

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1733 of 1989
T.A. No.

13.
DATE OF DECISION 13.2.1990

P.C. Aggarwal

Applicant (s)

Shri B.S. Mainee

Advocate for the Applicant (s)

Union of India & Others

Versus
Respondent (s)

Shri R.K. Kamal & Shri B.K.

Advocat for the Respondent (s)

Aggarwal.

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 under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri P.C. aggarwal, Chief Parcel Clerk, Northern Railway, Railway Station, New Delhi, against order No. 115-P/Confl./1/88 dated 2.9.1988 passed by the Divisional Railway Manager, Northern Railway, New Delhi, transferring the applicant from Delhi Division to Allahabad Division. The case of the applicant is that although the seniority of the applicant is division-wise and not the headquarters control seniority, yet the applicant has been transferred from Delhi Division to Allahabad Division without any reason whatsoever. The transfer order is not on administrative grounds, but it is a punitive order in the garb of an administrative order and has been passed in a hush-hush manner to punish the applicant without giving him any 'Show Cause Notice'.

2. Brief facts of the case, as stated by the applicant, are that the applicant was appointed as Office Clerk on 8.10.1959, thereafter was selected as a Coaching Clerk in 1962 and was posted as Relieving Coaching Clerk in January 1963 after having successfully completed training at the

Railway Training School, Chandausi. The applicant worked as Relieving Coaching Clerk upto July 1964 and during this period he worked as a Coaching Clerk at Ghaziabad, Muzaffarnagar and Khatauli. Thereafter the applicant was posted as Parcel Clerk at Delhi. By his hard work, devotion to duty, sincerity and dedication, the applicant had been getting regular promotions and is presently Chief Parcel Clerk in the grade of Rs. 1400-2300. Vide orders dated 4.2.87, the applicant was transferred from Delhi Station to New Delhi, but the applicant was not spared and subsequently vide order dated 8.5.87 (Annexure A-3 to the application), his transfer from Delhi to New Delhi was pended. The reason for not sparing the applicant was that he was an office-bearer of the Union. Thereafter vide orders dated 30.4.88, the applicant was transferred from Delhi to Kurukshetra without cancelling the earlier transfer orders. The applicant filed an appeal against the transfer orders to Kurukshetra on 3.6.88 (Annex. A-5 to the application) which was recommended by the Station Superintendent, Delhi Main Station, pointing out that the retention of the applicant at Delhi Main Station was in the interest of Administration and eulogised the meritorious services of the applicant. The respondents cancelled the orders of transfer to Kurukshetra and passed orders transferring the applicant from Delhi to New Delhi vide their letter dated 11.7.88 (Annex. A-6 to the application). The applicant joined duties at New Delhi on 14.7.88. Although the applicant was an active worker and office-bearer of the Northern Railway Men's Union for a long time, he was disenchanted with the working of the Union and, therefore, stopped working for the N.R.M.U. in March 1988 and onwards. Although the applicant was transferred to New Delhi Station in July, 1988, through a notice dated 2.9.88, he ^{again} was transferred from New Delhi to Allahabad (Annex. A-1 to the application). No reasons whatsoever have been given in the impugned order for transferring the applicant just after 1½ months since his joining the duties at New Delhi. Moreover, his transfer is not within the Division but out of the Division which is not the normal practice.

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The inter-divisional transfers are not ordered because such transfers not only cause hardship to the transferred employees but also to the staff of the division to which the staff is transferred because the seniority of the staff existing on that division is adversely affected. Transfer of the applicant from Delhi Division to Allahabad Division is against the extant policy and practice and it clearly shows that there are some hidden motives behind the transfer. In terms of Railway Board's letter dated 28.10.68 (Annex. A-7 to the application), it has been clearly laid down that in case some staff is rendered surplus, order of seniority should be the criterion for deciding about the employees who are to be rendered surplus. The applicant represented to the General Manager, Northern Railway, on 4.9.88 against his transfer. The applicant's transfer has been made during the mid-session of his four children's education which will affect their academic career. One of his daughter's marriage is to be solemnised in December, 1988. According to the applicant, so far as he knows, he is not involved in any vigilance case. The impugned transfer orders are illegal, arbitrary, non-speaking, discriminatory and void ab-initio on the grounds that no reasons whatsoever have been given for transferring the applicant just 1½ months after his earlier transfer, in accordance with the extant policy/practice staff having divisional seniority is only transferred in the division and not to another division, that the impugned order is not an administrative order but a punitive order and that the transfer order has been passed with mala fide intention and extraneous reasons and the administrative interest is only a camouflage. The applicant has prayed the Tribunal to quash the impugned orders and direct the respondent to let him perform his duties at New Delhi where ^{he} was transferred in the month of July, 1988.

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3. The respondents in their reply have stated that the application is in violation of Sections 20 and 21 of the Administrative Tribunals Act. They have stated that the applicant was awarded punishment of withholding of increment for one year on 25.9.1987 in a vigilance case. They have admitted that the applicant was posted to Kurukshetra, but when fresh orders are issued, automatically the earlier orders stand cancelled and superceded by the fresh one. This clearly shows the Department's sincere intention to accommodate the applicant without any malice as has been alleged by the applicant in his application against the Deptt. and to provide him at its best in a clear vacancy. The transfer orders were issued by the competent authority on the directions of the Railway Board authorities in exigencies of services. The respondents had to comply with the directions of the Railway Board and hence the transfer orders were passed by the competent authority. The General Manager and other officers are fully empowered under Rule 226 of the Indian Railway Establishment Code, Volume I, to transfer any railway employee of Group C & D anywhere from one establishment to another. The transfer was effected as a result of high-level decision at Railway Board's level purely in public interest on administrative grounds. They have stated that the applicant was not declared surplus and hence Railway Board's orders dated 28.10.68 do not apply to him. The contentions raised in the grounds are wrong and denied in view of the fact that the transfer orders have been issued by the competent authority who is fully empowered under the Rules to effect such transfer. The decision to transfer the applicant alongwith others was taken at a very high level purely in public interest and the Deptt. claims privilege of the secret notes and the decision taken which was purely in exigencies of service and to manage the affairs of the Indian Railways in order to provide satisfactory and

clean service to the public. No remedy as prescribed under Rules 20 and 21 of the A.T. Act lies and the application being premature is liable to be dismissed on this ground alone.

4. The applicant in his rejoinder has stated that the respondents have suppressed facts which were revealed during the arguments on 29.9.88 that the transfer of the applicant is as a result of the enquiry held by an Enquiry Committee under the orders of the respondents. The complete eclipse of the facts from the counter affidavit is clearly with the intention to hoodwink the Tribunal by a bald statement that the transfer order has been passed under the orders of the Railway Board without disclosing any reason and without even placing the Railway Board's order and/or enquiry report on record. The alleged enquiry has been held ^{or} on the back of the applicant without giving him an opportunity of hearing and, as such, is illegal and malicious. The respondents have flouted the Tribunal's order dated 29.9.88 which directed the respondents to pend the implementation of the impugned transfer order. The respondents have deliberately refused to comply with the order and have not taken the applicant on duty although he reported for duty on 14/9, 16/9, 22/9, 3/10 and 10/10/88 and have also not paid him his salary. The applicant has been illegally transferred from Delhi Division to Allahabad Division with mala fide intentions as a result of some alleged enquiry which was held ^{behind} on the back of the applicant. The applicant has been transferred out of the seniority group to another Division where seniority of the staff is maintained separately from the staff of Delhi Division. Moreover, in Allahabad Division, the seniority of the booking clerks as well as parcel clerks is combined and they are inter-transferable whereas in Delhi Division, the seniority of booking clerks and parcel clerks is maintained separately and the parcel clerks cannot be posted as booking clerks and

vice-versa being entirely distinct seniority groups. The respondents have failed to indicate the exigency of service which compelled them to transfer the applicant out of the Division and out of the seniority group and what public interest would be served by transferring the applicant in the middle of the School Session of the children. The punishment by way of withholding of the increment temporarily for one year in 1987 was as a result of a technical lapse on the part of the applicant in not informing the Deptt. that his wife was running a stitching and embroidery centre and that a TV was purchased in the name of the applicant's wife for Rs. 900/- in 1976 without getting permission of the Deptt. The applicant has refuted the contention of the respondents that there was no post of Chief Parcel Clerk available at New Delhi as S/Shri Budh Ram, P.L. Nigam, A.P. Gupta, Ram Yash Singh and Sunder Lal in the grade of Rs. 1400-2300 were transferred from Delhi to New Delhi vide DRM, New Delhi's letter dated 11.8.87 (Annex. V) and all these employees were junior to the applicant. Though the order of transfer appears to be innocuous, yet the respondents have admitted that the applicant was transferred under the orders of the Railway Board who had appointed an inquiry committee and it was as a result of the recommendations of the inquiry committee that the applicant has been transferred. It is obvious that the transfer of the applicant is based on certain conclusions arrived at by the respondents and/or by the Railway Board with regard to the conduct of the applicant. These conclusions drawn behind the back of the applicant cast a stigma on the applicant and positively marred his future service prospects. Moreover, according to the extant Railway Board orders the employees cannot be transferred from one Division to the other Division against his willingness.

5. The applicant also claims that he has rendered meritorious services at Delhi and New Delhi stations and has helped to collect lakhs of rupees of which the Railway Board was going

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to be defrauded by unscrupulous merchants and their agents. The applicant by dint of his loyalty stopped the withdrawal of amounts deposited by the merchants for taking Memo Delivery without complying with the extant rules. The applicant had been collecting the cost of the consignments from the merchants before letting them to take delivery without surrendering the R/Rs as per rules. The merchants did not take kindly to this action of the applicant and threatened him that they would get him transferred in case the applicant did not dance to the illegal and fraudulent intentions of the merchants. Besides, the applicant reweighed the inward consignments and collected huge sums from the merchants as "UNDER-CHARGE" which had shown an increase of 3000% within six months. A certificate in this regard issued by the Chief Parcel Superintendent, Delhi, is annex hereto and marked Annexure XX. The applicant appeared in the court of the Hon'ble Mr. M.S. Rohilla, Sub-Judge 1st Class, Delhi, in case No. 382/86 and deposed as a result of which the suit filed by the merchants was dismissed on 30.8.88. The merchants and their unscrupulous agents who were already unhappy with the applicant, became all the more hostile and the applicant is afraid that the transfer of the applicant is the result of false and mischievous complaints and inquiries against the applicant. The applicant has a strong belief that the transfer of the applicant with mala fide intention to punish him on the false undisclosed ground of public interest.

6. The respondents in their additional counter have stated that with a view to offering satisfactory services to the customers, the Ministry of Railways (Railway Board) undertook an independent assessment to ascertain the background and the quality of service rendered by the railway staff in Delhi/New Delhi Parcel Offices who come in daily contact with the rail-users. As a result of this assessment, it was decided to shift those staff from Delhi/New Delhi Parcel Offices against whom there are general complaints regarding the quality of services rendered and the public relation functions. Such staff included the personnel who had developed

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deep roots in Delhi area due to long stay and such long stay was not considered desirable in larger public interest. In pursuance of the assessment as to the suitability or otherwise of the concerned railway staff in public dealing, the Railway Board advised the General Manager, Northern Railway, to transfer such staff in public interest out of Delhi Division immediately and the applicant was one of the Parcel Office staff included in the list.

7. The learned counsel for the applicant, Shri Mainee, strongly contended that there was no proper assessment of work done by the applicant and if there is any inquiry conducted by the respondents behind the back of the applicant, it would be illegal as an opportunity must be given to the applicant to know such assessment and file his defence, if necessary. The learned counsel wanted all the papers concerning such an inquiry to be placed before the Tribunal. The respondents claimed privilege as these were secret documents. The plea of the respondents was, however, not agreed to and the respondents were directed to produce the papers leading to the transfer of the applicant, including the inquiry report.

8. The secret gist of the Study Report on the malpractices/corruption in the working of Parcel/Luggage Offices at Delhi and New Delhi stations was produced and also shown to the learned counsel for the applicant. The report mentions that the Vigilance Directorate of the Board and the Northern Railway Vigilance had been receiving numerous complaints against the functioning of New Delhi and Delhi Parcel/Luggage offices. The bulk of these complaints is regarding malpractices being indulged in by Parcel/Luggage officials leading to leakage of revenue, harassment to rail users and payment of avoidable claims. The Minister of State for

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Railways, being seized of the problem, wanted immediate action to stop the malpractices and improve the image of the Railway administration. A Study Team comprising the Chief Vigilance Officer (T), Northern Railway, Area Superintendent Delhi, Northern Railways, and Executive Director Vigilance (T), Railway Board, and two Vigilance Inspectors one each drawn from the Board and the Northern Railway examined the matter and submitted the Report suggesting various measures to improve the working of the Delhi/New Delhi Parcel Offices. While making various recommendations, the Study Team also recommended that certain officials should be shifted out of Delhi area on grounds of long stay, bad track record, questionable reputation and inefficiency in supervising work. The applicant was one of the 6 officers suggested for moving out of Delhi/New Delhi Parcel Offices.

9. The learned counsel for the respondents stated the transfer of the applicant was done purely in public interest and not only the applicant but a large number of persons working in the Parcel Offices have been transferred out of Delhi and New Delhi. The process of such transfers is still continuing with a view to improve the image of the Railways. He said that Delhi is particularly vulnerable and much of the criticism which comes to public notice is in Delhi area. There is, therefore, no malafide in transferring the applicant alongwith the others out of Delhi. He said that the applicant, Shri P.C. Agarwal, has been working in Delhi area for a very long time and as such there is nothing wrong in transferring him out of Delhi. He emphasised that since the idea was that persons with long stay in Delhi Parcel Offices should be moved out as very often such persons develop

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deep roots in these areas and as a general policy persons likely to have developed roots in Delhi/ New Delhi stations are to be moved out. He said that since the transfer is being done in public interest, the applicant would not suffer in the matter of seniority or in any other way.

10. The learned counsel for the applicant, on the other hand, said that the transfer was clearly illegal. According to Railway Board's Circular No. 939-E/276/I.R.T. (SSBO) dated 27.8.1971 inter-divisional and inter-railway transfers in the intermediate grade in which there is no element of direct recruitment are not permissible. He said that the track record of the applicant was excellent and he had been instrumental in bringing out the fraud by some unscrupulous merchants and as such some influential members of the business community in collusion with the Railway staff were working against him. As the Study Team came to the conclusion that the applicant's track record was bad and he was indulging in malpractices, it would harm the career of the applicant very seriously and as such the transfer becomes punitive and, therefore, illegal in the eyes of law, specially as the inquiry was done behind the back of the applicant.

11. The learned counsel for the respondents cited two Supreme Court judgements in Union of India & Others Vs. H.N. Kirtania - 1989 (3) SCC 445 - and the Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani - 1989 (2) SCC 602 - where the Supreme Court has held very definitely that transfer is an incident of service and an employee has no right to be posted at a particular place

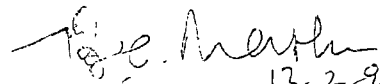
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and that transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules ^{or} on ground of mala fides. The Supreme Court also held that a Government servant can make a representation to the competent authority but cannot refuse to go to the next station of posting on grounds of having made a representation. No Government employee, otherwise provided for in the rules, can refuse to go on transfer.

12. I have gone through the pleadings and have very carefully considered the arguments by the learned counsel for the applicant and the respondents.

13. It is a well accepted principle in matters of transfer that normally courts will not interfere in transfers which are based on public interest or which are for administrative reasons. The transfer can only be questioned if it is a result of mala fide or if it violates any statutory provisions. It is true that the Study Team which went into the working of the Parcel Offices in Delhi did not associate the applicant with such an inquiry, but it is not an inquiry against the conduct of the applicant. The impugned order of transfer also does not make any reference to any inquiry. It only states that the transfer has been ordered in the interest of administration and the General Manager or the Railway Board are legally competent to order inter-divisional transfers if these are in the interest of administration. If the purpose of the transfer is to improve the image of the Railway administration, one cannot ordinarily find fault with such an action. The applicant has been working in Delhi area since 1964.

He was once posted to Kurukshetra in April 1989 but that was also cancelled. As such, effectively, he has been in Delhi/New Delhi/Nizamuddin which are all parts of Delhi area for over 25 years. The order of transfer does not say that the applicant has been transferred because of any corrupt practices and no stigma has been attached to him. Only when the respondents were asked to explain the public interest, they came out with the report of the Study Team which mentions that in order to improve the image of Railway administration in Delhi area, persons who have been long in Delhi or who did not have a good track record were being moved out of Delhi. It is not a case of a solitary transfer of the applicant, but a number of others have also been transferred and are being transferred. It is not necessary for the administration to transfer persons strictly according to their length of stay at a particular place. There can be many other considerations and as long as there is no mala fide and violation of any statutory rules, the policy laid down by the Supreme Court in Union of India & Others Vs. H.N. Kirtania's case has to be followed. As no malafide has been established and as there is no violation of statutory rules and the order of transfer is in the interest of administration, I see no reason to interfere with the impugned order of transfer. As the applicant has been transferred out of Delhi Division after working in Delhi for a very long time, such an action can be justified and no stigma is attached to such a transfer. I am satisfied that the transfer is to improve the image of the Railway administration and is not violative of any principles of natural justice. In the circumstances, the application is dismissed. There will be no orders as to cost.


(B.C. Mathur) 13.2.90
Vice-Chairman
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