

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 535/89.

DATE OF DECISION:

Shri A.N. Agarwal

.... Applicant.

Versus

Union of India & anr.

.... Respondents.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.
The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

For the Applicant.

... Shri B.S. Mainee,
Counsel.

For the Respondents.

... Shri O.N. Moolri,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

This Application has been filed by Shri A.N. Agarwal, Head Parcial Clerk, Kot Dwar Railway Station, Northern Railways. He is aggrieved by an order dated 14.2.1989 passed by the Senior Divisional Commercial Superintendent, Moradabad transferring/posting him from Kot Dwar to Moradabad as a cash witness in cash office. Normally, such an Application has to be filed before the Allahabad Bench of the Tribunal. But the applicant moved a petition under Section 25 of the Administrative Tribunals Act 1985 for retention of the O.A. before the Principal Bench on the ground that he was undergoing the treatment in All India Institute of Medical Sciences and, therefore, it would be convenient for him to pursue his case in the Principal Bench. The permission was granted. The Application was admitted and numbered as O.A. 535/89 and an interim order was passed staying his transfer from Kot Dwar station of Northern Railway. A CCP was filed by the Applicant for non-implementation of the interim order. But the CCP was dismissed as having infructuous as the applicant's transfer had been stayed until the disposal of this Application. The matter has thereafter come up for hearing.

Two questions arise in this case; firstly, whether the impugned order is bad in law inasmuch as the Senior Divisional Commercial Superintendent, Moradabad had no power to issue that order and secondly, whether the order passed was mala fide.

Learned counsel for the applicant Mr. B.S. Mainee contended that the Senior Divisional Commercial Superintendent had no power to issue an order of transfer without consulting the Senior Divisional Personnel Officer, who is a competent authority to transfer the staff depending upon the exigency of the service.

Learned counsel for the respondents Mr. O.N. Moolri, however, contended that the Senior Divisional Commercial Superintendent was empowered to issue the order of transfer/posting in Moradabad of the Northern Railway. He was exercising the power of the Divisional Railway Manager, Northern Railway, Moradabad. It was not necessary for him to consult the Senior Divisional Personnel Officer in this regard.

We have not been shown any provision that the power of transfer could not be exercised by the Divisional Railway Manager or delegated to any other senior officer. As a matter of fact, a perusal of Annexure A-2, which is a "Standard Form of Chargesheet" issued in this regard, shows that it has been issued from the Divisional Railway Manager's Office, Northern Railway, Moradabad and has been signed by Shri J.J. Singh, Senior Divisional Commercial Superintendent, Moradabad. Originally, the applicant was Head Booking Clerk. On 22.11.1988, a surprise check was conducted by CMI/LRJ of Booking Office, Kot Dwar in presence of the ASM. The applicant was Head Booking Clerk and as such was under the Senior Divisional Commercial Superintendent. Consequently, he could pass the order of transfer/posting. His posting to Moradabad was as a cash witness in cash office. There was no demotion but was only a change of duty. We are not satisfied that there is any illegality in the order of transfer passed by the Senior Divisional Commercial Superintendent.

to be bad in law. The first point is accordingly decided.

The second question relates to mala fides in passing the impugned order dated 14.2.1989. The applicant's case is that his transfer was mala fide for there was a policy of the Railway that nobody would be allowed to work at one seat for more than 5 years and be moved from one Station to another for more than 10 years. The second contention was that his wife was seriously ill and receiving treatment from his family doctor at Kot Dwar and it was not possible to shift her from Kot Dwar. Thirdly, a charge-sheet had been issued by the Senior Divisional Commercial Superintendent against the applicant on false and frivolous ground and he had also been suspended by him and thereafter, an order of transfer was passed. Learned counsel contended that taking a conspectus of this fact and circumstances, it was evident that the order of transfer was not bonafide but was mala fide at the instance of the Senior Divisional Commercial Superintendent.

Mr. Moolri for the Railways totally denied the allegation of mala fide. He urged that a Railway servant is liable to transfer from one Station to another at any time and there was no such policy anywhere in the Railways that an employee should not work at one seat for more than 5 years and should not remain at the same station for more than 10 years. No such policy papers have been produced or filed in this case. He further contended that certain irregularities were noticed on a surprise check of the office of the Head Booking Clerk and the applicant was found in possession of more funds than the Railway money deposit in the Booking office that day. A charge-sheet was accordingly drawn up and served on him. But he had been assigned the duty at Kumbh Mela at Allahabad where he served only for 8 days and got himself relieved and returned to Kot Dwar on 10.2.1989. The Station Master, however, did not assign him any duty because there was no such order from the Divisional Railway Manager or the Senior Divisional Commercial Superintendent, Moradabad. A suspension order against him was

passed on 24.11.88 but was revoked with effect from 12.12.1988 and on the same day an order was passed that he will thereafter work as Head Parcel Clerk from the same day in place of Shri Shamsuddeen, who was directed to take over as Head Booking Clerk. He had been served with a chargesheet on 27.1.1989 (Annexure A-8 to the OA) and the disciplinary enquiry was pending. He has come up before the Tribunal challenging his transfer from Kot Dwar to Moradabad principally on the ground that he does not wish to leave Kot Dwar. Learned counsel urged that there was no mala fide at all in passing the impugned order.

Having heard learned counsel for the parties, we are satisfied that this is not a case of mala fide at all. The applicant was the Head Booking Clerk and during the course of a surprise check, certain serious irregularities were noticed. The matter was brought to the notice of the Senior Divisional Commercial Superintendent. On the same day on the report of the CMI/LRJ, a suspension order was issued to the applicant on 24.11.1988. This was, however, withdrawn on 12.12.1988. A fresh suspension order was issued on 21.12.1988 but that too also was revoked on 31.1.1989. Thereafter, he was ordered to go to Allahabad on Kumbh Mela duty where he served from 1.2.1989 to 8.2.1989. He got himself relieved from the Allahabad on the ground that his wife was seriously ill at Kot Dwar. He returned to Kot Dwar but the Station Master did not allow him to resume as Head Booking Clerk. On the 14th of February, 1989, he was transferred to Moradabad. Kot Dwar is not far away from Moradabad. There is approximately 100 KMs distance between Kot Dwar and Moradabad. Moradabad has far better facilities for treatment in the Railway Hospital than at Kot Dwar and the applicant if he so desired could have availed the same. Merely because a Railway employee is transferred from one Station to another it cannot be said that it is an act of mala fide.

It is significant to note in this case that the allegations of mala fide have been levelled against the Senior Divisional Commercial Superintendent. But he has not been made party in the O.A. It is imperative that where the allegations of mala fide are being made against an officer, then he has to be made a party so that he may reply to the allegations. This has not been done in the present case.

We are satisfied that no case of mala fide has been made out in this case. This is not a case for interference at all. Consequently, this O.A. must fail and is accordingly dismissed. However, we leave the parties to bear their own costs.

B.C. Mathur
17.7.90
(B.C. MATHUR)
VICE-CHAIRMAN (A)

AB
(AMITAV BANERJI)
CHAIRMAN

"SRD"

Prounced by me in Open Court

B.C. Mathur
17.7.90