

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regm. No. O.A. 907/1987. DATE OF DECISION: 23-10-1991.

Shri P.R. Rajal Applicant.

V/s.

Union of India Respondents.

CORAM: Hon'ble Shri P.C. Jain, Member (A).

Shri S.K. Sawhney, counsel for the Applicant.
Mrs. Shashi Kiran Chandra, counsel for the Respondents.

P.C. JAIN, Member: JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was posted as Carriage Foreman, Northern Railway, Hapur, has assailed Notice dated 27.1.1987 (Annexure II), by which he was ordered to be transferred from Hapur to Balamau.

2. The respondents have contested the application by filing their return and the applicants have filed a rejoinder thereto. I have carefully perused the material on record and also heard the learned counsel for the applicant. None appeared for the respondents for making any oral submissions.

3. The applicant has taken the following grounds to assail the impugned transfer orders: -

- (1) These orders have been issued without following the procedure prescribed for transferring Trade Union office bearers.
- (2) These orders are based on some alleged complaint against him, of which he had neither been informed nor afforded any opportunity to explain his position.
- (3) These orders have been issued in breach of the principles of natural justice.
- (4) These orders are arbitrary.
- (5) These orders amount to unfair labour practice.

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- (6) These orders have been issued on pick and choose basis and at a time when no general transfers are ordered.
- (7) These orders have been issued to please the rival Union.
- (8) These orders cast a stigma on the character of the applicant and he is being punished without being heard.
- (9) The impugned orders are violative of the provisions of Article 311 of the Constitution of India.

4. Transfer is an incidence of service and is not one of the penalties prescribed in the Railway Servants (Discipline & Appeal) Rules, 1968. Article 311 of the Constitution deals only with three penalties, viz., Dismissal, Removal and Reduction in rank, and has no application to this case. Similarly, the impugned transfer orders do not cast any stigma on the character of the applicant and there is no question of punishment being imposed. Admittedly, the applicant has been at Hapur from 1971 and was transferred from there only in 1987. The mere fact that the impugned orders of transfer were issued when routine transfer orders are generally not issued, would not in itself make the transfer orders as illegal or arbitrary. Respondents have categorically denied that the impugned orders of transfer of the applicant were issued on the basis of an alleged complaint, but/these were issued due to the exigency of service, administrative convenience and in the interest of administration. The averments of the applicant leave no doubt that there was a rivalry between the Union to which he belonged and the other Union. Annexure VII, which is a report of G.R.P., Hapur, and a copy of which has been filed by the applicant, states that representations were made to higher authorities by the spokesmen of URMU and NRMU against each other, which caused a tense atmosphere amongst them and there was apprehension of breach of peace. It further states that

(c)

in order to maintain law and order, both parties were challaned under Section 107/116 CRPC, which was before the Sub Divisional Magistrate, Hapur. In view of this background, if the respondents thought it fit in the interest of work to transfer the applicant, their action cannot be held to be illegal.

5. Learned counsel for the applicant emphasised on two points at the time of oral submissions. Firstly, it was urged that the procedure prescribed for transferring an office bearer of the Trade Union had not been followed. Admittedly, the applicant was such an office bearer and the prescribed procedure was applicable to him. The respondents have asserted that the prescribed procedure was followed. The orders of the Railway Board, in their letter No. E(L)61.FE1/43 dated 31-7-1961 as disclosed in Annexure XVI, directed as below: -

"Any proposal for transfer of an office bearer of a recognised trade union official, including the branches thereof, should be communicated by the Division to the Union concerned and the unions allowed to bring to the notice of Divisional Officer and if necessary later to the General Manager any objection that they may have against the proposed transfer."

The latest instructions contained in the Northern Railway Headquarters Office letter dated 23rd February, 1987 (Annexure XI) refer to the instructions dated 10.3.86, copy at page 25 of the paper book. These instructions also emphasise that as per extant instructions any proposal for transfer of an office bearer of a recognised union is required to be communicated by the Division to the union concerned so that the union may bring to the notice of the Divisional Officer, and, if necessary later to the General Manager, any objection that they may have against the proposed transfer. In case of disagreement at the lower level, papers have to be submitted to the General Manager for decision. These instructions further

state that in case there is a disagreement between the administration and the union at the divisional level and it is considered necessary to submit the papers to G.M. for approving the transfer of the union official, the Divisional Secretary of the Union should be informed by the Division that the objection of the Union is not acceptable and the papers are being submitted to the General Manager for final orders. It will then be for the Divisional Secretary to approach the General Secretary to bring any specific points to the notice of the G.M. if he so desires but no such reference will be made by that office to the General Secretary. In this connection, the respondents, in their return, have referred to Annexure XVI, which is a letter dated 10.2.1987 in connection with the transfer of the applicant, in which, it is inter-alia stated that in this particular case, Divisional Railway Manager, Moradabad, under his letter dated 19-12-1986 had advised their Divisional Secretary, who had not agreed to the proposal of transfer of the applicant and raised objection in his letter dated 30-12-1986 to DRM, Moradabad, copy of which was also endorsed by him to the General Secretary, URMU, New Delhi, to enable him to raise objection at the GM level, if considered necessary. This letter further states that since no objections were received from that side, the case was put up to General Manager and approval obtained for transferring the applicant out of Hapur. It is thus clear that the prescribed procedure had been followed in this case. Respondents have categorically stated in their reply that the transfer orders of the applicant were issued with the approval of G.M., Northern Railway.

6. The second contention urged by the learned counsel for the applicant was that the impugned order of transfer was punitive and on this point, he cited the law.

case of Shri K.K. Jindal Vs. General Manager, Northern Railway (ATR 1986 (1) 304). It has already been stated above that transfer is an incidence of service and is not a punishment as prescribed in the Railway Servants (Discipline & Appeal) Rules. It has also been stated above that the respondents have categorically denied that the impugned orders of transfer were issued on the basis of any alleged complaint. Further, K.K. Jindal's case came up for further consideration before a Full Bench of the Tribunal in the case of Shri Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another (Full Bench Judgments (CAT) 80). In para 13 of the judgment in Kamlesh Trivedi's case (supra), the Full Bench observed as below: -

" It is, therefore, clear that K.K. Jindal's case is not an authority for the proposition that when complaints are received and the exigencies of service require that a transfer be made, an inquiry must necessarily be held into the complaint before transfer is ordered. Nor did it lay down that if a transfer is made on receipt of a complaint, it would necessarily be deemed to be penal in nature. All that it laid down was that a finding as to misconduct and a finding which attaches stigma to the employee not preceded by an inquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer."

In this case, there is no finding of any misconduct against the applicant, nor there was any finding which attached stigma to him. The Full Bench also held in that case that no inquiry need be made if no finding of guilt, misconduct or stigma is attached, and that transfer may be made on administrative grounds and one of the grounds could very well be the allegations themselves. The Full Bench held that if the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. It was also held that question of observing the principles of

natural justice in a case of transfer does not arise where it is not based upon a finding on the allegations of misconduct or the like made against the employee.

In view of the observations of the Full Bench in Kamlesh Trivedi's case (supra), the contention of the applicant that the impugned transfer is punitive or that the principles of natural justice have not been followed, cannot be sustained.

7. The ground of unfair labour practice is also not sustainable for the simple reason that with a view to preventing such a practice in respect of the union office bearers, a procedure has been prescribed, as discussed above, and the same has been followed in this case.

8. The impugned orders in this case were issued in January, 1987 and this O.A. was filed on 30.6.1987. No interim relief for staying the operation of the impugned order of transfer had been granted. Learned counsel for the applicant was, therefore, requested to state the present position of the posting of the applicant. He stated that he was not ^{fully} aware of the present position as the applicant had not contacted him after the O.A. was admitted on 30.7.1987. He, however, mentioned that the applicant had joined at the new place of posting at Balamau, but was later on probably posted back at Hapur. If it is so, there is not much left in this O.A. at this stage. Even then, the contentions of the applicant have been considered on merits. The legal position in the matter of transfer of a Government servant appointed to a cadre of transferable posts, is by now fairly well settled and the scope of judicial review in such matters is restricted to cases where the transfer is ordered in violation of the statutory rules or is vitiated by malafides (UNION OF INDIA Vs. H.N. KIRTANIA - Judgements Today 1989 (3) SC 132; GUJRAT ELECTRICITY BOARD AND ANOTHER Vs. ATMARAM SUNGOMAL POSHANI - Judgments Today 1989 (3) SC 20). There are no allegations of malafide in the

application; nor any person against whom malafide might have been alleged, has been made a party by name. There is no violation of any relevant rule having force of law. The prescribed procedure for transfer of a Trade Union official had been followed.

9. In the light of the foregoing discussion, the O.A. is devoid of merit and is accordingly dismissed, leaving the parties to bear their own costs.

Dec 23/1991
(P.C. JAIN)
MEMBER (A)