

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 864/89
T.A. No.

198

DATE OF DECISION 31.8.1989

Dr. J.P. Aggarwal Applicant (s)

Shri B.S. Mainee Advocate for the Applicant (s)

Versus

UOI & Ors. Respondent (s)

Shri P.H. Ramchandani, Sr. Standing Counsel
~~XXXXXX~~ for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

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

JUDGEMENT

This is an application filed by Dr. J.P. Aggarwal, Assistant Divisional Medical Officer, Northern Railway, Ghaziabad (under suspension) against the impugned order No. 940-E/19-XIX/Eia dated 17.4.1989, passed by the General Manager (P), Northern Railway, New Delhi, transferring the applicant from Northern Railway to South Eastern Railway, Calcutta.

2. The applicant was appointed as an Assistant Surgeon on 22.6.1965 in class III post, promoted to class II on 1.1.1966 and further promoted to class I on 1.1.1973. According to the applicant, in January, 1986, nearly 30 persons belonging to Bhiwani and surrounding areas, were recruited as casual labourers in the Electrical

Loco Shed at Ghaziabad, due to the good offices of Shri Bansi Lal, the then Railway Minister, who represented Bhiwani constituency in the Parliament. These persons were directed to appear before the applicant for medical examination. While a number of casual workers were found medically fit, some workers were hesitant to take the medical examination because of some weakness or defect in their eye-sight. On 27.5.1986, one Shri Yadav, Assistant Private Secretary to the Minister, telephoned the applicant asking him to ensure that all casual labourers belonging to Bhiwani should be declared fit. One Ranbir Singh, who was one of casual labourers and due to be examined by the applicant, made a complaint to the Director, Vigilance on 30.5.1986 that the applicant demanded a sum of Rs. 300/- from him as bribe for declaring him fit. The case of the applicant is that this allegation was absolutely false and fabricated as no medical memo. had been issued to Shri Ranbir Singh on 30.5.1986 and the same was issued by the Department only on 31.5.1986 (afternoon). The Central Bureau of Investigation (CBI) registered a criminal case against the applicant on 31.5.1986 and the case is pending against the applicant in the court of Special Judge, Anti-Corruption at Dehra Dun. About 10 witnesses have been cited by the prosecution in that case but only two have been examined during the last two and a half years. But the applicant had to attend 34 hearings

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at Dehra Dun. After the registration of the criminal case, the applicant was placed under suspension on 7.6.1986 and he is continuing to be under suspension, which shows the mala fide intention of the respondents. The applicant has made several representations against his suspension but no reply has been given to him. The CBI registered two more cases against the applicant, one under the Indian Penal Code and the other under the Excise Act. Both these cases were filed by the CBI at Ghaziabad in order to harass the applicant. Both these cases have been dismissed by the Chief Judicial Magistrate, Ghaziabad. The CBI also searched the house of the applicant on 1.6.1986 but according to the applicant, nothing incriminating was found. In order to further harass the applicant, the respondents transferred him from Ghaziabad to Tundla under Allahabad Division vide orders dated 11.8.1986, even though the applicant was already under suspension. The wife of the applicant, who is also serving as Assistant Divisional Medical Officer, was also transferred to Tundla by the same order. The wife of the applicant, however, submitted representations to respondent No. 2, for cancelling the order as it could result in many hardships including the career of college and school going daughters of the applicant. After considering the representations of the applicant's wife, the respondents did not take any

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action to relieve the applicant's wife on transfer to Tundla and the applicant also continued at Ghazibad and he is being paid subsistence allowance.

3. After a period of nearly two years, the applicant was once again transferred to Sub Divisional Hospital at Tundla on 7.6.1988 and his wife was also posted to Tundla alongwith him. His wife again represented and her transfer was pended vide Notice dated 7.7.1988. The applicant was implicated by the CBI in a corruption case on the complaint of Ranbir Singh, who was subsequently posted at his home town Bhiwani. Shri Ranbir Singh was arrested by the Railway Protection Force on 17.3.1989 in a theft case. He attributed his arrest in the theft case to the applicant in the court of Special Judge, Dehra Dun and the applicant alleged that Ranbir Singh has been instrumental in his transfer to South Eastern Railway, Calcutta. His wife has also been transferred to South Eastern Railway, Calcutta alongwith him although these orders have not yet been implemented. The case of the applicant is that the transfer orders are arbitrary, in colourable exercise of power to punish the applicant for extraneous reasons and that the respondents have no power to transfer the applicant, who is already under suspension. The transfer of the applicant is a result of false allegations of Shri Ranbir Singh and the applicant was not responsible for his arrest at Bhiwani. It has

also been stated that the Railway doctors are not normally transferred from one Railway to another unless on request by the Doctor concerned. There are a large number of doctors junior to the applicant, but he has been picked up for transfer and that there are more than 60 vacancies of Railway doctors in the Northern Railway itself. It is also claimed by the applicant that his transfer from the Northern Railway to South Eastern Railway will jeopardise the criminal case pending against him at Dehra Dun as he has to attend the court about twice a month, besides jeopardising the education of his children. It is also stated that he has not been given any hearing by the respondents before issuing the transfer order.

4. The respondents in their reply have stated that the applicant was caught red handed by the CBI, in a case of accepting of bribe from Shri Ranbir Singh, a casual worker, Khalasi, who was directed to undergo medical examination at Ghaziabad and that after placing the applicant under suspension, criminal proceedings had been initiated against him at Dehra Dun. His Hqrs. at the time of suspension was fixed at Ghaziabad but taking into account his prolonged stay at Ghaziabad and to ensure smooth and proper prosecution of the case, the applicant's change of Hqrs. was ordered from Ghaziabad to Tundla in 1986. His wife was also transferred with a view to accommodate the couple at one station. In the reply, it has been claimed that

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the applicant is using intimidatory tactics to physically harm and influence the key prosecution witnesses so that they may not tender evidence against him in the court. On receipt of a specific report of brutal measures adopted against the key witness by the R.P.F., under the influence of the applicant, and after taking a careful view of the matter at a high level, orders were issued shifting the Hqrs. of the applicant to South Eastern Railway so that criminal proceedings against him can be allowed to proceed smoothly. The respondents are competent to fix the Hqrs. of a Government servant under suspension to any place other than the place of his last posting in the interest of public service.

5. The learned counsel for the applicant, Shri Mainee emphasised that the CBI was taking extra interest as the complainant against the applicant was a man of the Minister and this person, Ranbir Singh, had got himself transferred from Ghaziabad to Bhiwani. Shri Ranbir Singh was arrested in a theft case by the R.P.F. and he stated that he was falsely implicated at the instance of the applicant. Before the arrest, this key witness, Ranbir Singh, had already tendered his evidence in the Dehra Dun court. If the case of the respondents is that Ranbir Singh has been falsely implicated by the applicant, they should have withdrawn the case against him and taken action against the personnel of the RPF who arrested him. Besides, a doctor under suspension at Ghaziabad is hardly in a position to influence the R.P.F. at Bhiwani, to arrest

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someone, who has to give evidence against the applicant.

Shri Mainee said that a person under suspension cannot be transferred. The note under Rule 3 of the Railway Establishment Code (Vo. II) Appendix 31, provides that the Hqrs. of a suspended person can be changed only at the instance of the concerned employee. Under the Central Civil Services (Classification, Control and Appeal) Rules and other disciplinary rules, the competent authority can change the Hqrs. of a person under suspension but not under the Railway Establishment Code. Shri Mainee stated that coming from Calcutta is not easy and it would amount to snatching away his rights to defend himself in the criminal case. He said that in the case of R.K. Patel Vs. UOI (O.A. No. 1754/88), the Principal Bench has stayed the order of transfer of the applicant under suspension and similarly, in the present case, the transfer of the applicant from Ghaziabad to South Eastern Railway is clearly punitive. Shri Mainee also cited the following cases in support of his contention:-

(i) Kamal Roy Vs. UOI - SLJ 1987 (1) 383

in which the Gauhati Bench of the Tribunal has held that the change of Hqrs. after suspension of an officer is not allowed.

(ii) Prem Parvin Vs. UOI - SLJ 1974 SC XVIII -

which lays down that transfer outside the cadre is not allowed. Shri Mainee's contention is that the transfer from Northern Railway to South Eastern Railway is outside the cadre of the applicant.

(iii) K.K. Jindal Vs. General Manager, Northern Railway - ATR 1986 (1) CAT 304.

The point emphasised in this case is that the applicant had been transferred on CBI enquiry held behind his back and a unilateral decision has been taken on the complaint of Shri Ranbir Singh, arrested on a theft charge.

(iv) Gummadi Ankineedu Vs. DG, Indian Council of Agricultural Research - SLJ 1988(1) 187.

In this case, it has been held that the transfer, which is not a normal routine, will be penal and transfers should be ordered after great care.

6. The learned Sr. Standing Counsel for the respondents stated that the CBI laid a trap and caught the applicant red handed while accepting bribe. He was transferred so that he may not be able to tamper with the evidence or influence the witnesses. Being a doctor, he was very influential and, as such, he was transferred to Tundla in 1986 itself. He said that the applicant himself was delaying the criminal case at Dehra Dun and influencing the witnesses. Although the key witness Ranbir Singh has already been examined in the court at Dehra Dun, his cross examination is still to be done. Ranbir Singh had also met the Executive Director of the Railway Board, who recorded a note on 7.4.1989. At that time, Ranbir Singh had not been examined in the court and some more witnesses were also to be examined.

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The CBI reported and the higher authorities agreed that as the applicant was capable of influencing the witnesses, he should be sent out to a place which would be far away from the place of his posting so that he is not in a position to tamper with the evidence. Shri Ramchandani quoted the Vigilance Manual and also Swamy's Compilation on Suspension and Reinstatement, which allow that the Hqrs. of a suspended officer can be changed in public interest. He said in appropriate circumstances, the executive power to transfer the Hqrs. during suspension are there.

7. On the other hand, Shri Mainee said that as Shri Ranbir Singh had already been examined at Dehra Dun on 18.7.1988 and cross examination was done in May, 1989, it is pertinent that there was no complaint after 18th July, 1988. Only after Shri Ranbir Singh was arrested by the Railway Protection Force, the CBI, as a interested party, wanted the applicant to be sent away to Calcutta so that he is not in a position to defend himself. No other witness in the criminal case against the applicant has complained that the applicant has been influencing them, except Shri Ranbir Singh after his arrest at Bhiwani. Incidentally, the case against Shri Ranbir Singh has not yet been withdrawn and it shows that there has been undue interest taken by the CBI arbitrarily and in a mala fide manner. The senior officers of the Railways have also

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been influenced by the CBI in this case and as the change of Hqrs. of the applicant is clearly punitive, the transfer order changing the Hqrs. of the applicant should be quashed.

8. I have gone through the pleadings and arguments by the learned counsel on both sides. As far as the criminal case against the applicant for accepting bribe is concerned, the case is already pending before a court and the same will take its own course. The point to consider is whether the Railway authorities are justified in transferring the applicant and his wife from Ghaziabad to Calcutta on the ground that he will then not be able to influence the key witnesses in the criminal case against him or tamper with evidence in that case. It is seen that the main witness has already been examined in the criminal case and only formal witnesses are yet to appear. The law on transfer is fairly clear now. A person, who occupies a transferable post, can be transferred by the competent authority in exigencies of service and normally, the courts should not interfere with such transfers. The present case, however, is somewhat peculiar as the applicant has been transferred from Northern Railway to South Eastern Railway while under suspension, on the grounds that he has been influencing a key witness in the criminal case pending against the applicant, by getting him arrested through the R.P.F. It may be true that doctors may

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exercise considerable influence on Government employees, but no strong evidence has been produced before me that the applicant has been influencing key witnesses in the case against him, specially when he is under suspension for a long time and is quite far away from Bhiwani to influence the RPF who would go to the extent of beating up Shri Ranbir Singh and implicate him in a theft case. I do not want to go into the details as both the criminal case against the applicant and the theft case against Shri Ranbir Singh, have not yet been decided. The Gauhati Bench of this Tribunal has already held that an officer under suspension cannot be shifted from the place where he was suspended although the facts in that case are quite different. It is also difficult to accept that the applicant can have such a great influence on witnesses that he must be shifted from Ghaziabad to Calcutta, on a different Railway, specially as the witnesses still to be examined are of a formal nature or officers of the CBI. It has not been established that the applicant has exercised any influence over the witnesses except the version of Shri Ranbir Singh, who was arrested in a theft case by the RPF after he had already given his evidence in the criminal case at Dehra Dun. The transfer of the applicant from Ghaziabad to Calcutta, in the circumstances, does not appear to be one in exigencies of service or in public interest and appears to be punitive in nature. In the circumstances, the transfer order of the applicant, transferring him out of Ghaziabad while under suspension, is quashed. There will be no order as to costs.

B.C. Mathur
(B.C. Mathur) 31.8.84
Vice-Chairman.