

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA 1004/2004

New Delhi, this the 9th day of November, 2004

HON'BLE SH. SARWESHWAR JHA, MEMBER (A)
Sh. K.K. Aggarwal
S/o Sh. Shiv Shankar Agarwal
Working as Head Parcel Clerk
Chandausi.

At present resident of :-

C/o Sh. Sanjay Agarwal
Finance Manager
Honda City Car
Vasundhara Enclave, Delhi.

(By Advocate Sh. K.K. Patel)

...Applicant.

VERSUS

1. Union of India : through
The General Manager
Northern Railway
Headquarter Office,
Baroda House, New Delhi.
2. Divisional Railway Manager
Northern Railway, Moradabad.

...Respondents.

(By Advocate Sh. Rajender Khatter)

ORDER

The applicant, who is aggrieved by his transfer from one division to another while disciplinary proceedings against him have been pending at Chandausi and are at the final stage, has prayed for the transfer order dated 27-2-2004 being quashed, as the same is violative of the Railway Board's instructions dated 4-3-1965 and 25-3-1967.

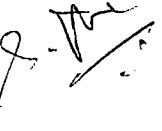
2. The applicant, while posted as Head Parcel Clerk at Chandausi, was placed under suspension on 28-5-2002, as disciplinary proceedings were contemplated against him. This followed a Memorandum dated 12-9-2002 served on him conveying to him the major penalty chargesheet and disciplinary proceedings being initiated against him. While preliminary hearing was fixed on 13 and 30-12-2002 as well as on 21-1-2003, he filed a representation dated — 29-1-2003 submitting the name of his defence helper. He further submitted documents on 5-2-2003 when

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the next date of hearing was fixed for 22-2-2003. Hearing of the case was then fixed for 25-3-2003. In the meantime, the Enquiry Officer changed and the hearing was fixed on 10-10-2003. The enquiry report has been submitted and the applicant has also submitted his reply to the same. Accordingly, the disciplinary proceedings are at the final stage. The applicant has alleged that he has been transferred at this stage to Lucknow Division from Chandausi. He has filed a representation against this on 13-2-2004 submitting therein that the disciplinary proceedings being at the final stage and his mother being above 71 years old and he having school going children, the entire thing will suffer due to the transfer. The applicant has also submitted that he has been under medical treatment, while he has learnt that he has been directed to be spared from Chandausi vide order dated 27-2-2004 for joining at Lucknow Division. Hence this OA.

3. The respondents in their short reply initially submitted that "transfer from one place to another is generally a condition of service and an employee has no choice in the matter. Transfer from one place to other is necessary in public interest and whenever a public servant is transferred, he must comply with the order. If there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer". On having gone through the reply filed by the respondents, it observed that they are of the view that the applicant indulged in malpractices in mass contact areas. The Railway Board's instructions have been issued after due deliberation in the conference on malpractices and corruption in mass contact areas organized by the Ministry of Railways on 10-7-98. It is in this background that the applicant has been transferred to Lucknow Division along with the post in the exigencies of service.

4. Reference has also been made to the decision of the Hon'ble Lucknow Bench of the Tribunal in the case of Anjani Kumar Dubey v. UOI & Ors. in which it has been held that "transfer order issued by competent authority on administrative grounds, on vigilance advice, cannot be interfered with (Annexure R-1). The judgement in Babu Ram's case on similar matter has already been



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placed at Annexure R-2. A copy of the latest judgement in Dharamraj's case is also placed at Annexure R-3. Reference to the Apex Court, upholding the transfer orders in the cases as cited by the respondents in paragraph 6 (a) of the reply has also been made to drive home the point that the transfer is within the exclusive domain of the Executive and will not be interfered with by the Courts. Some cases also have been cited in this regard in the subsequent paragraphs of the reply, all conveying the same message that transfers need not be interfered with, treating the same as a condition and incidence of service.

5. The respondents have also filed a detailed reply to the OA in which, broadly, the same submissions have been made as made in the short reply.

6. On careful perusal of the submissions made by the applicant, it is observed that he has not made out a very convincing case against his transfer. It is for the respondents to see whether it will be appropriate for the employee to continue at the present place of posting while departmental proceedings have been continuing against such an employee and which, according to the employee, have reached the final stage. It is also noted that the applicant has submitted a representation pointing out his personal problems due to transfer. The respondents are expected to give due consideration to the problems/grievances of the applicant and to take a view in the matter. I do not see any reason why this alone should make it necessary for the Tribunal to interfere with the transfer order.

7. Under these circumstances, I am inclined to dispose of this OA in terms of the above observations. It will be expected of the respondents to look into the representations/personal problems of the applicant and to apprise him of their decision in the matter.

8. With this, this OA stands disposed of as above.



(Sarweshwar Jha)
Member (A)

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