

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

D.A.No.1727/91

Date of decision : 28.2.92

B.S.Anand

...Applicant

Versus

Union of India and others

...Respondents

CORAM:

THE HON'BLE MR. J.P. SHARMA, MEMBER(J).

Counsel:

Shri B.S. Maini

...For the applicant.

Shri N.K. Aggarwal

...For the respondents.

1. Whether Reporters of legal papers may be allowed to see the Judgement? *YK*

2. To be referred to the Reporter or not? *YK*

JUDGMENT

The applicant, Senior Fuel Inspector, Lecashed, Saharanpur has assailed the order of his transfer dated 9-7-91/25-7-91 from Saharanpur to Jodhpur along with the post.

2. The applicant was working as Jr. Fuel Inspector and his promotion from Jr. Fuel Inspector was due to senior Fuel Inspector but he did not opt to get the promotion in April, 1990 because he wanted his posting and accommodation at Saharanpur itself, and was promoted on 30.6.90.

3. In this application, the applicant has claimed the relief that the said impugned order of transfer be quashed.

4. The applicant has taken the grounds firstly that one of his sons is in tenth class reading in a school at Saharanpur, and mid session transfer will hardly affect his career. Secondly, that the wife of the applicant is a patient of hypertension and needs proper treatment with the family doctor at Sharapur. Thirdly, it is stated that the retirement of the applicant is due in December, 1993 and since the period is less than 3 years, or about 2 years, according to the policies of the Railways, he should not have been transferred at the fag end of his service. Lastly it is stated that the transfer is mala fide and not in the exigencies of service.

5. The respondents denied the contention of the applicant and stated that the transfer has been effected in July, 1991 when the academic session in schools etc. is to commence and further the transfer of the applicant is in a general normal chain of transfer.

6. It is further stated that the applicant was not serving his job to the satisfaction of the superior staff and there were complaints against him

routine while on inspection. Thirdly, that applicant is governed by all-India seniority list and can be transferred any where in India which is a part of his service conditions. Lastly, it is stated that the transfer is in the public interest and ⁱⁿ the exigencies of the service in a ~~benafidal~~ manner.

7. I have heard both the parties at length. The learned counsel for the applicant has placed reliance in the case of ASHOK KUMAR VS. U.O.I. reported in ATJ 1991(2) P.266 regarding ~~the complaint~~ against the delinquent and 1991 SLJ Vol.II P.110 HN PETRO VS. U.O.I. that the guidelines regarding transfer have to followed.

8. As regards the contention of the ward of the applicant, he has already advanced in his career of education by one year and so after high school the ^{sen} applicant's/has to take education which he can take any-where. Moreover, the transfer is effected in the month of July and the result sheet filed by the applicant of 9th class is dated 27-4-91 which goes to show that the institution has closed the session sometimes in April and after this, there was a vacation. Thus, this ground cannot have any effect on the transfer order. This is not a case of education of the ward of the applicant in a particular college where he has to be tied up but it is a case of passing an examination of a particular standard and

that has already been done during the pendency of the case.

9. The second ground is of the illness of the wife of the applicant. The place to which the applicant is being transferred is the far bigger city than town like Saharanpur. The facilities in Jodhpur available for medical treatment are much readily available of experts than at Saharanpur. Moreover, hypertension is not a disease which needs a particular doctor for the examination and treatment.

10. The third ground taken by the learned counsel is that about 2 years are left for the applicant to retire and according to the railway guidelines, he should have not been transferred. The guidelines laid down by the railway are not mandatory in this respect because the word used there is "as far as possible". In the full bench judgement of KAMLESH TRIVEDI VS. ICAR, reported in FULL BENCH JUDGMENTS 1989 Vol.I(CAT) p.80, the full bench relied upon the decision of B.VARADHA RAO V. STATE OF KARNATAKA & OTHERS (1986(4) SCC p.131). It has been finally held by the Full Bench that instructions embodying the transfer policy are in the nature of guidelines to the officers who are vested with the power to order transfers in the exigency of administration than vesting any immunity for

transfer in the Govt. service or a right in the public interest. Thus, though there are certain guidelines that if a person reaching the age of superannuation within 2 years, then as far as possible, he should not be transferred. This transfer is of July, 91 and the applicant is retiring sometimes in December, 93. So, it cannot be said that the applicant is governed at all by the aforesaid guidelines issued by the railway Board.

11. The learned counsel has referred to the fact that transfer is mala fide and in this connection, has referred to paras 4.16 to para 4.18 of the counter filed by the respondents. In fact, the work of the applicant was not found to the satisfaction of the respondents and in this connection, confidential letter was issued on 4-5-91 by Asstt. Mechanical Engineer, Northern Railway, Ambala Cantt. Again a letter was issued to the applicant on 10-5-91 regarding unloading of coal. The contention of the learned counsel is that the applicant has been transferred on a complaint by the Asstt. Engineer and so the transfer is punitive in character. He has also referred to the case of K.K.JINDAL. However, in the KAMLESH TRIVEDI(Supra), it has been clearly held in para 13 of the judgment at page 191 as follows:

"13. 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."

12. The learned counsel for the applicant also referred to the judgment in OA-1486/87 S.N.SINGH VS. U.O.I. ^{decided} E.C. by the Principal Bench on 15-4-88 and laid stress on para 2 and para 4(b) of the judgment. The facts of that case were totally different. In that case, the applicant was found indulged in various mal practises and major penal proceedings were pending against him. However, in the present case, no stigma is attached to the applicant and in the public interest, he has been transferred to Jodhpur.

The application cannot be allowed being devoid of merits and, therefore, is dismissed. Interim order passed earlier is vacated. However, parties shall bear their ^{own} costs.

J. P. Sharma
(J.P.SHARMA) 28.2.92
MEMBER(J)

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