

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH ~~EXAMINER~~ NEW DELHI

O.A. No. 315 of 1989 ~~XXX~~

DATE OF DECISION 9.1.1991

Jagdish Applicant (s)

Mr BS Mainee Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

M/s BS Gupta & SK Gupta Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. TS Oberoi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Mr SP Mukerji, Vice Chairman)

In this application dated 14.2.1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Lorry Driver under Sub Divisional Officer(Phones) at Rohtak under the Ministry of Communications has prayed that the impugned order dated 14.12.1988 relieving him from Rohtak with effect from that date and transferring him to Karnataka Circle should be set aside and respondents directed to permit him to perform his duties at Rohtak. The brief facts of the case are as follows.

2. The applicant was appointed as Lorry Driver on 29.1.1984 under the Telecommunication District Engineer, Rohtak.

According to the applicant, the Telecommunication District Engineer(T.D.E.) Shri Budh Prakash at Rohtak became prejudiced against him as the applicant refused to become a party to the illegal and corrupt practices of T.D.E. and the subordinates. The applicant was suspended by the S.D.O., Rohtak in accordance with the order dated 30.1.1987 at Annexure-A2 in contemplation of disciplinary proceedings. No charge sheet was served on him. In the meantime, the situation of corruption and embezzlement in the Department of T.D.E., Rohtak was reported in the newspapers on 12.1.1988(Annexure-A3). Shri Budh Prakash had lodged criminal reports against the applicant on 12.2.1987 and 22.8.1987. The applicant who was under suspension ^{and} ~~came to know~~ ^{that a} warrant of arrest ^{had} ~~had~~ been issued on the basis of the reports filed by Shri Budh Prakash, surrendered himself in the Court on 16.9.1987 and was thereafter released on bail on 28.8.1987 by the High Court at Chandigarh. The T.D.E. on 30.10.1987 revoked the order of suspension(Annexure-A4) and simultaneously transferred him from Rohtak to Karnataka. Against the order of transfer, the applicant moved the Tribunal in O.A-177/88, but the respondents did not file any counter affidavit. During the pendency of the application the order of transfer of the applicant was cancelled by the Minister on 2.9.1988(Annexure-A5) and ^{thus} communicated to him on 7.9.1988(Annexure-A6). On the basis of the cancellation of the transfer, the applicant ^{was} taken back on duty at Rohtak and the criminal case

filed against him was also withdrawn by the Government on 26.9.1988 (Annexure-A7). The Additional Sessions Judge finding that the complainant in the criminal case was no more interested in pursuing the case, allowed the Government to withdraw the case and the applicant along with other accused was acquitted on 7.1.1989 of the charges framed against him. In the meantime, the order impugned in this case dated 14.12.1988 again transferring the applicant to Karnataka was passed. The applicant thereafter withdrew the pending application No. O.A-177/88 and filed this application against the second order of transfer. The applicant's contention is that the impugned order of transfer has been passed out of malice under the influence of T.D.E. Shri Budh Prakash who had filed two false criminal cases against him, that the order of transfer is punitive and passed without holding an inquiry and ill-founded on extraneous considerations. Against the background of his having been suspended without any charge sheet so far filed and the criminal case since withdrawn, the impugned order of transfer has been termed as malafide and having been passed in colourable exercise of powers.

3. The respondents have quoted Rule 37 of the Post and Telegraph Manual Volume IV indicating that all officials of the Department are liable to be transferred to any part of India unless expressly ordered otherwise, ^{and that} the transfers of those Group 'D' service should not be ordered except when advisable

(4)

(8)

in the interest of public service for very special reasons.

The respondents have argued that transfer is not accompanied by any ~~evil~~ consequence as the pay and seniority are protected.

They have averred that the impugned order is neither malafide nor punitive but has been ordered "to bring efficiency and to eliminate slackness from the department." They have also stated that the applicant belongs to Group 'C'. They have also denied the allegations of financial malpractices and cheating levelled against the T.D.E. and the subordinates and stated that the newspaper reports are wrong. The allegations of corruption and malafides against Shri Budh Prakash, T.D.E. have been stated to be uncalled for. It has been stated that he has not been made a party and that he had nothing to do with the transfer of the applicant and is now posted abroad (Saudi Arabia). They have stated that it is the Director General, Telecom himself who under Rule 37 transferred the applicant to Karnataka.

4. In the rejoinder, the applicant has denied or challenged the averments made by the respondents as wrong and has reiterated that the Government themselves decided to withdraw the criminal case against him. The respondents have produced a copy of the judgement dated 22.9.1989 delivered by the Tribunal in which the application filed by Shri K.C. Malik, one of the co-accused with the applicant before us in the aforesaid criminal case, against his transfer to Kerala Circle was rejected and his transfer upheld.

5. We have heard the argument of the learned counsel for the parties and gone through the documents carefully.

From the judgement of the Additional Sessions Judge, Rohtak, (page 17 of paper book) it appears that the applicant before us Shri Jagdish, Shri KC Malik, the applicant in O.A-174/88 which was decided by the judgement dated 22.9.1989(at pages 32 to 38 of the paper book and reported in ATJ 1990(1), 218) and two other employees were charged for the offence punishable under Sections 307/34/332/333 I.P.C. Like the applicant before us Shri KC Malik, the applicant in O.A-174/88 was also suspended by the T.D.E. on 22.8.1987 and when he came to know that warrants of arrest have been obtained by the Police to arrest ~~the~~ ^{him} applicant in pursuance of a false F.I.R. lodged by Shri Budh Prakash, he also like the applicant before us surrendered in the Court, remained in Police custody and then in judicial custody till 28.10.1987 and released on bail by the High Court at Chandigarh. In that case also the Telecom District Engineer, Rohtak revoked the order of suspension on 30.10.1987 and issued orders of his transfer from Rohtak to Kerala Circle on the same day. It is that transfer order that was ~~but~~ challenged before the Tribunal but upheld. The Tribunal in that case examined the file produced by the respondents and made the following observations:

"4. In the file produced by the respondents regarding complaint against four employees of N.W. Circle, Ambala, it was alleged that four employees of the office of the D.E.T. Rohtak, including the applicant, attacked Shri Budh Prakash, D.E.T. Rohtak, on 22.8.87 in which Shri Budh Prakash received head injury and a finger of his left

hand was fractured. GM Telecom, Haryana, visited Rohtak alongwith Director, Telecom, on 23.8.87. The matter was also enquired into by the Vigilance Officer of the Haryana Circle. The Telecommunication Board transferred the four officials, including the applicant, out of the Rohtak Circle. Shri KC Malik was transferred to Kerala Circle. It appears that the Telecommunication Engineering Services Association also wrote to the Minister for Communications complaining against some persons regarding indiscipline and violence in the offices in Haryana. The transfer orders of some of the concerned staff was stayed by the Minister, but the transfer of the applicant was not stayed although the wife of the applicant as well as an M.P. had also requested for cancellation of the applicant's transfer on compassionate grounds. The D.O.G. Vigilance had given a note to Secretary, Telecommunication, saying that four officials had to be transferred out of the Haryana Circle under Rule 37 of the P&T Manual for wilful assault and it was felt necessary that to retrieve situation and to enforce discipline it was necessary to give administrative support to the officers by transferring the applicant and others. It appears that the matter was also considered by the late Minister of Communications who did not agree to the cancellation of the transfer orders in the interests of service."

After going through the confidential file which was shown to the learned counsel for the applicant also, the Tribunal found that there was lot of indiscipline in the office of the T.D.E. Rohtak "and it became necessary for the competent authorities to shift some persons whom they thought were responsible for creating indiscipline". The allegation of the malafides against Shri Budh Prakash, T.D.E. was not accepted as he had not been made a party. However, the transfer order from Haryana to Kerala was found to be extraordinary. Upholding the order of transfer, the Tribunal in that identical case connected with this case also observed as follows:

"9. The question, however, is whether the courts should interfere in a transfer order passed in public interest. In *Union of India and Others V. H.N.Kirtania* Judgements Today 1989 (3) S.C. 131 - the Supreme Court have held that there is no valid justification to interfere in orders of transfer made against an employee of the Central Government holding a transferable post. A Central Government employee holding a transferable post is liable to be transferred from

one place to the other in the country and has no legal right to insist for his posting at any place of his choice. The Court has held that transfer of a public servant made on administrative grounds or 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 the statutory rules or on ground of malafides. In the circumstances, it has to be seen whether the present transfer of the applicant can be termed as illegal on grounds of violation of any statutory rules or on ground of malafides. As far as the statutory rules are concerned, the Telecommunications Board have the authority to transfer an employee any where in the country. Rule 37 of the P&T Manual is clear on this point. The impugned order of transfer is an administrative order and the order of transfer itself is not punitive in character and has been issued in the normal course without any element of punishment or causing any stigma on the applicant.....

In the case of Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another - 1989 (1) SLJ 641 CAT - the Full Bench of this Tribunal has held that transfer is not a penalty and if the competent authority considering overall circumstances even after a disciplinary action feels that transfer is required, it can certainly so order. In this case, the Tribunal held that the authorities have vast discretion and if transfer in public interest is a mere violation of guidelines, it would be immaterial unless malafide has been claimed and fully established. In the present case, the transfer order alleges no misconduct or attaches any stigma on the applicant. It cannot be said that the competent authority has exercised powers for settling any scores, but it appears to have been done in the interest of enforcing discipline.

10. In view of the clear decisions of the Supreme Court in H.N.Kirtania's case and the findings in the case of Shri Kamlesh Trivedi, I see no reason to interfere with the orders of transfer. The application is, therefore, rejected. There will be no orders to cost."

We respectfully agree with the line of approach adopted by the Tribunal in the aforesaid case. In this case also malafides against Shri Budh Prakash cannot be accepted as he cannot be said to have any hand in the impugned order of the applicant's transfer passed with the approval of the Director General himself. The impugned order does not carry any stigma and cannot be said to be punitive in nature. The applicant is obliged as a Group 'C' employee to work any where in the

country and the respondents in the circumstances of the case cannot be faulted for passing the impugned order ^{in the} ~~A~~ public interest of maintaining discipline and efficiency in the T.D.E's office at Rohtak. The order of transfer does not warrant any judicial intervention. The application is dismissed without any order as to costs.

26/1/91
(TS OBEROI)
JUDICIAL MEMBER

SP Mukerji
(SP MUKERJI)
VICE CHAIRMAN

trs