

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1634 of 1987 198
T.A. No.

DATE OF DECISION

1.2.1988

— Shri Ashok Kumar Sabharwal Petitioner

Shri B.S. Maine

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri O.N. Moolri

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Shri B.C. Mathur, Vice-Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Ys*

2. To be referred to the Reporter or not ? *NO* *Ys*

3. Whether their Lordships wish to see the fair copy of the Judgement ? *See*


(B.C. Mathur)

Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. OA 1634 of 1987 Date of decision 1.2.88

Shri Ashok Kumar Sabharwal Applicant

Vs.

Union of India and Others Respondents

PRESENT

Shri B.S. Mainee ... Advocate for the applicant.

Shri O.N. Moolri ... Advocate for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunal Act, 1985 against the impugned orders No. 941-E/370/Pt.IV/P-II dated 21.10.1987 passed by the Divisional Personnel Officer, Northern Railway, New Delhi, transferring the applicant from Delhi to Kurukshetra.

2. The brief facts of the case are that the applicant was posted at the Delhi Railway Station as Parcel Clerk since December 1983. On 28.7.1987, the applicant was on duty till 1730 hrs, but stayed for another two hours due to heavy work in the office. While he was returning to his residence, he was waylaid by one Shri Sant Lal, another Parcel Clerk, and assaulted by him without any rhyme or reason. The applicant reported the matter to the Station Superintendent, Delhi, on 29.7.87 (Annexure A-2 to the application). The applicant is an active member of the Northern Railway men's Union which is a recognised Union by the Northern Railway and due to inter-rivalry, the Chief Parcel Supervisor had an ill-will against the applicant. The Chief Parcel Supervisor was appointed to hold a fact finding enquiry and brushing aside the evidence on record, he submitted an adverse report to the Station Superintendent, alleging that the quarrel was picked up by the applicant. On the



basis of the aforesaid report, the Station Superintendent issued a memorandum dated 12.8.87 (Annexure A-3 to the application). The applicant filed his explanation on 21.9.87 to the Station Superintendent (Annexure A-4 to the application), but the Station Superintendent who was the disciplinary authority did not impose any penalty on the applicant. In the mean time, on 22.9.87, when the applicant was on duty, two other clerks, Shri Ashok Kumar and Shri Avtar Singh, entered the office of the applicant and abused him. The applicant reported the matter to the G.R.P., Delhi. On 23.9.87, the Secretary of the Union wrote a letter to the Divisional Secretary of the Northern Railwaymen's Union reporting these activities. The matter was also reported to the Divisional Railway Manager on 5.10.87 (Annexure A-7 to the application). The Station Superintendent had not imposed any penalty on the applicant, but forwarded all the papers and files to the Area Superintendent, the next higher authority for necessary action. The rival Railway Union, namely, the Uttri Railway Mazdoor Union in order not only to malign the applicant and his Union, but for getting his transfer, took up the matter in the Permanent Negotiating Machinery and forced the Area Superintendent to transfer the applicant out of Delhi purportedly on administrative grounds. The applicant was transferred on 29.10.87 when he was ill. The case of the applicant is that the transfer order is punitive and due to inter-Union rivalry and should be quashed as it is illegal, arbitrary and malafide. The transfer order has been given a colour of administrative order, but when the Station Superintendent had forwarded all the papers to the Area Superintendent, he had immediately asked for vacancies of Parcel Clerks indicating that instead of taking departmental action as prescribed, a short-cut method was found to transfer him away from Delhi.

3. The respondents in their reply have denied that the applicant was transferred by way of punishment. They have sought dismissal of the application on the ground that the applicant never represented to the authorities against the impugned orders and has come to the Tribunal without exhausting the legal remedies available

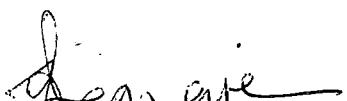


to him. It has been stated by the respondents that the applicant while off duty picked up a quarrel with another clerk, Shri Sant Lal, and the enquiry report (R-1) has established this fact. They admitted that the question of fighting between the Parcel Clerks was taken up at the P.N.M. meeting. It was a right thing to do as the discipline of the staff was being affected. In the P.N.M. meeting the matter was discussed and it was decided that the people who indulged in repeated indiscipline should be transferred on administrative grounds and the impugned orders have been issued in pursuance to such deliberations and the decisions taken at the P.N.M. meeting. It was done so that the Administration could work smoothly and efficiently and also to maintain a healthy and peaceful working atmosphere.

4. The applicant maintained that his transfer is malafide due to inter-Union rivalry and the transfer order has been passed as a punishment and, therefore, is illegal. His transfer was forced by the rival Union who placed this matter on the Permanent Negotiating Machinery of that Union. A note was issued to the rival Union saying that the applicant had been transferred to Kurukshetra in order to appease them, but no action was taken on the memo or chargesheet given to him by the Station Superintendent. The transfer order has been used as a short-cut method and no opportunity has been given to the applicant to rebut the charges against him. The learned advocate for the applicant cited the case of **Shri K.K. Jindal Vs. G.M. Northern Railway** decided by the Tribunal and reported in **A.T.R. 1986 - C.A.T. - 304** which lays down that the order of transfer though may appear innocuous is in colourable exercise would not be an order on administrative grounds. The learned advocate for the respondents has argued that the transfer order of the applicant is a part of the administrative judgment. The applicant was clearly fighting with his colleagues and instead of waiting till the situation deteriorated beyond limit, the head of the organisation had to take some action. Even if it amounts to purchasing peace of a large number of works, the act of transfer would be in the larger interest of railway administration. The learned advocate for

the applicant argued that the applicant was being made a scapegoat as a result ~~to~~ of a conspiracy. He feels that if the applicant is guilty, he should be punished as a result of the chargesheet, but cannot be transferred without a proper enquiry and passing orders on the basis of such an enquiry.

5. After hearing the arguments on behalf of the applicant and the respondents, two things are clear, that the relations between some Parcel Clerks or even members of the two Unions were not cordial and that the applicant has been transferred by the authorities not as a ~~matter of~~ punishment, but on administrative grounds. If a transfer is made even to appease a large number of workers, it would be an administrative order to ensure smoother functioning of the railways. Railways are a public utility service and in the larger interest of smooth functioning of such an organisation, certain discretion has to be left with the railway authorities. Even if it is accepted that the transfer was a result of inter-Union rivalry, if in the larger interest of keeping a healthy atmosphere in the organisation, the competent authority felt it necessary to transfer the applicant, I feel that it would not be correct for a court to interfere in such a transfer. In the circumstances, I ~~see~~ was no reason to interfere with the impugned orders. The application is, therefore, rejected. There will be no order as to costs.



(B.C. Mathur)
Vice-Chairman