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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1122 of 2000

New Delhi, this the 30th day of May, 2001

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri Bhunni Lal
S/o Shri Badri Thali
R/o 1291, Loni,
Ghaziabad, U.P.

-APPLICANT

(By Advocate: Shri Umesh Singh)

Versus

1. General Manager
Northern Railway
Baroda House,
New Delhi
2. A.E.N.,
Northern Railway
Delhi
3. Section Engineer (P-Way)
Northern Railway, Mori Gate
Delhi

-RESPONDENTS

(By Advocate: Shri R.L.Dhawan)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The present OA has been filed against the impugned order dated 7/8.6.2000 passed by the Section Engineer, Delhi i.e. respondent no.3, whereby the applicant is stated to have been transferred and spared from Gang No.67-A, Old Delhi to Gang No.1-A, Azadpur without any reason and justification.

2. Case of the applicant is that he is a permanent Gangman and working since the date of his appointment in Gang No.67-A at Old Delhi. It is submitted that applicant is an illiterate person and some departmental officials i.e. Pay Mistry, Clerk Bahadur and Radhe Shyam are harassing him by adopting various illegal tactics. It is alleged that these persons have

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not called him on duty from 16.3.2000 to 24.3.2000 and on 25.3.2000, they served the applicant a chargesheet and imposed punishment of forfeiture of his yearly pass for the year 2000. An appeal against that order is stated to have been filed by the applicant which is pending disposal. It is further alleged that officials of the respondents in the month of April, 2000 deliberately and illegally marked his absence on 13.4.2000 and 14.4.2000 which was National Holiday due to Dr. Ambedkar Birthday, on 15.4.2000 which was rest day and on 16.4.2000 which was Sunday. The applicant made a protest against this illegal action to the higher authorities whereafter the attendance register was corrected. It is after the complaint on which the attendance register was corrected that the above named officials of respondents' department started harassing more to the applicant and also did not allow him to discharge duties from 20.5.2000 to 22.5.2000, from 23.5.2000 to 25.5.2000 he worked at site and from 26.5.2000 to 8.6.2000, he was forced to sit in the office. Applicant made complaints vide representations dated 23.5.2000, 24.5.2000 and 1.6.2000 which were duly served upon the respondents but no action was taken thereon. The applicant has not been given duties from 20.5.2000 till the date of filing of this OA. A complaint is alleged to have been made to Vigilance Department also for proper inquiry.

3. On 8.6.2000, the applicant was served with the impugned order from Section Engineer through PWI transferring him to Gang No.1A, Azadpur, Delhi. The applicant pleads that since there is no direct train

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available from Loni to Azadpur and that he is not allotted a Government quarter, the transfer order would cause him great prejudice/problem in discharging his usual duties because duty hours start since 7.00AM morning.

4. In the grounds to challenge the impugned order, the applicant has simply stated that the transfer order is malafide and it has been prompted by those officials who have been harassing him. It is also submitted that persons junior as well as senior to the applicant have been retained in the same gang and his transfer was just to teach him a lesson as he had made complaints to the higher authorities. It is pleaded that since the services of the applicant could be utilised in the same department so on that account also, the transfer order is bad.

5. Respondents are contesting the OA. It is stated that since the Union of India has not been impleaded as a respondent, so this OA is bad for non-joinder of necessary party. Respondents have submitted that the transfer order has been passed on administrative grounds and in public interest. It is also submitted by respondents that initially the applicant was transferred from PWI, Shakur Basti in October, 1994 under PWI Delhi and was posted in gang no. 68 to 67A on 17.7.85 on his written request. Respondents have further pleaded that those officials who had been allegedly causing harassment to the applicant have not been impleaded, so the charges levelled against them should be treated as false and fabricated and respondents are unable to give comments on their behalf.

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It is submitted that applicant was absent from his duty unauthorisedly from 28.2.2000 to 15.3.2000 without any prior intimation and on 16.3.2000, he had requested to take him on duty as he could not attend office for the aforesaid period due to sickness. His applicant was sent to the competent authority on the same day.

6. As regards marking the applicant absent from 13.4.2000 to 16.4.2000, the department has submitted that railway being an essential service, the staff are booked on National Holidays and emergency for which extra payment is made. On 12.4.2000, a train was derailed in West Yard Delhi which obstructed the railway traffic. The gangmen of gang no.67 and 67A were deputed on 13.4.2000 and 14.4.2000 to meet the eventuality by repairing the track. All other gangmen of gang no.67A were present on 13.4.2000 and 14.4.2000 but the applicant absented himself even on this grave hour of emergency. However, his absence for the said period has been regularised. It is further stated that applicant was transferred from gang no.67A to gang No.A DUK on 18.5.2000 but he refused to accept the letter on 18.5.2000 in the presence of three of his colleagues and did not attend his duty from 20.5.2000 onwards. It is denied that the applicant was not given duty during the period 20.5.2000 to 23.5.2000. The respondents have also pleaded that transfer order has been passed in exigency of service and the applicant cannot challenge the same once he is liable to be transferred by the orders of the management which are passed in public interest.

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7.. I have heard learned counsel for the parties and gone through the records.

8.. As regards liability of the applicant to be transferred from one place to another, that is not in dispute. Learned counsel for the applicant has not been able to show any circular or document issued by the department according to which it could be established that applicant is not liable to be transferred. As regards malafide alleged on the part of certain officials of the respondents' department, it is pertinent to mention here that applicant has not arrayed those officials as respondents. So the fact that the applicant was harassed by some clerks in the office of respondents, remains unestablished as they have not been impleaded as respondents. Even otherwise, the harassment at the level of clerks seems to be no ground for assailing the orders of transfer because it is for the management to see at what place they have to utilise the services of their employee and the employee cannot ask for a choice place of posting, particularly so when he is liable to be transferred in accordance with the rules. The applicant has also not been able to show as to how the impugned order is against the rules and instructions which are being followed by the department while passing transfer orders..


9.. None of the grounds taken by the applicant in para 5 of the OA show that order of transfer is malafide or it is in violation of any statutory rules. Hence I am

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of the opinion that this OA deserves to be dismissed as applicant is unable to assail the order of transfer. I, therefore, dismiss this OA. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

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