

- 4 -

CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No.1887/1989.

DATE OF DECISION: February 9 1990.

Shri Suraj Ram & Another	Applicants.
Shri B.S. Mainee	Advocate for the applicants.
	V/s.	
Union of India	Respondent.
Shri A.K. Sikri	Advocate for the respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reports of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? yes.
3. Whether his Lordship wishes to see the fair Ms. copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

(P.C. Jain)
9/2/90
Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL - 5.
NEW DELHI

O.A. No.1887/1989.

DATE OF DECISION: February 9, 1990.

Shri Suraj Ram & Another Applicants.
Shri B.S. Mainee Advocate for the Applicants.
V/s.
Union of India Respondent.
Shri A.K. Sikri Advocate for the Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicants, who are working as Khallasi (applicant No.1 working under Inspector of Works-I, Northern Railway, Kishan Ganj, Delhi and applicant No.2 working under Inspector of Works, Northern Railway, Tis Hazari, Delhi) and are under suspension with effect from 21.7.89, have challenged their transfers vide order dated 25.8.89 (Annexure A-1 to the application). Applicant No.1 has been transferred from Delhi to Kurukshetra and applicant No.2 from Delhi to Shamli. In the relief, they have prayed for quashing the impugned orders and for direction to the respondents to allow them to work on their posts peacefully and without any interference. They have also prayed for the costs of the proceedings to be awarded to them and for any other orders which the Tribunal may deem fit and proper under the facts and circumstances of the case.

2. The facts of the case, in brief, are as under: -

The applicants are brothers and they were appointed as Casual Labourers on daily wages on 4.9.1975 and 20.5.1974 respectively. Applicant No.1 was retrenched on 10.9.77

Clean:

- 6 -

and was reappointed in September, 1977 itself in the office of Inspector of Works (Estate) as Casual Khalasi and has been in continuous service since then. Applicant No.2 has also been in continuous service since 1974. Applicant No.1 who has been working under I.O.W., Delhi Kishanganj has been transferred in the same capacity under I.O.W., Kurukshetra and applicant No.2 who has been working under I.O.W., Tis Hazari has been transferred in the same capacity under I.O.W., Shamli, vide Order No.12E/3, dated 25.8.89. They have been transferred to the respective stations along with their posts and consequently their Headquarters also stand transferred to the stations of their postings. The applicants have challenged these orders on the ground that the same are punitive in nature and are illegal, mala fide, malicious, discriminatory, against statutory rules and unconstitutional. They have pleaded that the transfer orders are punitive in the garb of administrative orders and are not in exigencies of service. They have also stated in their application that the headquarters of the suspended railway servants cannot be shifted and their Headquarters shall be assumed to be their last place of duty as per the provisions of the Railway Establishment Code. They have alleged in the application that they are being harassed and humiliated for claiming their rights under the law. According to them, applicant No.1 was discharged from service by orders passed by the D.S.E. (Estates) on 1.5.1981 which were later quashed by the Central Administrative Tribunal in T.A. No.263/1986 by its Principal Bench at Delhi, vide judgement delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman and Hon'ble Mr. S.P. Mukerji, Administrative Member, on 31.5.88, whereby the respondents were directed to reinstate him with effect from 1.5.1981 with all back wages and that the arrears of pay, etc. were to be made good within a

Ques.

period of three months from the date of communication of the said order. It is alleged in the application that the back wages have not been paid to applicant No.1 in spite of his repeated representations. On the other hand, he was put under suspension by order dated 20.4.1989, which was later revoked by respondent No.2 vide his order dated 14.6.89. He resumed his duties but was again suspended vide order dated 21.7.89.

Applicant No.2 who is the elder brother of applicant No.1 was also put under suspension w.e.f. 21.7.89. It is alleged in the application that applicant No.2 has been suspended only because of suspicion that he has been helping applicant No.1 in claiming his back wages and writing representations/complaints to the higher officers. Disciplinary proceedings have also been initiated against applicant No.1 on his alleged unauthorised absence from 15.6.89 to 14.7.89. Thus, although the impugned order dated 25.8.1989 relates to the transfer of the applicants out of Delhi, the applicants have, by narrating the aforesaid facts, tried to show that the transfer order is the result of colourable exercise of powers and to punish the applicants for their hectic efforts to get the payment of wages.

3. On the other hand, the respondents, in their counter-affidavit, have given a different history of the case. It is stated that applicant No.1, in spite of revocation of his suspension w.e.f. 15.6.89, did not report for duty and as such his salary could not be charged for the period he remained absent from duty from 15.6.89 to 14.7.89. On 18.7.89, the applicants attacked the Assistant Engineer Estate, Delhi and Inspector of Works, Kishanganj and as a result Shri S.P. Jain, IOW and Shri D.L. Kataria, Asstt. Engineer/Estate got serious injuries and the applicants were booked under Sections 186, 353, 332 and 34 of I.P.C.

Ques.

and were later released on bail. From the Department side, they were placed under suspension in order to initiate contemplated D&AR action against them. The respondents have stated that in view of the above situation and the safety of Government officials, the transfer of Headquarters was done not as a punishment by the competent authority but to ensure smooth functioning of the railways. According to them, the competent authority has transferred the applicants out of Delhi separately within Delhi Division in the public interest and on administrative grounds. It is also stated that the change of headquarters of employees is a prerogative of the administration and the employees have no legal right to challenge the same. They have used very harsh words in saying that the applicants are 'habitual offenders/criminals and chronic litigants with the Administration'. They have admitted that applicant No.1 has been charge-sheeted for his unauthorised absence from 15.6.89 to 14.7.89, but the same has no relevancy to the facts and circumstances of the present application. They have charged them for misbehaving and disobeying the orders of their superiors and committing criminal acts by taking law into their hands. In the rejoinder, the applicants have reiterated the facts as given by them in their application and that the impugned orders are purely punitive in nature.

4. I have gone through the pleadings of the case and have heard the learned counsel for the parties.

5. The main point urged on behalf of the applicants was that the impugned order of transfer is punitive. This plea is not legally sustainable. Transfer is an incident of service and as it is not prescribed as one of the punishments which can be imposed on a Government servant,

Cec

it cannot be treated as punitive (Shri Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another - Full Bench Judgements (CAT p. 80)).

6. Another point urged was that Khalasis under one Inspector of Works form a separate cadre and that they are never transferred from one seniority group to another or from one station to another. It was, therefore, urged that transfer of the applicants amounts to transfer outside their cadre and such a transfer without the consent of the applicants is against law. The judgement of the Delhi High Court in Civil Writ No.957 of 1971 in Prem Parveen Vs. Union of India and others (SLJ 1974 at p. xviii) was cited in support of this contention. The learned counsel for the respondents vehemently opposed this plea and refuted the contention of the learned counsel for the applicants. In this case, neither party has been able to show before me whether Khalasis under one Inspector of Works constitute a separate cadre or not. No rule or order has been cited in support of their contention by the applicants on this point. In view of this, it is not possible to give any finding on this point. The pleadings, however, show that the applicants have worked under more than one I.O.W.s. In the case of Prem Parveen's case (supra), the petitioner, who was confirmed as U.D.C. in the Directorate of Extension, Ministry of Food & Agriculture, Community Development and Co-operation (Department of Agriculture) was drawing pay in the grade of Rs.130 - 300 and the next higher post was Superintendent Grade II in the pay scale of Rs.350 - 475. His transfer was ordered to Regional Stations office where U.D.C. grade was Rs.130 - 280 and the next promotion post of Head Clerk was in the scale of Rs.210 - 380. It was held that as the transfer of the petitioner was to an ex-cadre post, it could not be done without his consent. In this case before me, no

Cec.

4

difference in the existing pay scale of the post held by the applicants and the posts to which they have been transferred has been shown. No adverse effect on promotion prospects has also been demonstrated. Moreover, the applicants have been transferred along with their posts, and in such a case, it is difficult to agree to the contention of the applicants that their transfers have been made to ex-cadre posts. In these circumstances, the judgement of the cited case is not applicable to the instant case and it is not possible to hold that the transfers are bad in law.

7. Another point urged by the learned counsel for the applicants was that as the applicants were under suspension, they could not be transferred from their present place of posting and he cited the Note below administrative instruction No.3 in Appendix XXXI of the Indian Railway Establishment Code Volume II. This Note is reproduced below: -

"Note.- An officer under suspension is regarded as subject to all other conditions or service applicable to generally to Railway servants and cannot leave the station without prior permission. As such, the headquarters of a Railway servant should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, there is no objection to a competent authority changing the headquarters if it is satisfied that such a course will not put the Railway Administration to any extra expenditure like grant of travelling allowance or other complications. "

Rule 3 deals with charge of office. It is provided in ^{the} ~~these~~ ^{rule} ~~rules~~ that, as a general rule, the headquarters of a railway servant other than those on the staff of

Uec

the Railway Board, are either the station which has been declared to be his headquarters by the authority competent to prescribe his headquarters for the purpose of travelling allowance or in the absence of such declaration, the station where the records of his office are kept. The above note reiterates that an officer under suspension is regarded as subject to other conditions of service generally applicable to railway servants and he, therefore, cannot leave the station without prior permission. The reading of the above note will clearly show that it is not directly relevant to the case of a transfer and provides that if an individual under suspension requests for change of his headquarters, such request can be considered. It nowhere debars the competent authority to transfer a Government servant under suspension. Moreover, when the applicants have been ordered to be transferred in this case along with their posts, the Headquarters of the applicants also undergo a change.

8. The learned counsel for the applicants also contended that the impugned transfer orders have been issued by A.E.N., who is a person involved in the alleged incident of misconduct and that he was not competent to issue the transfer orders. This plea is also not substantiated. The impugned order itself refers to Senior DPO's Order No.941-E/349/P-4, dated 23.8.89. Moreover, the learned counsel for the respondents showed at the bar that D.S.E. (Co-ordination), New Delhi had directed Senior DPO to order the transfers and the Senior DPO had accordingly directed the A.EN. to issue the transfer orders. This could not be rebutted by the applicants.

9. The learned counsel for the applicants also cited the judgement of the Guwahati Bench of the Central Administrative Tribunal in the case of Kamal Roy Vs. Union of India & Others (SLJ 1987 (1) (CAT) p. 382).

Uem

The cited case is not relevant to the facts of this case.

10. The case of Gummadi Ankineedu Vs. The Director General, Indian Council of Agricultural Research (SLJ 1988 (1) p. 186) was also cited in support of the contention that as the transfers were not routine transfers, the same will be deemed to be punitive transfers and could not be ordered without notice. The facts of the case as mentioned in the earlier paras certainly show that it is not a case of routine transfers, but these also do show that these are transfers on genuine administrative grounds. There is nothing to establish mala-fide or violation of any statutory provision in this case. The competent administrative authorities have come to the view that in the interest of proper functioning of a public utility service as the Railways, the applicants need to be shifted from their present place of posting. I do not consider it to be a fit case for grant of the relief prayed for. The Hon'ble Supreme Court in the case of Union of India Vs. H.N. Kirtania (Judgement Today 1989 (3) SC 131) and in the case of Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani (Judgement Today 1989 (3) SC 20) emphasised that transfer is an incident of service and a Government servant has no legal right to claim to remain posted at a particular place or on a particular post. As already stated above, in this case, it cannot be held that the applicants were not subject to transfer, especially when they have been transferred along with their posts.

11. The learned counsel for the respondents cited the case of Ashok Kumar Sabharwal Vs. Union of India & Others (ATLT 1988 (1) p. 365) wherein it was held that the Railways are a public utility service and

Ces.

in the larger interest of smooth functioning of such an organisation, certain discretions have to be left with the Railway authorities.

12. In view of the above discussion, the application is devoid of any merit and is accordingly dismissed. Parties to bear their own costs.

(P.C. JAIN)
MEMBER (A)
9/2/90