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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

....

DATE OF DECISION: 14.9.1988.

REGN. NO. O.A. 707/87.

Shri Parma Nand ... Applicant

Vs.

UOI & Ors. ... Respondents.

CORAM:

Hon'ble Mr. Birbal Nath, Administrative Member.

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

For the respondents: Shri Ajay Goel, Advocate for
Shri S.P. Kalra, Advocate.

JUDGMENT.

Per this Application No. 707/87 filed on 18th May, 1987 under Section 19 of the Administrative Tribunals Act, 1985, the applicant, Shri Parma Nand, who was working as Booking Clerk in the Northern Railway, Delhi, has challenged his transfer to Ghanauli, ^{as order} issued on 4.8.1986. The transfer order is at Annexure A-1 of the Application and reads as under:

"Notice.

Shri Parma Nand Booking Clerk Gr. Rs. 260-430 (RS) Delhi is transferred to Ghanauli on Adm. grounds in the same capacity and grade.

Sd/- (illegible)

Note: He may be spared immediately.

Changes may be advised promptly.

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Dated: 4.8.1986."

2. The main contention of the applicant is that Ghanauli is part of Ambala Division and the applicant could not be transferred out of Delhi Division. The

second main contention of the applicant is that this transfer emanates from punitive motives. It is the case of the applicant that the Vigilance Department had tried to implicate him in a false misconduct and even if the disciplinary proceedings were to be taken, he could not be transferred from one Division to another.

3. The Tribunal has heard the learned counsel for the parties and perused the documents placed before it.

4. So far as the first contention of the applicant is concerned, ^{the applicant} he relies upon the instructions of the Railway Board contained in letter issued vide No. E(D&A) 65 RG 6-6 dated 25.3.1967. The relevant portion of the instructions quoted in para. 6.5 of the application, is reproduced below:-

"The non-gazetted railway staff against whom a disciplinary case is pending or is about to start, should not normally be transferred from one Railway Division till after the finalisation of departmental/criminal proceedings, irrespective of whether the charges merit imposition of a minor or major penalty."

It has been conceded on behalf of the respondents that Ghanauli is in Ambala Division but it was within the Delhi Division when the transfer order was issued. Therefore, the first contention of the applicant is untenable.

5. Regarding the second contention of the applicant, the Tribunal had called for the file on which the applicant's transfer was processed. The respondents have made the relevant file available today. The transfer of the applicant has apparently been ordered on a report from the Vigilance which reads as under:-

"No. 11/E/4167/86. dated 8.7.1986.

The Divisional Railway Manager,
Northern Railway,
New Delhi.

Sub: Shri Parma Nand, B.C. Delhi.

During the course of vigilance, decoy check of counter No. 5 of second class booking office, Delhi, on 28.4.1986, Shri Parma Nand Booking Clerk was found responsible for following lapses:-

- 1) He charged Rs. 126/- for three tickets ex-Delhi to Kanpur but gave only 2½ tickets for Kanpur to the passenger. Thus charged Rs. 26/- extra from him.

It is suggested that D & R action under major penalty may please be initiated after transferring and placing him under suspension. A copy of report, article charges, statement of imputation, list of relied upon documents and witnesses alongwith viz. report is enclosed. The action taken against the staff may please be apprised to the office.

Sd/-Vijay Kumar,
for G.M., Vigilance."

5. From the foregoing, it is clear that the applicant was found to be responsible for indulging in mal-practice. The respondents would have been within their right to transfer him from one seat to another or to place him under suspension, as recommended by the Vigilance. However, what they have done is that have replaced the disciplinary action by transfer. Even for disciplinary proceedings, it would have been necessary to keep the applicant at the same station in view of the instructions contained in the Railway Board's letter dated 25.3.1967, as reproduced above. There is nothing to show on the file that there were abnormal circumstances necessitating the transfer of the applicant to a far-off place from Delhi. Though there is no malafide involved in the transfer of the applicant, it is patent that the transfer does involve an element of penalty inasmuch as it is founded on the allegations of misconduct against the applicant. It has been held by the Tribunal in the case of K.K. Jindal Vs. General Manager, Northern Railway and others¹ that a punitive transfer is bad in law. Again, there is a catena of judgments of the Supreme Court where transfer, as an instrument of punishment, is held to be legally untenable. The Supreme Court in the case of

the Syndicate Bank Ltd. Vs. the Workmen², has clearly held that where a transfer is made for punitive purpose, it will fall within the mischief of malafides.

§. In view of the foregoing discussion of facts and law, the impugned order of transfer is held to be legally untenable and is set aside accordingly. However, this order of the Tribunal will not debar the respondents from passing any other order for taking any disciplinary action etc. against the applicant, as per law.

There will be no order as to costs.

14/9/88
(BIRBAL NATH)
Member.
14.9.1988.

2. AIR 1986 SC 1283.