

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.1618/87

Date of decision 20.1.1989

Shri Sheodan Singh

....Petitioner

Vs.

Union of India & Others

....Respondents

For the petitioner

....Shri G.D. Bhandari,
Counsel

For the respondents

....Shri P.S. Mahendru,
Counsel

Coram:

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN(A)

(The judgment of the Bench delivered by
Hon'ble Mr. S.P. Mukerji, Vice Chairman(A))

The applicant, who is a Scheduled Caste employee of the Northern Railway has in this application under Section 19 of the Administrative Tribunals Act, 1985 challenged the order of transfer dated 3.10.86 from Delhi to Moradabād Division.

2. The brief facts of the case are as follows. The applicant was promoted as Booking Clerk in the scale of Rs.260-430 on 4.10.76 and thereafter promoted on an ad hoc basis as Enquiry-cum-Reservation Clerk in the scale of Rs.330-560 on 23.5.85. He was working in the Delhi

Division and figured in the Divisional Seniority List.

His normal transfer liability is within Delhi Division.

On 11.7.86, he was charge-sheeted on the ground that he had purchased a house under the Ghaziabad Development Authority in his wife's name without seeking prior permission or giving information. On 2.9.86, he was awarded the punishment of withholding of increments for a period of 2 years without postponing future increments.

On 3.10.86, the impugned order was passed transferring ^{in the scale of Rs 260-430.} him from Delhi to Moradabad in another Division.

On 7.10.86 he appealed against the order of punishment and

on 8.11.86, he filed a representation praying that ~~his~~ the order of transfer may be cancelled as the transfer was

in connection with the purchase of the house by his wife for which he had already been punished. Within less than

a month of his representation, on 7.12.86, ^{the} respondents placed ^{in the context of the purchase of the house} kept the order of transfer in-abeyance. The applicant met the

General Manager on 10.8.87 in the same matter and on 21.8.87,

^{in the context of the purchase of the house} he was informed by the General Manager's office that his request for cancellation of the transfer order cannot be accepted. The transfer order was restored on 14.8.87, ^{while}

the applicant's plea is that the order of transfer was punitive in nature and against the policy governing transfer adopted by the respondents. The respondents have stated that even though the applicant was transferred to his substantive

lower grade in the Moradabad Division in the scale of Rs.260-430, it was kept pending and now he has been transferred in the same grade. They have denied that the transfer is bad in law or that inter-divisional transfer from Delhi to Moradabad amounts to double punishment. They have gone on to say that Moradabad is not very far from Ghaziabad, which is the native place of the applicant. They have stated that the transfer was a routine transfer on administrative grounds.

3. I have heard the arguments of the learned counsel for both the parties and have gone through the documents carefully. I have no doubt in my mind that the transfer of the applicant to Moradabad was punitive in nature. This is self evident from the communication dated 21.8.87 (Annexure A-2) from the office of the General Manager on the basis of the interview that the applicant had with the GM on 10.8.87. This communication reads as follows:-

" An ex-M.P. lodged a complaint against you to the Railway Ministry and the Railway Ministry desired this Railway Administration to take up with you for violation of the rules in connection with the purchase of a House by you in the name of your wife at Ghaziabad. After you had been proceeded against under the Discipline and Appeal Rules, a minor-penalty of W.I.T for two years had been imposed. The case, after you met the General Manager, was submitted to the latter who has, in the circumstances of the case, not considered it desirable to agree to your request for cancellation of your transfer from Delhi to Moradabad Division.

You are advised to immediately carry out the transfer."

(emphasis added)

From the above, it is clear that as the night follows

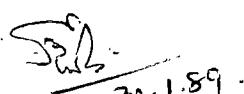
the day, the transfer order has followed the alleged violation of the rules by the applicant in the purchase of a house in his wife's name. The words "in the ^{expediency} circumstances" of the case links the minor penalty with his transfer.

4. The learned counsel for the respondents conceded that seniority unit of the applicant was a division and that in case of the applicant, he was transferred from Delhi Division to Moradabad Division. This appears to me not to be ^a routine transfer because inter divisional transfers are not generally made.

5. The fact that the applicant was transferred to Moradabad originally in the lower scale of 260-430 from his officiating scale of 330-560 also shows the punitive nature of the transfer order. The fact that on his representation dated 8.11.86 where he had alleged that he should not be punished twice for the same fault, the order of transfer was put in abeyance on 7.12.86 also shows that the respondents had indirectly conceded his plea that the transfer is an additional punishment. The policy of the Government in regard to Scheduled Caste/ Scheduled Tribes as indicated at Annexures A-11 & A-12 is that they should be posted nearer their home town as far as possible. By his transfer to Moradabad, he has been placed farther away from ^{compared to} his native place from Ghaziabad ^{than} where he was originally posted at Delhi. It is an established law that while the

Government has an absolute right to transfer its officials in the public interest, this power cannot be exercised for ordering transfer for punishment or for collateral purpose or in a mala fide manner.

6. In the facts, I allow the application, set aside the impugned order of transfer dated 3.10.86 and direct that the applicant should be posted back to Delhi in the grade of Rs.330-560. The respondents, however, will be at liberty to give him any assignment so long as the grade and the place of posting is not changed. There will be no order as to costs.


20.1.89
(S.P. MUKERJI)

VICE CHAIRMAN(A)