

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

8

O.A. No. 944/86 1986
T.A. No.

DATE OF DECISION 12.6.1987

Shri P.K. Jain Petitioner

Shri K.S. Mahadevan Advocate for the Petitioner(s)

Versus

Union of India Respondent


Shri S.P. Kalra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No



(S.P. Mukerji)
Administrative Member

9

5

Central Administrative Tribunal
Principal Bench, Delhi

Regn. No. OA-944/86

Date: 12.8.1987

Shri P.K. Jain

.... Applicant

Versus

Union of India

.... Respondents

For the Applicant

.... Shri K.S. Mahadevan,
Advocate.

For the Respondents

.... Shri S.P. Kalra, Advocate.

CORAM: Hon'ble Shri S.R. Mukerji, Administrative Member.

JUDGEMENT

The applicant, who was working as Supervisor (Booking) in the New Delhi Railway Station under the Northern Railways, has moved this application under Section 19 of the Administrative Tribunals Act praying that the order of transfer, transferring him from New Delhi to Sonapat may be set aside and respondents directed not to transfer him outside Delhi till his retirement.

2. The brief facts of the case are as follows. On 26th ^{November} ~~January~~, 1985, some Vigilance staff, on the complaint of an

illiterate passenger against the Booking Clerk working under the applicant, caught the Booking Clerk who had allegedly

over-charged the passenger by Rs.10/- inside the booking

counter. The applicant is alleged to have ^{tried} ~~admitted~~ to ^{shield} ~~shift~~

the Booking Clerk and adopt ^a ~~non~~-cooperative attitude towards

the Vigilance Team. He was charge-sheeted on 31.12.1985 but

before that, the impugned order of transfer was passed on

5.12.1985 transferring him to Sonapat. The applicant has

alleged that he was transferred as a measure of punishment

on the basis of the allegations of the Vigilance Team and ^{argued} ~~argued~~

^{that} ~~that~~ even though he was charge-sheeted on 31.12.1985, he was

exonerated by the Enquiry Officer and the disciplinary

authority who passed order of exoneration on 21.5.1986 and

hence, the order of transfer should be quashed. He has also alleged that he has only 2-3 years to retire and in accordance with the policy of the Railways, his transfer at this stage and in the middle of the academic session is unwarranted. He has also stated that he will suffer grievously^{as} he has got three unmarried daughters aged 16, 15 and 15 (twins) studying in Delhi and invalid wife.

3. The respondents have denied that there was any motive of punishment behind the order of transfer and averred that the applicant had been in Delhi since 1963, that the three other officials transferred with him have already taken over at the new places and that there is no policy of not transferring an employee who has 2-3 years of service left.

4. I have heard the arguments of the applicant and the learned counsel for both the parties and gone through the written arguments and documents carefully. The following chronological order of events will be very pertinent for this case :-

- i) Date of the Booking Clerk caught by the Vigilance Team . . . 26.11.85
- ii) Order of transfer issued . . . 5.12.85
- iii) Charge-sheet served on the applicant for non-cooperation with the Vigilance Team . . . 31.12.85
- iv) Order of exoneration passed . . . 21.7.86

From the above it is very clear that the order of transfer was inextricably intertwined with the disciplinary proceedings started on the basis of the developments on 26.11.1985. Within 9 days of the Vigilance Team's raid on the Booking Office the applicant's transfer order to Sonapat was issued followed by the Charge-sheet issued within 26 days of the impugned order of transfer. One cannot, therefore, escape the inexorable conclusion that the order of transfer was issued with the sole

motive of punishing him and getting rid of the applicant from Booking Division. Since the applicant was fully exonerated by the Enquiry Officer who found that "on the basis of all evidences adduced during inquiry, the charges against the C.O. fully stand disapproved" and the Competent Authority thereafter exonerated the applicant, it appears to us that the order of transfer was not only motivated ^{by a desire of} ~~not~~ punishment but what is worse, motivated on the wrong assumption of delinquency. Therefore, neither under the law nor on the ground of administrative exigency can the impugned order be defended.

5. The fact that the applicant had been in Delhi since 1963 and, therefore, could be transferred out of Delhi, is tainted by the ^{Other} fact that the authority ^{having slept for twenty two years} should have woken up to the need of transferring the applicant within 9 days of the alleged misconduct on his part. Even if there was need to shift him from the Booking Unit, he could have been transferred to any other unit not having any dealing with the public, in Delhi itself considering that he was to retire within less than 3½ years in January, 1989. It is a recognised convention in Administration that an officer should not be transferred near his date of superannuation unless he asks for such a transfer to a place where he wants to settle down. Further, in the present case, the applicant has three unmarried daughters - one 16 years old and twin-daughters aged 15 years studying in Delhi. It would have been a great blow to him and his innocent daughters if he were to be transferred suddenly in the middle of the academic session. In K.K. Jindal Vs. General Manager, Northern Railways and Others, AIR 1986(1) C.A.T.304, Mr. Justice K. Madhava Reddy, Chairman of the Tribunal who delivered the judgement observed as follows:-

"6. It cannot be gainsaid that transfer is an exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard. At the same time, an order of transfer as observed by V. Khalid J. (as he then was) in P. Pushpakaran V. Chairman,

Coir Board (Kerala) 1979(1) SLR 309, "can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this, that transfers when effected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by courts". That is the human aspect of the matter. However, exigencies of administration and public interest must take precedence over individual inconvenience or hardship. A welfare state, governed by Rule of Law has, therefore, attempted to ensure fairness and equality of treatment and eliminate arbitrary action even in the matter of transfers by enunciating a policy. Though the State was not bound to enunciate a policy in this regard, in which case each individual transfer when questioned would have to be considered, any action not conforming to it would prima facie be unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy. Like every other administrative order, an order of transfer also must conform to rules if any framed and policy if any, enunciated by the Government. Even if there are none, an order of transfer cannot be arbitrary or discriminatory, for that is a Constitutional requirement which every order must satisfy."

6. ~~We are~~ ^{It is} satisfied that in the present case the circumstances go to show that the impugned order of transfer was passed more to teach the applicant a lesson than on administrative grounds, on allegations which proved to be unfounded. The respondents' plea that the applicant can work in Sonepat while settling in Delhi, will be cool comfort to the applicant nearing his superannuation with three young un-married daughters studying in the schools in Delhi. The respondents have not even indicated whether he would be allowed to retain government accommodation if so allotted to him. The respondents' plea that there is no policy regarding not transferring an officer who has 2-3 years to retire, is rather surprising as this has been a recognised policy in various departments of Government.

62

13

7. In the facts and circumstances of the case, we allow the application, set aside the impugned order of his transfer to Sonapat. During the course of arguments it was revealed that the applicant has been posted as Booking Supervisor at the Old Delhi Main Station. That should settle the case. There will be no order as to costs.

52/12.8.87

(S. P. MUKERJI)
ADMINISTRATIVE MEMBER