

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 1419 of 1988

Date of decision: 25.5.89

Shri C.L. Surya

....

Applicant

Vs.

Union of India & Others

....

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 filed by Shri C.L. Surya, Senior Clerk, Northern Railway, Zonal Training School, Chandausi, against impugned order Notice No. 66/G/VII dated 2.5.88 (Annex.'A' to the application) issued by the Principal Zonal Training School, Chandausi, against illegal transfer of the applicant.

2. Brief facts of the case, as stated in the application, are that the applicant joined as a Junior Clerk in the Moradabad Division of the Northern Railway on 9.12.1957 and was promoted as Sr. Clerk on 1.4.1976 in the Divisional Superintendent's Office at Moradabad. In May 1980, the applicant was transferred to the Northern Railway Zonal Training School at Chandausi. Vide Divisional Supdt. Moradabad's letter dated 22.5.82 (Annexure A-2) the ministerial (i.e. clerical) staff of the Zonal Training School was constituted into a separate cadre and options were invited from the ministerial staff of Moradabad Division to opt for working either in the Zonal Training School or in the Moradabad Division. The applicant opted for working in the Zonal Training School which was formed into a separate seniority unit (last para of Annex. A-3).

3. Vide Divisional Railway Manager's Office, Moradabad, Notice dated 10.11.1982 (Annex.A-4), the applicant was appointed to officiate as Asstt. Welfare Inspector on ad hoc basis for 6 months for in-service training and on completion of this training, his case was to be referred to the Confidential Branch for further

action. But the applicant was not spared and he was promoted to officiate as School Sargeant in the Zonal Training School on ad hoc basis pending selection vide Principal, Zonal Training School's notice dated 24.12.82 (Annex. A-5). The post of School Sargeant is <sup>equal to</sup> ~~that~~ in the grade of Rs. 425-640. The applicant continued to work as School Sargeant upto 10.9.87 when orders were issued by the Principal, Z.T.S., Chandausi, to post him as Head Clerk in the Grade of Rs. 425-700 (Revised Rs. 1400-2300) on repatriation to his parent cadre.

4. A charge sheet for major penalty dated 17.9.87 was issued to the applicant for alleged irregularities pertaining to the period when he worked as Sargeant. Copies of statement of articles of charge as well as imputation of misconduct in support of the articles of charge are available at Annexure A-7. The Principal, Z.T.S., vide his orders dated 2.5.88 (Annex. A-8) held the charges against the applicant proved and ordered reduction to the lower post of Sr. Clerk in the scale of Rs. 1200-2040 (Revised pay scale) for a period of five years, besides recovery of Rs. 9740.00 for the loss caused. The applicant has preferred an appeal against this order on 15.6.88.

5. On the authority of GM(P), New Delhi's letter dated 19.6.87 (Annex. A-9), the Principal, Z.T.S., Chandausi, issued orders on 2.5.88 sparing the applicant on transfer on 2.5.88 (A.N.) to report to Divisional Railway Manager, Moradabad, for further orders, but the DRM, Moradabad, vide his letter dated 23.5.88 (Annexure A-11), returned the applicant to Principal, Z.T.S., Chandausi, on the ground that the applicant had no lien on his Division as Z.T.S., Chandausi, had already become a separate promotion unit for the ministerial staff w.e.f. 22.5.82. The applicant reported back to the Principal, Z.T.S., Chandausi, who, however, returned him to D.R.M. vide his letter dated 24.5.88 (Annex. A-10) stating that he could not be allowed duty at Z.T.S., Chandausi. The D.R.M. Moradabad, again sent the applicant back to Z.T.S. on 27.5.88 (Annex. A-11) that the applicant be retained at the School till receipt of a reply from Headquarter's

office (Annex.A-II). The applicant reported to the Principal for duty on 28.5.88 but he was not given any duty. He made representations on 30.5.88 and 31.5.88 (Annex. A-12 & A-13 resp.) that although he was attending office since 28.5.88, neither his attendance was being marked nor any orders given to him and requested that his salary for the month of May 88 may be charged at the Z.T.S. But the applicant did not get any response and submitted further representations on 4.6.88, 10.6.88 and 15.6.88 (Annex. 14, 15 and16). On 18.6.88, the Principal Z.T.S., Chandausi, handed over to the applicant his letter dated 17.6.88 (Annex. A-17) addressed to the D.R.M. Moradabad, wherein it was stated "As clarified by Head Quarters Office Shri C.L. Surya, Senior Clerk is directed to report to DRM/Moradabad for further orders." The applicant reported to D.R.M., Moradabad, on 20.6.88 (18th and 19th being holidays), but the applicant was not given any duty. On 11.7.88, the applicant was given a letter dated 8.7.88 from DRM Moradabad to GM(P), New Delhi (Annex.A-18) requesting a post against the applicant which can be posted with no effect on his seniority on the other staff of the Division. It was also stated that otherwise it would not be possible to adjust him. This letter was delivered by the applicant inthe Headquarters office on 13.7.88. No reply from the Headquarters Office has reached Moradabad Division so far with the result that the applicant is still without a posting and he has not been paid any salary from May, 1988 onwards causing acute financial distress to the applicant.

6. According to the grounds urged by the applicant, his transfer is absolutely unjustified as he belongs to a separate cadre and his transfer to another promotion unit is unwarranted. The transfer has been ordered as a measure of punishment. The transfer is obviously ordered because his working as School Sergeant was found to be unsatisfactory. The applicant has stated that there is no reason why he should be transferred from the post of Sr. Clerk when the duties of the two posts are entirely different. The applicant prays that the respondents be directed

to allow the applicant to work as Sr. Clerk at the Zonal Training School and to arrange payment of his salary for the months of May, June and July, 1988 at Chandausi urgently.

2. The respondents in their reply have stated that the applicant was involved in certain misappropriation of Govt. store and a vigilance case was established against him and a major penalty was imposed on him of reduction in rank for five years as Sr. Clerk in the revised pay scale of Rs. 1200-2040 and recovery of Rs. 9740.00 was also ordered from his monthly salary on account of loss caused by him to the Rly. Administration. The applicant chose not to prefer an appeal against this order. Since the conduct of the applicant was dubious and it was not congenial for the administration to continue him on the administration for the smooth and proper functioning, the Headquarters Office issued an order to shift him from ZTS, Chandausi, to a nearby place under DRM, Moradabad, but the DRM, Moradabad, also declined to accept him taking into consideration his past record and referred the matter back to the Headquarters Office to reconsider its decision. Finally, the Headquarters Office ordered his posting in Moradabad Division and the petitioner was allowed to join under loco Foreman, Moradabad, which the applicant complied with without any protest. Thereafter the salary <sup>b/w</sup> <sub>^</sub> of the applicant treating the waiting for order period as duty was prepared and paid to him. There are extant orders of the Railway Board in this connection empowering the competent authority to transfer a Railway servant from one seniority unit to another in the exigency of service anywhere in India. Such was the exigency as mentioned above that the applicant was transferred from ZTS, Chandausi, to DRM, Moradabad, and the applicant has no cause of action to move this Hon'ble Tribunal. The application has become infructuous after the joining of the applicant under Loco Foreman, Moradabad, without any protest. Salary for the month of May, 1988 could not be charged at ZTS, Chandausi, as he was spared on 2.5.88 from there and the Moradabad Division was advised to charge his pay through LPC and letter. The salary for the intervening period as averred

has since been paid to the applicant.

8. The learned counsel for the applicant has pointed out certain anomalies in the counter filed by the respondents. He stated that it has been mentioned in the counter that there was a vigilance case against the applicant whereas there was no vigilance case but the case was started on the basis of complaints of accounts people. Similarly, DRM, Moradabad, asked the applicant for going back to Chandausi not because of his past record, but because of cadre problem. He also pointed out that the applicant had not joined at Moradabad without protest. He had made representations against his posting at Moradabad as can be seen from his representations given in Annexures A-12 to A-16 and he filed the O.A. as a protest against his posting to Moradabad. He cited the judgment in OA 210/88 of the Principal Bench decided on 24.1.89 where a Headclerk at Chandausi was allowed to continue as he had become a part of the cadre of the Zonal Training School, Chandausi, and he had ceased to have any lien in his parent Division i.e. at Moradabad. He also cited two other cases - 1984(1) SLJ page 61 - Prakash R. Borker Vs. U.O.I. & Others decided by the Bombay High Court where it was held that transfer from one cadre to another cadre without the consent of the officer was void. A similar decision was given in the case of Shri G. Chandrasekharan Pillay Vs. U.O.I. & Others - OA 1117/86 decided by the Principal Bench on 11.9.87 - that change of cadre without consent was not valid. The counsel for the respondents, however, said that the judgment in OA 210/88 was on different grounds and that the General Manager has the competence to transfer an official outside the cadre if it was in administrative interest. It is seen that the the original order of transfer does not mention administrative grounds, but when the DRM, Moradabad, raised certain issues, it was clarified by the Headquarter's office that the transfer order was on administrative grounds.

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9. Shri Moolri laid great stress on the point that the higher authorities in the Northern Railway had come to the conclusion that it was not congenial for the applicant to continue at Chandausi and that the Tribunal should not replace its subjective judgment with that of the Administrative Head who had transferred the applicant to a nearby place without affecting seniority of the applicant. The discretion in such matters must be left to the Department and in any case transfer is not a punishment. When the applicant was found bungling, discretion must be allowed to the Department to shift him from one place to another.

10. Shri J.K. Bali, however, said that the applicant was found bungling only as a Sargeant and as such was sent to his parent cadre from the ex-cadre post and the transfer order to Moradabad which was issued even before the punishment was awarded smacks of arbitrariness.

11. I have considered the arguments on both the sides and I feel that once the applicant had severed his connection with the Moradabad Railway Division's office and became a member of a different cadre at Chandausi, he should not normally be transferred out of that place without his consent. The General Manager has certainly a right to transfer an official from one cadre to another in public interest, but in this case the applicant had <sup>already</sup> been punished by reduction in the scale for five years. He was also removed from the post of Sargeant to that of a Head Clerk and then that of a Senior Clerk. He can certainly be chargesheeted and punished if he is found bungling in the post of a Sr. Clerk, but to impose the punishment of reduction in pay as well as transferring the applicant from Chandausi to Moradabad, specially when there was no post available at Moradabad and the order was to revert the juniormost person at Moradabad, if necessary, appear unjustified. It is also noticed that the applicant is a Scheduled Caste employee and his native place is 4 miles from Chandausi,

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as such, considering all the aspects it would be reasonable that he should continue at the Zonal Training School to which cadre he has been transferred permanently. In the circumstances, it is held that the applicant should be sent back to the Zonal Training School, Chandausi, immediately. The application is allowed, but there will be no orders as to cost.

*B. C. Mathur*  
25.5.89

(B.C. Mathur)  
Vice-Chairman