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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1416 of 1988

Date of decision: 2.12.1988.

Shri S.C. Verma

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri J.K. Bali

Counsel for the applicant.

Shri O.N. Moolri

Counsel for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri S.C. Verma, Transporation Instructor, Northern Railway, against impugned transfer notice No. 21/Trans dated 18.6.1988 (Annexure A-1 to the application) passed by the Principal, Zonal Training School, Northern Railway, Chandausi concerning his transfer.

2. The brief facts of the case, as stated by the applicant, are that while working as Deputy Chief Controller at Moradabad, the applicant was posted as Transportation Instructor on ad hoc basis pending formation of a panel under the rules. The applicant's posting was ordered at his request as he was a heart-patient and had been recommended light duties by the Divisional Medical Officer, Northern Railway, Moradabad. He joined the Zonal School at Chandausi on 27.4.1985. Subsequently, he was called for a selection for the post of Transporation Instructor and he was found suitable for continuing in the existing grade for the unexpired period of his tenure (Annexure A-4). He got "A grade" and "outstanding" in the All India Instructors Course held from 19.8.1985 to 19.9.1985 at the Western Railway Zonal Training School, Udaipur.

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To his dismay, he learnt that during his absence on sickness, the Principal, Zonal Training School, Chandausi, issued transfer orders of the applicant on 18.6.1988 (Annexure A-1). The orders stated that the applicant was spared on the forenoon of 1.6.1988 to report ^{fur} to DRM/Moradabad for ther posting orders on repatriation to his parent division on administrative grounds. At the time of making application before the Tribunal, the applicant had been on sick list and under treatment in the Northern Railways Central Hospital at New Delhi. The case of the applicant is that the orders of sparing him by the Principal at the behest of the Headquarters were not issued in public interest and are punitive in nature. It is stated that normally transfers are ordered because of promotion to fill a vacant post or for long stay at a particular place. His tenure was for four years, which he would be completing in April, 1989. The applicant has been singled out for discriminatory treatment as three of his other colleagues with a longer stay have not been shifted. He gave examples of Shri L.S. John who joined the School in 1974, Shri R.K. Rawat and Shri V.C. Saxena, both adhoc, who joined the School on 26.12.1981. While Shri Rawat and Shri Saxena were appointed on ad hoc basis, the applicant had been selected on a regular basis. The Chief Safety Superintendent, Northern Railway, had issued instructions that Transportation Instructors should be relieved in the order of their total stay at the Zonal Training Centre. The applicant has filed a copy of a letter from the Northern Railway Headquarters to the General Secretary, N.R.M. Union, dated 4.7.1988 (Annexure A-11) explaining the circumstances of repatriation of the applicant from Chandausi to Moradabad. From this letter it appears that some enquiries were held revealing that the applicant was involved in a case of helping a candidate in copying during examination and as such his presence in any capacity in the Zonal Training School, Chandausi was not considered desirable. The applicant was, however, ^{never} associ-ated with any enquiry, but he has been transferred on the basis of such an enquiry behind his back, Therefore, the foundation of

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the transfer is punitive and it cannot be considered as a transfer simpliciter in public interest. The applicant further states that he would be put to a pecuniary loss of Rs. 198.00 per month on reversion to Moradabad Division. The transfer would also affect his health as well as the studies of his children.

3. The respondents in their reply have stated that the applicant was posted to Chandausi on purely ad hoc basis on 27.4.85 and while he was holding his lien at Moradabad, he could be sent back from the ex-cadre post at any time. It has been claimed that the retention of the applicant at the ex-cadre post and his retention in the Training School for longer period was not considered desirable and, therefore, he was repatriated to his parent Division. Orders dated 18.6.88 were issued to the applicant, but he refused to accept and avoided accepting the letter. Even when the orders 18.6.88 were served on the applicant at Chandausi in the presence of three responsible witnesses, he refused to accept them. He did not even accept the letter sent through Registered A.D. It has been claimed by the respondents that the impugned order is not a transfer order but only a repatriation order. The normal period of four years of deputation can be curtailed at the discretion of the Department according to the exigencies and need of the Department.

4. The learned counsel for the applicant cited the cases of Shri S.N. Singh Vs. Union of India and others decided by the Principal Bench on 15.4.1988 which is similar to the present case. In that case also it was argued by the respondents that the applicant had no right to be retained at the Zonal Training School where he had been brought for a period of four years, but once he is discriminated against and others with longer periods of stay have been retained, unless there are overwhelming reasons of public interest and administrative exigencies, such a discriminatory transfer cannot be defended. The learned counsel for the applicant also cited the case of K.K. Jindal decided by the Principal Bench

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wherein it has held that "once a policy of transfer has been laid down, any action not conforming to it would prima facie be unsupportable". The review petition filed by the respondents in that case was also rejected.

5. After hearing the arguments of the learned counsel for the applicant and the respondents I am of the opinion that there has been some discrimination against the applicant as two of his colleagues, namely, Shri R.K. Rawat and Shri V.C. Saxena who were appointed Instructors on ad hoc basis had been retained at Chandausi whereas the applicant who had been regularly selected was spared. Under normal conditions, I accept a person on deputation can be repatriated to his parent office even before the expiry of the tenure period and that normally courts should not interfere in matters of transfers, specially those in public interest. But in this case it appears that the reason for transfer is the alleged involvement of the applicant in a case of copying in the examination at the School. If the work of the applicant was not satisfactory or if in the normal circumstances his remaining at Chandausi was not in the interest of the work at the School, the respondents would be quite justified in transfer^{ing} the applicant in the larger interest of the efficient running of the Zonal Training School, but such a transfer without an enquiry cannot be done if a stigma is cast on the applicant. By writing a letter to the Northern Railway Mazdoor Union that the applicant had been implicated in a copying case, the transfer does not remain a transfer simpli-citer.

If the respondents came to the conclusion that continuance of the applicant at Chandausi was not desirable, they would have been perfectly justified in transferring the applicant in public interest, but by writing to the N.R.M. Union that he was involved in an undesirable activity, they have cast a stigma on him and, therefore, the transfer becomes punitive in nature. Whether it is a transfer or repatriation does not make any difference. In the circumstances, the transfer order is not sustainable and the

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same is quashed. The applicant should be allowed to go back to the Zonal Training School, Chandausi, within a fortnight to complete his tenure which will come to an end in April 1989. If at that time, the respondents feel that his tenure need not be extended, they would be at liberty to repatriate him to his parent organisation.

6. It is understood that the applicant has joined duties at Rosa under Moradabad Division. He should be given the salary of the post where he has actually worked and also allow him leave salary according to rules when he had applied for leave on medical grounds.

7. The respondents are also directed not to charge penal rent for the house which was in occupation of the applicant while he was away from Chandausi and he should be allowed to continue in the same house so long as he is working at Chandausi.

8. The application is allowed and in the circumstances of the case, there will be no order as to costs.


(B.C. Mathur) 2/2/88
Vice-Chairman