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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

DA 1562 of 1990

Decided on 18th Sept., 1990

Shri Amar Nath Sharma ... Applicant

versus

Union of India through General Manager,
Northern Railway,
Baroda House, New Delhi. ... Respondents.

For the Applicant -Mr. Shri S.K.Sawhney, Advocate.

For the respondents -Mr. Shyam Moorjani, Advocate.

B.S. SEKHON:

18-9-90

Vide order dated 27th July, 1990 (Annexure A-1), applicant has been transferred from Panipat to Kurukshetra. Aggrieved by the aforesaid order, applicant has assailed the same, inter-alia, on the grounds that the order has been issued in breach of the provisions of Section 33 of the Industrial Tribunal Act, 1947 (for short 'the Act'), the same is punitive in character and has been issued to victimise him at the instance of a rival Union viz. Uttariya Railway Mazdoor Union; it amounts to unfair labour practice on the part of the respondents and has been issued with a view to depriving him of his right guaranteed by Article 19(C) of the Constitution, the order is malafide, violative of Articles 14 and 16 of the Constitution. He has prayed for quashing of the impugned order and for a direction to the respondents to desist from victimising him.

2. Respondents have resisted the Application on preliminary objections as also on merits. Preliminary objection raised by the respondents is that applicant accepted his transfer vide his letter dated 28th July, 1990, whereby, he

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asked for railway passes and clarification regarding joining time. It has been further averred by the respondents that applicant's transfer has been made on administrative grounds, he has since joined at Kurukshetra and nothing survives in the Application, which is liable to be rejected being devoid of any cause of action. Characterising the Application as mis-conceived, respondents have denied the allegations about the impugned order being violative of Articles 14 and 16(1) of the Constitution, punitive in character or in breach of Section 33 of the Act. The averments about the malafide, victimisation, the impugned order having been issued with a view to depriving the applicant of his right under Article 19(C) of the Constitution have also been refuted by the respondents.

3. We have heard the arguments addressed by the learned counsel for the parties and have considered the pleadings and the documents on record.

4. Banking on Annexures R-I and R-II, the learned counsel for the respondents stated that applicant had not only accepted the transfer order prior to filing the Application, but has also joined at Kurukshetra. According to the learned counsel, the Application is mis-conceived and has been rendered infructuous. Vide Annexure R-I of 28th July, 1990, applicant stated that he was spared on 28th July, 1990 afternoon, but he had neither received railway passes from Panipat to Kurukshetra, nor was there any clarification for joining time. He also requested that clarification alongwith railway passes be sent to him adding that otherwise it will be presumed that he had not been spared. By virtue of communication dated 30-7-90, Annexure R-II, applicant was told that it was wrong to suggest that he had not been given the transfer pass and that he had neither collected the same nor any efforts were made to collect the same later on. He was

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also told that it was not customary to specify the joining period as it is well understood that as per rules and that 10 days' are allowed as joining period which would commence from the date of relinquishment of charge. Upon a pointed clarification sought from the Bench, the learned counsel for the respondents stated that the applicant has joined at Kurukshetra on 28th August, 1990. The learned counsel for the applicant also conceded this fact. As the applicant has already joined at Kurukshetra, the impugned order stands implemented. The implementation of the impugned order has rendered the Application infructuous. In view thereof, the Application merits dismissal on the ground of its having been rendered infructuous and it is not necessary to go into other questions relating to the validity or otherwise of the impugned order. Consequently, the Application is hereby dismissed on the ground of its having been rendered infructuous. No order as to costs.

I. K. Rasgotra
(I.K.RASGOTRA)
AM 18/9/90

B. S. Sekhon
(B.S.SEKHON)
VC
18-9-90