

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

....

O.A. 26/87.

Dated: 25.2.1987

Shri Rajai Ram

... Applicant

Vs.

Union of India & Ors.

... Respondents.

CORAM:

Hon'ble Mr. Justice G. Ramanujam, Vice-Chairman (Judicial)

Mr. Birbal Nath, Administrative Member.

For the applicant:

Shri G.D. Bhandari, counsel.

For the respondents:

Shri K.N.R. Pillai, counsel.

(Judgment of the Bench delivered by
Mr. Birbal Nath).

JUDGMENT.

Per his application filed before the Tribunal
on 1st January, 1987, the applicant, Shri Rajai Ram, a
Scheduled Caste, working as a Booking Clerk in the Northern
Railway, has challenged his transfer from Palam, New Delhi to
Rewari (both within the jurisdiction of Bikaner Division) on
promotion from grade Rs. 260-430 to grade Rs. 330-560 on the
ground that this transfer is made in violation of the policy
laid on the subject of transfers. It was also alleged by the
applicant that this transfer has been made on mala fide grounds to
accommodate another Booking Clerk, Shri Rajesh Kapur (ground (4) of

of the application).

2. The learned counsel for the applicant drew our attention to the policy laid in various circulars of the Northern Railway on the subject of transfers (Annexure 'G' and Annexure 'H'). Annexure 'G' was issued by the Railway Board on 24th December, 1985 whereas, Annexure 'H' was issued by the Divisional Railway Manager, Bikaner on 23rd May, 1985. Relevant portion of Annexure 'G' issued by the Railway Board reads as under:

"... Again, in Board's letter dated 6.7.78 referred to above, it was clarified that even at the time of initial appointment, the SC/ST candidates should, as far as practicable, be posted nearer to their home towns or at places where the Administration can provide them quarter subject to their eligibility. It was further clarified that these instructions would equally apply to cases of transfer on promotion, provided the post is available..."

So far as the instructions issued by the Bikaner Division are concerned, Annexure 'H' stipulates as under:-

"... Thus in future, the promotion of staff in Commercial categories viz. Ticket Collectors, Coaching/ Goods Clerks from grade Rs. 260-400/260-340 to grade Rs. 330-560 should be ordered at their present stations by readjustment of posts. However, transfer on request and on administrative grounds will, however, continue."

The learned counsel for the applicant vehemently argued that this impugned transfer to Rewari from Palam, New Delhi, was in violation of the policy laid by the Railways and could not be sustained in view of the Supreme Court judgment in E.P. Royappa Rao Vs. State of Tamil Nadu (AIR 1974 SC 555) para 4 page 1956-1957, that "a transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative

(17)
(6)

interest or in exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons. The power of transfer must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations as for achieving an alien purpose or an oblique motive, it would amount to malafide and colourable exercise of power. Frequent transfers can't but be held as malafide. He further argued that the applicant has been transferred from Palam to Delhi Cantt., then to Patel Nagar (of course, all within Delhi) and this shows malafides of the respondents. In this connection, he also relied on the judgment delivered by the Central Administrative Tribunal, Principal Bench, New Delhi, in K.K. Jindal Vs. General Manager, Northern Railway & Ors., (A.T.R. 1986 C.A.T. 304) wherein it was held that once a policy is enunciated, any action not conforming to it would prima facie be unsupportable.

3. The learned counsel for the respondents argued that the applicant was being sent to Rewari on promotion and there was no malafide in ordering this transfer. So far as the case of Shri Rajesh Kapur is concerned, he is adjusted in a lower scale of Rs. 260-400. So he cannot be said to be impinging on the right of the applicant. He argued that the applicant wants to remain in Delhi and has been absent from Patel Nagar Railway Station. He argued that his transfer from Palam to Delhi Cantt. or Patel Nagar was by way of local adjustment and does not amount to frequent transfers and they are not tainted by malafides.

He further relied on the judgment in Lachman Das Vs.

Shiveshwarkar and others (AIR 1967 Punjab 76)

wherein it has been held that the High Court can interfere only if a transfer is violative of any legal provision or is otherwise malafide. According to him, the transfer of the applicant was neither illegal nor malafide. So far as the policy circulars are concerned, he argued that vide Annexure R-1, filed with the counter-affidavit, it was made clear that the orders of the Divisional Railway Manager, Bikaner were being mis-interpreted and Annexure 'H' on which the applicant had been relying, stands superseded. He drew our attention to the following portion of Annexure R-1, i.e. order of 15th April, 1986:

"The above letter came up for discussion with DRM by URMU. URMU wanted that wherever the staff are available for promotion, the posts should be pin-pointed at that station/depot/shed.

DRM made it clear that it was wrong interpretation of his orders. He made it clear that in the first instance posts are to be pin-pointed on worth of charge and while doing so a care has to be taken that minimum shifting of staff is done...."

4. We have given careful thought to the arguments advanced at the bar and find that the applicant was transferred from Palam, New Delhi to Rewari on promotion on 8th February, 1985, vide Annexure 'E'. However, he continued to stay at Palam and other sub-urban stations in Delhi when Annexure 'M' dated 10.6.1986 was issued by the Divisional Commercial Superintendent asking for his being spared so that he could join on promotion at Rewari

and he had further directed the Station Superintendent, Palam to stop charging his pay if he was over and above the strength.

We find that the case of transfer of the applicant is not a routine transfer in the sense that he is being sent to Rewari ^{on promotion}. We were told by the counsel for the respondents that they have been compelled to transfer the applicant because the post of Booking Clerk in the grade of Rs.330-560 is sanctioned for a Junction only and not for sub-urban railway stations like Palam, Delhi Cantt. or Patel Nagar etc. In view of this practical difficulty, the respondents had to move the applicant from Delhi to Rewari.

Thus, this is an order of transfer on promotion. It is true that the Divisional Railway Manager, Bikaner had issued an order vide Annexure 'H' saying that the Ticket Collectors, Coaching/Goods Clerks should be adjusted at their present stations even on promotion, by re-adjustment of posts. However, this has to be read in conjunction with Annexure R-1. Even on a strict interpretation of Annexure 'H', it is to be noted that it does not apply to Booking Clerks. Even otherwise, every order has to be construed in a reasonable manner. The argument that this upgraded post of Book Clerk is sanctioned only for a Junction and not for a sub-urban railway stations carries the weight of credibility. Again, the Railway Board orders are of statutory nature, whereas, the order issued by the Divisional Railway Manager cannot have that sanctity. Annexure 'H', the order of Railway Board dated 24.12.1985 clearly lays that the Scheduled Caste candidates will be accommodated near to their home town etc. only as far as practicable and where the post is available. In view of this position of the circulars on the subject, we do not find that the impugned transfer order from

Delhi to Rewari is in violation of the policy circulars, or is violative of any law. Though the circular at Annexure 'H' was issued by the Divisional Railway Manager, ^{you the name} is, in many ways, impracticable bordering on absurdity, ^{and} it had to be modified by the officer himself by Annexure R-1. As such, we hold that the impugned transfer is valid.

5. We do not find any weight in the allegation that the impugned transfer is motivated by malafides. The only reference to malafides is made in ground (A) of the application in respect of Shri Rajesh Kapur. It was made clear by the respondents' counsel that this gentleman has been adjusted in lower scale of Rs. 260-400, whereas, the applicant has been transferred in a higher scale of Rs. 330-560. Since the vacancy is available at Rewari, the applicant had to be moved to Rewari.

6. In view of the foregoing, we do not find any merit in the application and hereby dismiss the same. However, we direct the respondents to reconsider the case of the applicant for a posting at a Junction at or ^{near} Delhi so that his family is not disturbed as, according to him, ~~he is nearing his retirement and~~ his wife needs medical treatment due to heart ailment.

There will be no order as to costs.

23/4/87
(Birbal Nath)
Member 25.2.1987

S
(G. Ramanujam)
Vice-Chairman (J)
25.2.1987