

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1036/89.

XXXAXXNO

199

21.2.92

DATE OF DECISION

Shri P.K.Shukla

Petitioner Applicant

Shri G.D.Gupta

Advocate for the Petitioner(s)
Applicant

Versus

Union of India & Others

Respondents

Shri B.K.Agarwal

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P. SHARMA, JUDICIAL MEMBER.

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. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGMENT

The grievance of the applicant under Section 19 of the Administrative Tribunals Act, 1985 is to challenge the validity of the order dated 4-5-1989 transferring the applicant from New Delhi Railway Station to Sonepat Branch Line in the Delhi Division, Northern Railway as Senior Ticket Collector.

2. The applicant claims the relief of quashing the order of transfer of the applicant and declaring the applicant entitled to continue to work as Senior Ticket Collector, New Delhi.

3. The relevant facts are that the applicant joined the Railways as Ticket Collector under Mughal Serai Division in March, 1982 and in May, 1983, he was transferred to Old Delhi Railway Station in the same capacity under the Delhi Division. Some disciplinary proceedings were initiated against the applicant by the Assistant Traffic Superintendent, New Delhi and by the Order dated 26th June, 1984, the increment of the applicant in the grade of Rs.260-400 was withheld for a period of one year which has been assailed by the applicant in OA 338 of 1986 and has succeeded in getting that order quashed by the judgment dated 28.7.1987. Sometimes in 1985 again, a chargesheet was issued to the applicant from the Station Superintendent, Delhi and the increment of the applicant was withheld for six months from May 1, 1986. The applicant assailed this Order by filing an application no.337 of 1986, which is still pending in the Tribunal. The applicant has also filed some Contempt proceedings passed in OA-338/86. Again by the order for non-compliance of the order/dated 17-10-88; the applicant was transferred from Old Delhi Railway Station to New Delhi Railway Station. The applicant had filed another application no.400/86 for denying him promotion as Assistant Conductor because, in the meantime, the applicant was transferred from Mughal Serai Railway Station to main Delhi Railway Station and the same is also pending. Again the applicant was given another penalty/withholding of

of increment for 2 years vide Order dated 29-1-1986 and he . . . also assailed that order in OA 98/87 and the same is also pending before the Tribunal. However, subsequently this penalty was withdrawn as it was substituted by a penalty of Censure. The applicant filed another Original Application along with his father, Shri Gauri Shankar Shukla for transfer of the accommodation in possession of the father of the applicant in the name of the applicant as the father of the applicant was also in the service of the Railways and since retired. That case is also pending before the Tribunal.

4. In the wake of the above circumstances, the present impugned order of transfer dated 5-5-1989 (annexure A-III) has been passed though the applicant alleges that he did not receive the same. The applicant, on 3-5-89, was asked to perform duty at Gate no.5 of New Delhi Railway Station. While the applicant was doing duty at Gate no.5, the applicant found that General Manager, Northern Railway, Shri J. Rajgopalachari passed through the said Gate. The General Manager, as stated by the applicant, said "Your name is P.K. Shukla". The applicant replied in affirmative on which the General Manager further said "I have heard about you much. I am going to transfer you from here. Then I will see what you will do. You have filed many cases against the Railways". The applicant asked about his fault, then the General

Manager said, "My officers will find out the same". The applicant immediately gave the same in writing to the Chief Ticket Inspector (CTI) on 3rd May, 1986 itself (Annexure A-III and A-IV). The Senior Divisional Commercial Superintendent, Shri Katara told ~~xxxxxxxx~~ the applicant at about 5 P.M. that he has been transferred to Branch Line, Sonipat. The applicant thereafter fell sick from 5th May, 1989.

5. The applicant assails his transfer order on the ground that the authorities were prejudiced against the applicant. The applicant has filed many applications challenging various orders passed against him before the Tribunal which irritated the respondents and so the transfer order has been passed in a malafide, arbitrary and illegal manner. The transfer has been effected not because of administrative exigency or in the normal course. The said transfer order is not benafide because a number of similarly placed at New Delhi Railway Station have stay of much longer duration than that of the applicant, are allowed to continue at New Delhi Railway Station vide Annexure A-IV.

6. The respondents contended this application and stated in the reply that the applicant came to Delhi Division, Northern Railway on mutual transfer from

Eastern Railway. It is further stated that without the proper filing of the application, the respondents have not verified that the applicant has filed applications for certain grievances before the Tribunal. It is further stated that the applicant has been given regular increments since May, 82 to May, 86 and arrears have since been paid to him as evident from the service records. The transfer of the applicant from Delhi to New Delhi is in the interest of the administration as well as in public interest. It's further stated that transfer orders have been issued and communicated to the applicant and Sonepat is situated on the main Delhi-Ambala Line. It is said that the applicant has made fabrication and concoctions to malign the senior-most officer, who is incharge of the Northern Railway. According to respondents, it looks very odd and absurd for a General-Manager to come out with a threat to a Ticket Collector at the Gate. The applicant further has not stated in the application whether General-Manager was alone at the time of giving him threat or there were other officers, and if so, who were they. Thus, the allegations made in the application are totally denied. It is stated that there is no malafide in the transfer order and the General-Manager does not know the applicant personally. However, it is stated in the counter that the General-Manager, in a surprise check, found the

applicant negligent on duty in the performance of his official duties at Gate No.5, which is an important Gate at New Delhi Railway Station and important dignitaries pass that Gate. The transfer order has been passed in the administrative exigency and there is no violation of Article 14 and 16 of the Constitution. It is for the administration to place a right person at a particular place to give proper service to the public.

7. The transfer order filed as Annexure R-I simply shows that Shri P.K.Shukla, Senior TCR is transferred on administrative grounds and posted in the same capacity at Sonipat against existing vacancy. It is further stated that the transfer order has been passed with the approval of ARMO and Senior DCS.

8. I heard the learned counsel for the parties at length. The learned counsel for the applicant, in the light of the facts of this case, already stated earlier in the earlier part of the judgment, argued that the transfer has been effected out of some prejudices and, in this connection, referred to the talk between General-Manager, Shri Rajgopal Chari and the applicant on 3rd May, 1989 at 5 P.M. at Gate no.5 at New Delhi Railway Station. In this context, the applicant has placed reliance on a note written to C.T.I. on the same date (annexure A-IV). The affidavit of CTI, Shri S.C.Mittal dated 15-1-90 (Annexure A-II); and of Shri S.N.Sharma

CIT (Annexure A-III) and of Shri Jasbir Singh dated 9.1.90 (Annexure A-III). Against this version given by the applicant, the respondents, in their counter, have stated in para 5 (d-i) that General-Manager was on surprise check and found the applicant negligent on duty in performance of his official duties at Gate no.5 which is an important Gate at New Delhi Railway Station and important dignitaries pass that Gate. The learned counsel for the applicant pointed out that the General-Manager, Shri Rajgopal Chari, though he has impleaded as respondent no.3, did not counter the assertions in the application against the General-Manager. The learned counsel pointed out that even in the counter, a finding that applicant was negligent on duty, has been given without an inquiry which is punitive and as such, the transfer order amounts to a punishment passed ~~very~~ without holding an inquiry. The learned counsel has placed reliance on the authority of K.K.JINDAL reported in 1986(1) ATR p.304, in support/the fact that the persons who are senior at the station and continuing since 1961 and before the posting of the applicant at Delhi in August, 1988, as made clear by annexure A-IV and specifically referred in para 6 at page 16 of the Original Application, the transfer has been effected by a policy of picking and choosing and

such transfer is discriminatory in the present case like that of the case of K.K.JINDAL (supra). In reply to the said arguments, the learned counsel for the respondents argued that the General-Manager is the highest authority having about 9 Divisions under his control and nowhere in the application is stated that Shri Rajgopal Chari was known to the applicant from before. It was only a surprise check/visit when the General-Manager has found the applicant somewhat deficient in the discharge of the duties amounting to negligence in due performance of duties and so in that event, the applicant has been transferred to a nearby place, Senepat. It is for the administration to place a right person at a particular place to give proper service to the public. The question of discrimination, therefore, in such a matter does not arise.

9. Analysing the rival contentions of the parties, it is evident that General-Manager holds the highest post and least expected to indulge in a behaviour as has been alleged by the applicant. Testing the version of the applicant himself and comparing the version given given by the 3 persons to who filed affidavit in support of the version of the applicant, there is material contradiction in them. The version of the applicant, Annexure A-IV, does not mention that he has been transferred

to Sonipat and only mentions the fact that he will be transferred outside as many cases have been filed by him. Shri S.C.Mittal, CTI in his ^{affidavit} (Annexure A-III), deposed "I am going to transfer you outside Delhi - Sonipat - - -". Other deponents, Shri S.N.Sharma deposed that at 7 PM, the General-Manager came along with CTI, Shri S.C.Mittal and Senior DCS and "asked the DCS to transfer P.K.Shukla to outside." The 3rd deponent, Shri Jasbir Singh deposed that "you have filed many cases against the Railway. We are transferring outside. Thereafter the said man asked TC, Shri P.K. Shukla Sala, Bloodyfeet." This Jasbir Singh was a casual passenger on 3-5-89; was going to Agra by Malwa Express. He got his ticket prepared by the applicant. When there is a difference of version in the own evidences of the applicant, then the requirement desired by the learned counsel for the applicant that the respondent no.3, Shri J.Rajgopal Chari should have controverted these allegations loses much of its weight. A fact is acceptable if it is corroborated and similarly a fact becomes incredible when it is contradicted in material particulars. The version of the applicant, therefore, that he was pulled up by General-Manager in a manner urged in the application fails. The applicant is also an interested person in

this matter. General-Manager of the Northern Railway had no direct concern either with the punishment imposed earlier on the applicant or in any way came into picture earlier to this impugned order of transfer as it has not been shewn that in the earlier applications also, the General-Manager was having some say which ended in imposing penalty on the applicant. The version of the respondents given in the counter in para 5(d-i) is, therefore, more acceptable and is worthy of credence.

10. The learned counsel for the applicant also argued that the finding given by the General Manager that the applicant was negligent itself amounts to a punitive finding and in this connection referred to the case of Full Bench KAMLESH TRIVEDI V. INDIAN COUNCIL OF AGRICULTURAL RESEARCH & ANR., reported in FULL BENCH JUDGEMENTS CAT (1986-1989), 1989 edition at page 80. However, para 3 of the judgement of that case does not help the applicant at all which is relied by the learned counsel for the applicant. Para 13 of the judgement is reproduced below:

"It is, therefore, clear that K.K.Jindal's case is not an authority for the proposition that when complaints are received and the exigencies of service require that a transfer be made, an inquiry must necessarily be held into the complaint before transfer is ordered. Nor did it lay down that if a transfer is made on receipt of a complaint, it would necessarily be deemed to be penal in nature. All that it laid down was that a finding as to misconduct and a finding which attaches stigma to the employee not preceded by an inquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer."

11. The Full Bench in the above noted case also observed in para 18 of page 93 as follows :-

"18. In view of the above discussion, we held that any order of transfer must (1) be in public interest and in the exigency of service on administrative grounds. (2) It must not be in callous or mala fide exercise of power. (3) It should not be arbitrary. (4) It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording intendment of the instructions embodying the transfer policy. (5) The transfer itself must be ordered by a competent authority in bona fide exercise of the power. (6) It should not be a "fixed" transfer or for settling scores. (7) However, merely because transfer is ordered on complaints or after an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. (8) The principle that 'justice should not only be done but appear to be done' is not contravened if transfer is made without any further inquiry after a penalty is imposed in a proper disciplinary proceedings. (9) It does not amount to a double jeopardy."

12. The contention of the learned counsel of the respondents is that no stigma has been attached to the career of the applicant and it is the observation of the superior officer at one particular time when he was on surprise inspection that the applicant was deficient in the discharge of his duties. The applicant was not proceeded with an inquiry. Moreover, as stated in the earlier part of the judgment, on 3-5-1989 itself, there was no occasion to indulge into such a discourse as alleged by the applicant. The applicant had already been transferred within Delhi from Delhi Railway Station

to New Delhi Railway Station on 17-10-88. After this transfer, the applicant has not filed any application as the same has not been averred in the application for redress of any grievance. Even if the General-Manager had any animus against the applicant, then there was no reason why a person who was all competent could have waited so long for adopting a vindictive attitude.

13. A finding normally is given after consideration of some facts. The contention of the learned counsel is that a finding has been arrived at that the applicant was negligent cannot be sustained. In fact, the applicant has not been proceeded with any inquiry and only has been made to go to other place on transfer on administrative grounds. The transfer order, Annexure R-I, is clear on this point.

14. The contention of the learned counsel that senior at the Station are still living and the applicant whose junior at the Station has been transferred has no basis at all. Though, this has to be kept in view but it was for the administration to place a person at a proper place. This was not the only point taken in K.K.JINDAL's case (supra). There were other points also. Thus, it cannot be said that the applicant has been discriminated in any manner, whatsoever.

15. The learned counsel for the respondents has also differentiated the case of K.K.JINDAL and it is needless to narrate all these facts because the case of K.K.JINDAL is based on different facts. In the present case, there is simply order of transfer from New Delhi to Senapati. The applicant was transferred to Old Delhi Railway Station as Ticket Collector in 1983. In October, 1988, the applicant has been transferred from Old Delhi Railway Station to New Delhi Railway Station. The applicant has /in filed various applications in 1986 and 1987 but none of these years, the applicant was picked up for transfer. The applicant cannot have a grievance on the account that the applicant has been discriminated.(See Gujrat Elec. Board vs. Atma Ram and OOI vs. H.N.Kritania, AIR 1989 SC p-1436 p-1774 respectively).

16. In view of the above facts, we find that there is no force in this application and the same is dismissed. The stay order is vacated.

In the circumstances, the parties to bear their own costs.

J. P. Sharma
(J.P.SHARMA)
JUDICIAL MEMBER.

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