

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1864 of 1988
T.A. No.

DATE OF DECISION 13.2.1990

K.K. JINDAL
Applicant (s)

Shri G.D. Gupta
Advocate for the Applicant (s)

Versus

GM, Northern Railway
Respondent (s)

Shri B.K. Aggarwal
Advocate 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 under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri K.K. Jindal, Chief Parcel Supervisor, Delhi Division, Northern Railway, Delhi Rly. Station, challenging the validity of the order dated 2.9.1988 transferring the applicant from Delhi Junction to Aligarh Junction on the grounds that though the cadre of Chief Parcel Supervisor is Division-wise, though the seniority list of Chief Parcel Supervisor is Division-wise and though there is no question of transfer of Chief Parcel Supervisor from one Division to another Division, yet the applicant has been transferred from Delhi Division to Allahabad Division.

2. Brief facts of the case as stated by the applicant are that the applicant is presently employed as Chief Parcel Supervisor in Delhi Division of Northern Railway and is posted at Delhi Junction Railway Station. The applicant was initially appointed as Coaching Clerk in the Northern Railway on 31.1.1973 and later on in May/June, 1976 he was appointed as Commercial Apprentice on account of his being a graduate and after completing his training from the Zonal Training

School, Chandausi, he was appointed Chief Parcel Clerk on Delhi Division vide General Manager(P)'s letter dated 28th July, 1978. He joined duties as Chief Parcel Clerk on 2.8.1978. However, a hue and cry was raised against the appointment of the applicant by one Shri Ram Saran Das, the then President of the Local Unit of Northern Railway Men's Union, who was on enemical terms with the applicant's father, who was at that time Secretary of the rival Union i.e. Uttari Railway Mazdoor Union, as the applicant's father had opposed the General Strike of 1974 and got rewards, whereas Shri Ram Saran Dass was arrested at Karnal in connection with the 1974 strike and removed from service and held the father of the applicant responsible for all the consequences. Shri Ram Saran Dass even sat on 'Dharna' outside the Office of the Station Superintendent, New Delhi, on 2.8.78 and gave threats to the Administration. Under these circumstances, the applicant was relieved of his duties of C.P.C. at New Delhi on 3rd August, 1978 and posted as Commercial Inspector, Bhatinda (in Delhi Division) which was in the equivalent grade of the Chief Parcel Clerk. The applicant joined duties on 4th August, 1978 and worked there upto 9.4.1980. In the meantime the applicant was told that he had no lien either in the post of Commercial Inspector or Chief Parcel Clerk, he submitted a representation to decide his lien on the basis of which the General Manager took up the matter with the Delhi Division and the authorities then realised that the applicant had a lien on the post of C.P.C. and the applicant was again posted as C.P.C. at Nizamuddin vide orders dated 7.4.1980. There was again agitation by the same group of persons led by Shri Ram Saran Dass, but this time the General Manager took the view that he would go by the rules. Since the record of the applicant was wholly unblemished and meritorious, he was promoted to the higher grade of Rs. 550-750 with retrospective effect from 1.6.79 and vide orders dated 4.5.83, the applicant was again promoted to the next higher grade of Rs. 700-900 w.e.f. 4.4.1983. Though initially the appointment was in the beginning ad hoc basis, but later on it was made regular with effect from 1.1.1984 which proved conclusively that the record of the applicant was wholly unblemished and satisfactory otherwise the applicant could not have been given the said promotion.

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According to the applicant, he was given meritorious certificates in appreciation of his work and was also given reward for his most outstanding acts of honesty and a reward of Rs. 500.00 was specially given by the General ^{Manager} to the applicant. Through his honest and relentless efforts was able to fetch for the Railway Rs. 1 lakh more from the auction of accident involved steam coal wagons which earned him certificates of appreciation. He and his father reported some cases of fraud to the higher authorities which resulted in the recovery of Rs. 1,12,000/- from the merchants, black listing of its main clearing agent and withdrawal of the facility of delivery on the basis of General Indemnity Bond which gave the merchants facility of taking delivery without immediate surrender of railway receipts which was challenged by 7 merchants dealing in whole-sale business of lemon in the High Court but failed. This made a number of persons including big business houses his enemy and they started creating lot of troubles in the matter of his service career. The enemies included dishonest and fraudulent merchants in addition to rivals of the father of the applicant on account of inter-union rival, whose misdeeds were exposed, and also a number of officers in the Railway too became conspirators with them. The advantage of this situation was taken by Shri Ram Saran Dass who though retired had become a main pivot behind the conspiracy against the applicant and his father. It is unfortunate that on the one hand the applicant's performance has been excellent and outstanding and, on the other hand, the authorities succumbed to the pressure brought to bear by the dishonest and fraudulent elements who were exposed by the applicant and his father, the applicant was suddenly proposed to be transferred from Nizamuddin Rly. Station, ostensibly on the plea that according to the extant instructions staff coming into contact with the public were to be shifted after four years. There were some employees in the Parcel Offices having stay of 20 years or even more having public dealings like the applicant and with record not as good as that of the applicant but who had not been transferred. Some transfers on the basis of longest stay were made vide orders dated 6.6.86

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but they were within the Delhi area. These orders were cancelled in the case of office bearers of the recognised Union, whereas this was not done in the case of the applicant who was at that time Vice-President of the Uttariya Railway Mazdoor Union at Nizamuddin Station. The applicant had been discriminated even in respect of other employees who were not office bearers but whose stay was much longer/higher than that of the applicant. It was under these circumstances that the applicant challenged the validity of the aforesaid order of transfer by filing an Original Application under Section 19 of the Administrative Tribunals Act, 1985, No. O.A. 26 of 1986, in January 1986, which was allowed by the then Chairman of the Tribunal, Justice K. Madhava Reddy, and Member, Shri Kaushal Kumar who held that the impugned order of transfer was for reasons merely other than administrative and that since according to the respondents the order of transfer of the applicant was because he was allegedly indulging in undesirable activities, the transfer order was rendered punitive and the same could not be passed without holding an enquiry as to whether the allegations of undesirable activities were correct or not. As a result of this judgment, the order of transfer of the applicant dated 2.1.86, was cancelled and he was allowed to join duties at Hazrat Nizamuddin in the post of Chief Parcel Supervisor. Since the respondents were prejudiced against the applicant owing to the judgment of the Tribunal and making allegations of malafide, the respondents did not take rest and proceeded further to hold a departmental enquiry on wholly false and untenable charges. The applicant was first placed under suspension vide order dated 21.4.86, which was wholly illegal and malafide and had been carried out in order to penalise the applicant and to victimise him as is clear from the fact that no charge sheet was served on him for almost 9 months. Then 5 charges were levelled against the applicant, but none of them was proved and the applicant had to be exonerated of the charges vide order dated 24.5.88 (Annex-S to the application). Moreover, the suspension period of more than 2 years from 21.4.86 to 23.5.88 was regularised as spent on duty vide memo dated 2nd/7th June, 1988 (Annexure-T). The applicant was put back on duty on 23.5.88 at Nizamuddin, but vide orders dated 10.6.88, the applicant was transferred to Delhi Junction, within one month, where he resumed duties

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on 18th June, 1988. Hardly 2-1/2 months had passed, another order was passed on 2.9.1988, transferring the applicant not within the Division, but outside the Division i.e. to Aligarh in Allahabad Division. A copy of the order is at Annex. U. According to the applicant, there could be no public or administrative interest of exigency, but the order of transfer was the result of continued malafides and prejudices against the applicant because of the background stated above. The transfer order was apparently illegal as the post of Chief Parcel Supervisor is borne to the de-centralised cadre. The post of Chief Parcel Supervisor was decentralised vide orders dated 25.3.84 (Annex. V) as a result of which there could be no question of inter-divisional transfers. The seniority is Division-wise, and, therefore, there could be no transfer outside the Division but only within the Division. The seniority is Division-wise would be clear from the Seniority List of Chief Parcel Supervisors of Delhi Division issued vide circular dated 7.9.87 (Annex. W).

3. After receiving the order of transfer dated 2.9.88, the applicant made a representation on 4.9.88 (Annex. X), but the applicant has not been favoured with any reply. The malafide would be clear from the fact that though the applicant was sanctioned leave for four days vide his application/1.9.88 to Station Superintendent and marked so in the Attendance Register, but even then after receiving the orders of transfer, the remaining 3 days ^{leave} was cancelled vide orders dated 2.9.88 (Annex. X). The applicant has also not been paid the amount of salary and subsistence allowance during the period he remained under suspension from 21.4.86 to 23.5.88 which shows that the respondents have been trying to harass the applicant to the maximum. According to the applicant, the impugned order of transfer dated 2.9.88 transferring the applicant from Delhi Division to Allahabad Division has been rendered wholly illegal, void, ineffective, ultra vires, unconstitutional, arbitrary, malafide, discriminatory and is liable to be set aside on the grounds that there could be no public or administrative exigency or reason for transferring the applicant. The applicant having belonged to the cadre of Chief Parcel Supervisor, which is a Division-wise cadre,

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is not liable to be transferred from one Division to another vide circular dated 27.8.71 (Annex. Z-2) which also lays down that no inter-divisional transfer can be allowed to take place where there is no element of direct recruitment and in the present case there is no direct recruitment in the post of Chief Parcel Supervisor. Thus the impugned order of transfer is patently malafide apart from being arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution.

4. The respondents in their reply have stated that the application is in violation of Section 21 of the A.T. Act. According to them, the applicant was relieved on 2.9.1988 for joining at the new place of posting. The respondents have denied the contention of the applicant that Shri Ram Saran Dass was opposed to his appointment as Chief Parcel Clerk at New Delhi and that it was under his pressure that applicant was posted to Bhatinda. They have denied the allegation that transfer of the applicant is the result of Union rivalry. In fact, the transfer was made in public interest, which the respondents are competent to make. They have also denied that the transfer is due to pressure from the enemies of the applicant as alleged. The transfer of the applicant alongwith the others was made in public interest. It is not the only case of the applicant but others have also been transferred to Allahabad Division out of Delhi Division which is purely in administrative interest. They have admitted that certain Parcel clerks were ordered to be transferred from New Delhi to Delhi and vice-versa on account of longest stay and that the transfers of those who had been office bearers of the recognised Unions were pending till they were replaced by suitable persons. As the applicant was an office bearer of the recognised Union, his transfer was approved by the General Manager before his transfer orders were issued and that there has been no violation of the instructions referred to by the applicant. The appeal of the applicant against his transfer was duly considered by the competent authority and rejected. Since the transfer of the applicant has been done in public interest, his seniority will not be affected in any manner. The transfer is not at all malafide or punitive. The applicant has not exhausted the remedies available under Sections 20 & 21 of

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the Administrative Tribunals Act.

5. The learned counsel for the applicant, Shri G.D. Gupta, strongly urged that the order of transfer of the applicant was completely mala fide and the respondents have been harassing him for the last several years and that they are angry with him because he was able to get ^{the} earlier transfer orders quashed by this Tribunal in OA 26/86. Hardly any new facts have emerged which will justify the transfer of the applicant in public interest. The case of the applicant is that right from the beginning his appointments have been consistently opposed by Shri Ram Saran Das, former President of the Local Union of the Northern Railway Mazdoor Union as he was inimical to his father who was Secretary of the rival union, namely, Uttri Railway Mazdoor Union. As a result, when he was appointed as Chief Parcel Clerk on 2.1.78, he was on 3.1.78 posted to Bhatinda where the applicant worked from 4.8.78 to 9.4.80, but on his representation/^{when} he was posted to Nizamuddin as Chief Parcel Clerk, the same Shri Ram Saran Das once again agitated against him. But this time, he did not succeed. The applicant was promoted in 1983 and again on 1.1.84 and has been given a number of certificates and rewards for excellent work. He and his father were able to report cases of fraud in which the Railways were involved and were instrumental in recovering Rs. 1,20,000/- from some wholesale lemon merchants whose appeal in the High Court also failed because of the applicant. These merchants and the rivals in the union activities have been putting pressure on the Railway officers for his transfer from Nizamuddin on completion of four years although there are many persons who have been in Delhi area for a much longer period. As the cancellation of the transfer by the Tribunal was not taken kindly by the respondents, he was later suspended and he remained under suspension for two years.

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Five charges were also framed against him, but nothing was found against him in the inquiry conducted by the respondents themselves and the entire period of two years suspension was treated as duty. He was posted back on duty on 23.5.88, but on 10.6.88 he was transferred to Delhi Junction where he joined on 18.6.88 and now the applicant has been transferred on 2.9.88 from Delhi to Aligarh which is outside the Division. There is no public interest involved in this transfer but is a result of pure prejudice. The cadre of Chief Parcel Supervisors is decentralised and the transfer is clearly mala fide.

6. The learned counsel for the applicant said that Annexure Z-2 which is Serial No. 5414 - Circular No. 939-E/276/I.R.T. (SSBO) dated 27.8.1971 clearly lays down that inter-divisional and inter-railway transfers in the intermediate grade in which there is no element of direct recruitment are not permissible. As such, if there is any reason to deviate from these orders passed by the respondents, there should be some very special reasons for doing so, but the respondents have failed to give any reason for the inter-divisional transfer of the applicant which by itself shows the mala fide of the respondents.

7. It was pointed out by the learned counsel for the respondents that there have been complaints regarding the working of the Parcel Offices in Delhi and the Minister of State for Railways was very keen that attempts should be made to improve the image of the Railway administration by transferring persons who had been at a station for long periods and had carved out deep roots there and also such persons who were inefficient or whose reputation was not good for the Railways. As such, a Committee consisting of senior officers including the Chief Vigilance Officer (T), Northern Railways and the Executive Director Vigilance (T), Railway Board, had gone into the matter and given a report on the malpractices/corruption in the working of Parcel/Luggage Offices at Delhi and New Delhi. This Committee had recommended transfer of some persons on grounds of long stay,

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bad track record, questionable reputation, inefficiency in supervision/working etc. The learned counsel for the respondents, Shri B.K. Agarwal, claimed privilege of these documents as they were secret documents, but since the respondents have a right to transfer persons whose continued presence at some places was not in public interest, the applicant was transferred. He said that it was very important, particularly at Delhi, and the Minister was very keen that a thorough study should be made and efforts taken to improve the image of the Parcel/Commercial Offices at Delhi/New Delhi stations. The Committee had spelt out the duties and responsibilities of Parcel and Commercial Officer who was to supervise the working of the Parcel and Commercial Offices and suggested that a senior scale officer of unimpeachable integrity should look into the parcel traffic only. He said that one of the recommendations of this Committee was that this senior scale officer would supervise both Delhi and New Delhi where the earnings from parcel traffic alone were about Rs. 4 lakhs a day and these are likely to increase in future. The high-level Committee recommended transfer of some persons who had either very long stay or had a questionable reputation.

8. Shri Gupta vehemently opposed that anything wrong had been found with the applicant. He said that he had certainly not been at Nizamuddin or even at Delhi for a long time continuously. He had an excellent track record and there were people with much longer stay and with definite bad record who were not transferred from their places. He said that one cannot get bad reputation in air. There must be some actions which result in bad reputation and one cannot be punished without being told what is wrong with him, but no such allegation has been made against the applicant nor has he been given any opportunity to defend himself but has been illegally transferred out of the Delhi Division. Shri Gupta stated that the applicant's integrity and reputation were discussed fully in the judgement of the Principal

Bench of the Tribunal in OA 26/86. He also stated that the Study Team appointed by the Railway Board had gone into the records of all the Chief Parcel Clerks and Supervisors and while they found something adverse against some persons and named them in their report for transfer, his information was that although the record of the applicant was scrutinised thoroughly nothing against him was found and this Study Team or for that purpose any Team did not find anything against the reputation of the applicant.

9. Reverting to the judgement in OA 26/86 passed on 25.3.86^{er} by the Principal Bench, the averments of the petition^{er} (the present applicant) regarding the rivalry between the two Unions were not denied. They were merely termed as irrelevant. The respondents at that time had also said that the applicant was not having good reputation and that it was not in public interest to allow him to continue at Nizamuddin. The allegation that the petitioner was involved in objectionable activities and that his integrity was doubtful was made for the first time in the counter and was never communicated to him earlier. He was also not told as to^{on} what specific allegations against him the respondents had drawn these conclusions. The Tribunal also came to the conclusion that until the impugned order of transfer was made, the petitioner had an unblemished record. His integrity was above reproach and his service was exemplary and it had received due recognition of the Railway authorities concerned in the shape of cash awards and merit certificates. It was also established that the applicant was Vice-President of the Workers' Union and was engaged in legitimate trade union activities. The respondents had claimed that the applicant was indulging in undesirable activities as he was not having a good reputation and it was not in public interest to allow him to continue at Nizamuddin and that the transfer was on ground of integrity and

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bad reputation. This was stated to be "as a part of the drive to clean up the administration and remove from sensitive posts with public deal^{ings} officials with a bad reputation.....In some cases like the applicant's, it was considered that the purpose would be served by transferring them sufficiently away from their existing stations so that their links get broken." The Tribunal in that case found from the list produced before it that in the Parcel Section itself there were 16 persons among whom 12 were Chief Parcel Clerks and Chief Parcel Supervisors who had been in New Delhi for over 8 years and some for the last 26 years and each one of them had at least two punishments to his credit and some had 8 to 10 such punishments and while such persons were not touched, the applicant was shifted from Nizamuddin saying that he was occupying a sensitive post with public dealings. The Court came to the conclusion that "in such a case one would expect persons with abnormally long stay in Delhi with admittedly mixed records and some with several punishments to be transferred before persons like the petitioner with shorter stay and better record are disturbed. This is discriminatory and arbitrary. Such discriminatory transfers would not subserve public interest".

10. The Delhi High Court in Prem Parveen Vs. Union of India and others applied the dicta laid down by the Supreme Court in Barium Chemicals Ltd. and Others Vs. Company Law Board and others (AIR 1967 SC 295) in the case of a transfer where the Supreme Court said that "it is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to a conclusion of certain definiteness". While examining the case of the transfer of the applicant, the Tribunal referred to the record placed before the Bench containing a single letter dated 1.1.86 addressed by the Additional Divisional Manager, Northern Railway, to OSD(I/R), Northern Railways, stating that "it is not desirable to keep Shri K.K. Jindal at Nizamuddin due to various confidential complaints against him". What those complaints are, who has made them,

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what is the undesirable activity the petitioner had indulged in and what acts or omissions of the petitioner cast a cloud on his integrity are not evident either from the file or from what is averred in the counter affidavit. Even the nature of the complaints received is not stated. Thus the allegation that the petitioner has indulged in undesirable activities and there is a cloud on his integrity remains unsubstantiated.

11. In its judgement in OA 26/86, the Tribunal further cited the case of C. Ramanathan Vs. Acting Zonal Manager, FCI, 1980(1) SLR 309, which states as follows:

"Courts are chary to interfere with an order of transfer made for administrative reasons. But, if in a given case, an order of transfer appears to be a deliberate attempt to by pass all disciplinary machinery if ex-facie it is clear that the order of transfer was not made for administrative reasons, but was made to achieve a collateral purpose, then it is open to the court to crack the shell of innocuousness which wraps the order of transfer and by piercing such a veil, find out the real purpose behind the order of transfer."

12. Shri G.D. Gupta reiterated his earlier argument that the present order of transfer is also vitiated by mala fide and is colourable exercise of power. He forcefully contended that it is not an innocuous administrative routine transfer but is intended to be punitive. He said that when the name of the applicant is not even in the report of the Study Team, transfer itself to a different Division can only lead to one conclusion that such a transfer is malafide and, therefore, liable to be quashed. He said that the question of integrity of the officer, the question of his reputation, the question of his long stay in Delhi area have been considered fully by the Tribunal in OA 26/86. After that the respondents placed him under suspension where he remained under suspension for two years. He was issued five

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charges on integrity etc. and he was absolved of all the charges by the respondents and he was reinstated. He stressed that it is quite clear that the transfer is mala fide, based on pressures brought by rivals in the Union and unscrupulous businessmen whose undesirable activities were exposed by the applicant and his father and who are in collusion with some Railway staff. The earlier transfer was quashed by this Tribunal on similar considerations and the applicant had hardly got any time to get a bad reputation, if any, as he was allowed to join duties only on 23.5.88 at Nizamuddin and at Delhi Junction on 19.6.88.

13. The Railways had claimed privilege of the documents including the report of the Study Team, but it became necessary to see the concerned file dealing with the report and the orders of transfer of the applicant. The report of the Study Team was also shown to the learned counsel for the applicant. Only a gist of the Study Report was produced before the court and it was stated that there is no other report as such although the gist of the Study Report itself says that the "study has since been completed and the final report is being submitted separately." In any case, it is noticed that besides various recommendations, the report which has been signed by the Chief Vigilance Officer (T), Northern Railway, and the Executive Director Vigilance (T), Railway Board, has recommended transfer of six Senior/Chief Parcel Clerks, besides three others who are already under orders of transfer. The name of the applicant does not figure in this list.

14. The learned counsel for the applicant, Shri G.D. Gupta, insisted that the gist of the report is not adequate, but the entire report in which the cases of all the Parcel Officers have been considered should be brought before the court. His contention was that the cases of Parcel Officers, including the applicant, were considered by the Study Team and they came to the finding that there was nothing against the applicant and his transfer was not recommended. He said that the noting dated 25.8.88

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of the Executive Director (Vigilance), Shri J.N. Kaul, where he has suggested two other officers, besides the six recommended by the Study Team for transfer, is not supported by any material. ~~or facts~~. In view of the fact that the Board had taken a decision to transfer the applicant on the noting of the Executive Director (Vigilance) and as the gist of the Study Team on which the entire finding is based and on which the transfer orders have been ordered have already been shown to the court, production of any further document was not insisted upon. The respondents also mentioned that there was no other records to be produced.

15. The learned counsel for the respondents said that the transfer of the applicant is in public interest and not only the applicant, but many others like him were transferred from Delhi Division to Allahabad Division in the interest of administration. The applicant does not suffer in any way as his seniority would not be affected. He also cited two Supreme Court cases - U.O.I. and Ors. Vs. H.N. Kirtania (1989) 3 SCC 445 and Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani ((1989) 2 SCC 602) - where it has been held that transfer is an incident of service and an employee has no right to be posted at a particular place 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. He said that the applicant can only make a representation against his transfer order, but he cannot be allowed to remain at the place of his choice.

16. The learned advocate for the applicant, Shri G.D. Gupta, accepted the judgements of the Supreme Court in the above two cases but said that in the case of H.N. Kirtania, the Supreme Court have clearly laid down that a transfer order which is based on mala fide or which is against the statutory rules must be quashed.

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17. I have gone through the pleadings in this case very carefully and have given anxious consideration to the arguments of the learned counsel for the applicant and the respondents. It is true that normally courts should not interfere in transfer matters specially which are in public interest or are in exigency of service. The Railways have a right to keep their image clean and if they come to a conclusion that transfer of persons who have been at a place for a long time or whose reputation is not good enough or whose integrity is suspected, they would be within their rights to transfer such persons even without going through the process of starting disciplinary proceedings against such persons. At the same time, it is necessary to ensure that such transfers are not ordered on considerations which have nothing to do with public interest or improving the image of the organisation. Certainly, the Railway Board would be within their rights to transfer a Railway employee outside his Division in public interest, but when inter-divisional transfers are not allowed, specially in posts where there is no element of direct recruitment, unless a very strong case is made out against the person concerned, such a transfer would not be considered in public interest and could be termed as mala fide. It has been noted that there has been inter-union rivalry between the applicant and his father on the one hand and Shri Ram Saran Dass on the other. It has also been established that the applicant has been given various commendation certificates and rewards for good work and whereas several persons who have been in Delhi area for a much longer period and whose track records are certainly worse than that of the applicants ^{have not been moved out.} These have all been discussed fully in the judgement of this Tribunal in OA 26/86 and it is not necessary to repeat the same. The earlier transfer order of the applicant was quashed by this Tribunal as it was held that he had stayed in Delhi not for a very long period; in fact, his stay was among the shortest and that if the purpose of transfer was to improve the image of the organisation, then certainly people with longer

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stay and with bad track record should have been transferred first. It was stated by the respondents that the process of transfer is continuous and they are transferring many more people as a result of the drive to clean up the working of the Parcel Offices in Delhi area. However, if one sees the background, including the two year suspension of the applicant after his transfer order was quashed by the Tribunal, the framing of five charges against him which were not established by the respondents themselves and the report of the high-level Study Team which recommended shifting of some Senior/Chief Parcel Clerks out of Delhi and not naming the applicant, one cannot come to the conclusion that the applicant had either stayed too long in Delhi or had a questionable reputation or bad integrity, the reasons given by the respondents to justify the transfer order of the applicant. If it were so, the Study Team which had gone into the working of Parcel Offices thoroughly would have certainly included his name among those to be moved out of Delhi. There was ^{no} evidence of any type to indicate that the applicant had indulged in any malpractice or questionable conduct. It is possible that his name was included in the list of officials to be transferred as an after thought as he may have incurred the displeasure of some officers for initiating contempt of court proceedings against them. Without casting any aspersion on anyone, however, the impugned order of transfer does not appear to be in public interest. It should not also appear to be punitive. The respondents have certainly a right to utilise the services of their officers in the best way possible, but it should be in public interest and should not appear to be punitive or in colourable exercise of power.

18. In the circumstances, the application is allowed and the impugned order No. 115/P/Confl./1/88 dated 2.9.1988 is set aside in so far as the transfer of the Applicant, Shri KK Jindal is concerned. This order will not affect the transfer of

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other persons mentioned in the impugned order. There will be no orders as to cost.



(B.C. Mathur)
Vice-Chairman
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