2. Divisional Railway Manager,
Northern Railway,
D.R.M. Office,
New Delhi.
(By Advocate: Shri Rajesh)

RESPONDENTS

JUDGMENT

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

In this O.A. Shri Om Prakash, Office Supdt. D.R.M.'s Office, Northern Railway, New Delhi has impugned the order dated 19/22.9.94 (Annexure A.I) transferring him from Delhi to Jind.

2. Shortly stated the applicant who belongs to Scheduled Caste Community was issued a charge sheet that while working as Head Clerk at Shakurbasti, Delhi during May, 1983^{AA} was required to maintain the proper leave account of the staff to prepare their salary bill. ^{Om m} Shri Moti Ram had applied for LAP for 5 days and the same was sanctioned by the competent authority, but the applicant thereafter ^{allegedly} tampered with the attendance register and changed the LAP to

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C.L., and when Moti Ram complained, the applicant demanded something from him.

3. Although the applicant alleges that the charges were baseless, the respondents claim that the applicant had admitted to the charge but took the defence that no loss was caused to Moti Ram thereby.

4. Be that as it may, the applicant was transferred from Shakurbasti (Delhi) to New Delhi, Railway Station by order dated 25.10.83 while the vigilance inquiry was pending against him. Thereafter the applicant was promoted as Office Superintendent in the DRM's Office ^{Delhi} by order dated 4.3.84. More than 6 months later he was transferred by the impugned order dated 19/22.9.94 in the same capacity as O.S. Jind ^{by the impugned order}, against which the applicant has now come before this Tribunal.

5. In the grounds taken, it has been contended that the transfer orders were passed with reference to some vigilance case, which is punitive in nature and involves a colourable exercise of power; it violates natural justice; is malafide; violates transfer policy; and is otherwise arbitrary.

6. I have considered these grounds carefully.

7. In UOI Vs. H.N.Kirtania- JT 1989(3) SC 131, the Hon'ble Supreme Court had held that "the transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground

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of mala fides." Manifestly there has been no violation of statutory rules in this case. Applicant's counsel Shri S.K.Sawhney has invited my attention to the contents of Railway Board's letters dated 19.11.70 and 14.1.75 at page 320 of the Brochure on Reservation for Schedule Castes/ Scheduled Tribes in Railway Services, in which it has been stated that subject to the exigencies of service, transfer of SC/ST employee, should be confined to his native district or adjoining district or the places where the administration can provide quarter and he should be transferred very rarely and for strong reasons only. These circulars do not help the applicant in this particular case because firstly they are not statutory rules, but only guidelines; and secondly they ^{as rubricated} have been made subject to ~~the~~ ^{the} exigencies.

8. In so far as mala fides are concerned, it has been held ^{as} in catena of judgments that the ^{if mala fide} allegation has specifically to be pleaded, and the name of the person(s) against whom such allegation is levelled, ~~has~~ to be made a party, to enable him to rebut the charges. Furthermore, the allegation of mala fides has to be established on the basis of available materials. In the present case, all that has been alleged, is that the transfer is malafide and has been made in order to put him in difficulty as he has to shift his children in mid-scholastic. No person has been specifically named and no ground has been furnished why any person should bear animus towards the applicant. In this connection, Shri Sawhney has relied upon the Tribunal's ruling in N.N.Rao Aglawe Vs. UOI-ATJ 1994 (1) 437

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but that judgment does not help the applicant either because in that case all that had been stated was that the guide lines dated 24.6.85 regarding the special treatment to be given to the persons of SC/ST community in the cases of transfer, must be considered

and the representation against the transfer order must be disposed of by a speaking order giving reasons. In the present case, there is no averment made on behalf of the applicant that he had filed any representation against the transfer order which the respondents failed to consider. In fact without exhausting the opportunity of filing a representation, the applicant ^{As appears to} have approached this Tribunal, impugning the order dated 19/22.9.94 alleging that it is a colourable exercise of power.

9. Furthermore, merely because the impugned transfer order refers to certain orders passed by the Sr. DGM, New Delhi in a vigilance case, does not automatically ^{As} imply that the transfer order is a colourable exercise of power and is vitiated. If during the course of ^{any} vigilance enquiry, it is felt necessary in the administrative interest to transfer a person, it cannot be said that the transfer order is automatically punitive in nature or involves a colourable exercise of power. This has to be established by the applicant on the basis of materials on record and in the present case, the applicant ^{As} has failed to do so.

10. Under the circumstances, this matter warrants no interference. The O.A. fails and is dismissed. No costs.

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

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