

5
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

1318/88

57
9

1987

DATE OF DECISION 17.8.1987

Shri Yatinder Nath Rai

Petitioner

Shri R.L. Sethi

Advocate for the Petitioner(s)

Versus

Union of India and Another

Respondent

Shri O.N. Moolri

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

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
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

P.K. KARTHA
(P.K. KARTHA)
VICE CHAIRMAN(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

17.8.1988
DATE OF DECISION: 8.7.1988.

REGN. NO. O.A. 1318/87/86. (X)

Shri Yatinder Nath Rai ... Applicant

Vs.

Union of India & Another ... Respondents.

CORAM:

Hon'ble Mr. P.K. Kartha, Vice-Chairman, Judicial.

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

For the applicant: Shri R.L. Sethi, Advocate.

For the respondents: Shri O.N. Moolri, Advocate.

JUDGMENT
(delivered by Hon'ble Shri S.P. Mukerji, AM).

The applicant, Shri Y.N. Rai, who has been working as an Electrical Chargeman under the Northern Railways, has moved this application dated 31st August, 1987 under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned order of transfer dated 11.6.1985 transferring him from New Delhi on the same pay and grade to JUDW Workshop, as also the order dated 2.4.1986 rejecting his representations and warning him that disciplinary action would be taken against him in case he did not resume duty at JUDW Workshop, should be set aside. He also prayed that the period from 10.5.1983

(X) No of OA Corrected
Date 10.12.98

7

to 24.11.1983 be treated as leave on medical certificate and the period from 25.11.1983 till date be treated as on duty. His further prayer is that he should be given leave salary for the period from 3.7.1983 to 24.11.1983 and full pay and allowances from 25.11.1983 onwards, with all consequential benefits.

2. The brief facts of the case are as follows.

The applicant was appointed as an Apprentice and thereafter, posted as Electrical Chargeman 'B' grade Rs. 425-700 with effect from 9.5.1978. It is admitted by the respondents that in the Railways, there are two disciplines, namely, Power and Train Lighting. While the applicant states that having been recruited to the Power Wing of the Electrical Division, he cannot be transferred to the Train Lighting Wing nor could he be transferred from one Division to the other Division of the Northern Railways, the respondents have stated that inter-wing and inter-divisional transfers are permissible under the Rules. It is admitted by the respondents that seniority of Electrical Chargemen "B" for Delhi Division is maintained for working convenience, but for promotion purposes, joint seniority list is relevant. The applicant was, admittedly, sanctioned leave on average pay on 9.5.1983 for 10.5.1983 and 11.5.1983 to attend court proceedings at his home District. The respondents state that he was spared

for Refresher Training Course on 7.5.1983 for which he refused to receive the duty pass and absconded from duty. Since the Training Course was due to be completed on 23.6.1983, the pay charging authorities may have charged his salaries for the months of May and June, 1983. Be that as it may, according to the applicant, he fell seriously ill from 13.5.1983 and intimated telegraphically his parent office and applied for extension of leave on medical certificate till 22.11.1983. The respondents deny having received such a message and argue that the applicant should have sent medical certificate from a railway doctor and no such sick^{ness} certificate had been produced by him. According to the applicant, on being declared fit by the authorised Medical Attendant, he reported for duty on 25.11.1983 and submitted the requisite medical certificate and the fitness certificate. According to him, he had been attending his office from 25.11.1983 but was never assigned duty despite his repeated verbal requests, written representations and notice under Section 80 of the Code of Civil Procedure. The respondents deny these averments of the applicant and state that the applicant had been absenting himself from duty unauthorisedly. While the applicant states that he was sanctioned leave and ~~paid~~ paid a part of the leave salary from 13.5.1983 to 2.7.1983, but

has not been paid any leave salary or salary since 3.7.1983 till date, the respondents state that he was not sanctioned leave and that the salary drawn by him for the period of Refresher Training Course and unauthorised absence is subject to adjustment and recovery. While the applicant states that he was transferred by the impugned order dated 11.6.1985 from Power to Training Lighting Wing of the Electrical Division and from Delhi to Ambala Division, though such inter-wing and inter-divisional transfers are not permissible under the Rules, the respondents have stated that inter-divisional and inter-wing transfers are permissible. According to the applicant, the impugned transfer order was punitive in nature and was issued so that his juniors could be promoted, to the exclusion of the applicant, who was the senior-most in the Division. The respondents have denied this averment. The applicant protested against the transfer order on 25.6.1985 and his ~~representation~~ was rejected by the impugned order dated 2.4.1986. According to the applicant, his appeal dated 23.4.1986 has not been replied to, whereas, according to the respondents, the appeal was considered by the Senior Divisional Personnel Officer and the applicant had been informed about the decision. According to the respondents, the applicant's representations and appeal had been replied to on 1.3.1985, 19.6.1985, 6.8.1985, 2.4.1986 and 12.5.1986 but the applicant did not carry out the order of transfer. The respondents have also

10

argued that the application before the Tribunal suffers from the vice of mis-joinder of causes of action as the reliefs claimed cover not only the order of transfer but also payment of salary during the period of his unauthorised absence. They have also argued that he had made no representation for any amount of salary ^{claimed} with effect from 3.7.1985 and has not joined duty so far.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have raised a preliminary objection that the application is bad for mis-joinder of causes of action as "it is not clear as to whether the petitioner is claiming promotion or is challenging the transfer order or is claiming salary and on what account". The applicant has controverted this by stating that he was not paid leave salary between July and November, 1983 and thereafter not considered to be on duty due to mala fide attitude of his superiors and the transfer order was passed as a consequential step to harass him and his family. In this respect it will be useful to quote the reliefs claimed by the applicant in para 9 of his application as follows:-

- "(i) that the impugned order dated 2.4.1986 along with transfer order dated 11.6.1985 be set aside.
- (ii) that the period from 10.5.1983 to 24.11.1985 be treated as leave on medical certificate.
- (iii) that the period for 25.11.83 till date be treated as on duty.
- (iv) the applicant be paid for leave period from 3.7.83 to 24.11.83 and the duty period from 25.11.83 till date with all the consequential financial benefits and
- (v) the applicant be given his promotion from due date with all consequential benefits".

It will be clear from the above that the reliefs claimed have two limbs. On ^{the} one hand the applicant has prayed that the

impugned order of transfer dated 11.6.1985 transferring him from Delhi to Jagadhri as also the order dated 2.4.86 rejecting his representation against the transfer should be set aside. On the other hand he had claimed that the period between 10.5.83 and 24.11.83 should be treated as leave on medical certificate and the period between 25.11.83 till date should be considered to be on duty with all consequential benefits. We are of the opinion that how the period of his absence should be treated has nothing to do with the question of validity of the order of transfer dated 11.6.85 and one cannot be considered to be a consequence of the other. For the sake of the argument, even if the transfer order is set aside, the applicant will not automatically or sequentially be entitled to get leave salary or full salary for the period of absence from 10.5.85 for period to the order of transfer dated 11.6.85. However, it can be argued that if the impugned order of transfer dated 11.6.85 is set aside, the applicant may become entitled to be considered as on duty from the date of the order of transfer that is 11.6.85 provided it is established that he was entitled to join duty in Delhi on 11.6.85, but was prevented from doing so. Rule 10 of the Central Administrative Tribunal (Procedural) Rules 1987 reads as follows:-

"10 Plural remedies - an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another".

In this application there are two distinct causes

12

of action: one regarding the order of transfer issued on 11.6.85 and the other regarding non-payment of leave salary or salary during the period of absence from 10.5.83 till date. We are, therefore, considering this application only in regard to the first cause of action regarding the impugned order of transfer dated 11.6.85 and ~~the~~ ~~non-exemption benefits~~ regarding consideration of the ~~subsequent to that date for~~ period of absence or otherwise ~~with~~ ^{room} all consequential benefits. The applicant has challenged the impugned order of transfer on the ground that having been appointed as Electrical Chargeman in the Power Wing in Delhi Division, he cannot be transferred to the Train Lighting Wing in another Division at Jagadhri. Secondly, he has alleged malafides against the respondents by stating that he was senior-most in the Delhi Division and was transferred to Jagadhri to make ~~way~~ ^{room} for promotion of his juniors. The respondents have stated that transfer both between Power and Train Lighting Wings and between one Division and another are not prohibited and disciplinary action can be taken by the Electrical Disciplinary Authority ~~against~~ ^{if} the staff in both the Wings. They have also clarified that even though Division-wise seniority list is maintained that is only for working purposes, but for purposes of promotion to the next higher grade, inter divisional seniority list has to be considered. Accordingly, the applicant

even though he is the senior-most in the Delhi Division cannot on that account only claim promotion to the next higher grade. They have also denied that the transfer order is illegal, arbitrary or malafide. They have argued that the petitioner has intentionally been disobeying the order of transfer and has performed no duties, nor has worked and thus is not entitled to any salary.

3. The applicant has not produced before us any authority to controvert the averments made by the respondents that inter-divisional and inter-wing transfers are possible and that for promotion to the next higher grade Inter Divisional Seniority List only is ~~is~~ relevant. No malafide motive also has been proved to exist on the part of the respondents. In that context, the impugned order of transfer cannot be faulted. In a catena of cases starting from Lachman Dass Vs. Shiveshwar AIR 1967, Punjab 1976, the High Courts have held that Courts should not go into the matter of transfer ^{to} ~~to~~ adjudicate about the advisability or propriety of transfer which is primarily for the authorities concerned to decide keeping in view suitability of the official, his aptitude past conduct ^{of} reputation, the period for which he has been on a particular post and other considerations of exigencies of service. The Courts can only interfere if it is in violation of any legal provision or malafide. The

Supreme Court also in B. Varada Rao Vs. The State of Karnataka ATR 1987(1) SC 396 has held that transfer in a transferable cadre is not a condition of service but is an incidence of service and if the transfer is not for collateral purpose, it cannot be interfered with. The learned counsel has cited certain observations made by the Principal Bench of the Tribunal in its judgment in the case of Shri K.K. Jindal Vs. General Manager, Northern Railway and Others, ATR 1986(1) CAT 304, but this judgment makes it clear before going into the facts of that case that " it cannot be gainsaid that transfer is an exigency of service and may be ordered for ~~as~~ administrative reasons and the employer is the best judge in this regard". The judgment deprecates transfer by way of punishment though on the face of it the order may ~~be~~ bear the insignia of innocence. The judgment also makes it clear that " however, exigencies of administrative and public interest must take precedence over individual convenience or hardship". Referring to the same judgment, the Principal Bench in a subsequent case of Kulbir Prashad Jain Vs. U.O.I. and Others ATR 1986(2) CAT 304 observed as follows:-

" The impugned order is an administrative order. Transfer order in the exigencies of service as held in several judgments of the Supreme Court and also in a recent judgment of this Tribunal in Shri K.K. Jindal Vs. General Manager, Northern Railway ATR 1986(1) CAT-PB 304 can hardly be interfered with".

In Kamlesh Trivedi Vs. ICAR (1988) 7 ATC 253, the Principal Bench observed that transfer per se is not punitive inspite of hardship caused and is valid if it is based on exigency of service and public interest. The transfer is punitive if it is based on mis-conduct and is ordered without following the principles of natural justice. Transfer on the basis of complaint, preliminary enquiry, departmental enquiry after full opportunity to explain, would be valid. Since the applicant has not been able to establish that the impugned order of transfer is motivated by malafides or for collateral purpose or is punitive in nature or otherwise illegal, we do not find any reason to intervene in the matter. The Railways provide an essential service constituting a vital instrument of the country's ^{our} economy and responsible for safety of millions of travelling passengers using this service every day. Exigencies of this service must take precedence over individual convenience and one cannot escape such valid transfers by going underground on pleas of sickness and other physical or familial disabilities. The order of transfer in this case was passed on 11.6.85 and till date the applicant has not joined duties at Jagadhri where he was transferred. The plethora of representations while at the same time disregarding the repeated directions by the respondents to join duty cannot justify his wilful disobedience of the order of transfer.

4. In the facts and circumstances, we see no merit

in the application so far as the prayers for setting aside the impugned order of transfer dated 11.6.85 and for being considered to be on duty thereafter are concerned.

The application is thus rejected with liberty to the applicant to move appropriate legal forum, if so advised and in accordance with law in so far as the other reliefs regarding the period prior to 11.6.1985 are concerned.

There will be no order as to costs.


17.8.88
(S.P. MUKERJI)

ADMINISTRATIVE MEMBER


17/8/88
(P.K. KARTHA)
VICE CHAIRMAN(J)