

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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(A)

O.A. NO.1120/92

28.05.92

Shri Jitender Mohan

...Applicant

vs.

Union of India & Ors.

...Respondents

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri B.S. Mainee

For the Respondents

...Shri B.K. Aggarwal

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, Shri Jitender Mohan is a Helper Khallasi under Senior Divisional Electric Engineer (Rolling Stock), Locoshed, Ghaziabad and he was transferred by the order dt.31.8.1991 from Ghaziabad to Tughlakabad. Subsequently, he represented against this transfer order and Additional Divisional Railway Manager (ADRM) by the order dt.30.3.1992 cancelled this order. The order of cancellation also shows that it has been passed with the prior approval of Senior Divisional Electric Engineer, Ghaziabad and Kanpur. This order of cancellation was suspended by DRM by the impugned order dt.31.3.1992 (Annexure A1) which has been assailed in this application praying that the transfer from Ghaziabad to Tughlakabad of the applicant be cancelled and the impugned order dt.31.3.1992 be quashed.

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2. The respondents contested the application and stated that the transfer has been effected on the administrative ground in the exigencies of service as there was a report by the Senior Divisional Electric Engineer, Ghaziabad about inefficient working of the applicant at the place of posting.

3. I have heard the learned counsel of both the parties. It is not disputed that the applicant is Ex-Cashier, Uttariya Railway Mazdoor Union (URMU), Electric Lokoshed, Ghaziabad Branch. It appears that he was sacked from this post and he joined the other union, named Northern Railway Mens Union (NRMU), Ghaziabad Branch. Both the unions are functioning under the Railways and they have got their separate entities as well as office bearers. The administration also in the meeting of JCM invites both the union representatives in order to arrive at a decision. It appears that ^{J.C.} a meeting was also held regarding certain transfers which have been affected, which is said to have been presided over by DRM himself and certain decisions were taken in that meeting. The contention of the learned counsel for the applicant is that since the matter was raised in that meeting, the ADRM at the behest of DRM suspended ultimately cancelled the transfer of the applicant from Ghaziabad to Tughlakabad. The learned counsel for the applicant also argued that it

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is malafide transfer and the applicant has been made a sandwich between two rival unions' activists, i.e., NRMU & URMU. The learned counsel for the respondents hotly contested these contentions as divorced of facts.

4. The law regarding interference in the matter of transfers has now been made clear by the authorities of the Hon'ble Supreme Court in Gujarat Electricity Board Vs. Atma Ram Poshani, 1989 SCC page- ; Union of India Vs. H.N. Kritania, 1989 page- and the Full Bench decision of this Tribunal in the case of Kamlesh Trivedi Vs. ICAR, Full Bench Decision vol.I p-83. From a deep study of all these authorities, it comes out that the Tribunal can interfere in the following cases:
- (i) When the transfer is malafide, i.e., it has been effected to accommodate another person and choosing the applicant against the conventions and guidelines laid down for transfer.
 - (ii) When the transfer will affect the pay and perks of the affected person if he is made to join at the place where he is transferred.
 - (iii) When the transfer is punitive, i.e., it has been effected as a substitute for holding disciplinary proceedings against the applicant.
 - (iv) When the transfer is against the normally observed guidelines in the matter which from day to day is observed by the administration in effecting transfers.

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5. The learned counsel for the applicant has referred to the authorities of Rajiv Saxena, decided by the Cuttack Bench reported in ATR 1990(1) p-371 in which it is held that a transfer is not a substitute for holding a disciplinary enquiry. He has also referred to the case of Man Mohan Dass, reported in the same journal at p-68 on the same subject. The learned counsel has also referred to the decision of State of U.P. vs. Sheeshamani Tripathy, 1992 (1) CSJ 15 that there should be some valid basis for a transfer.

6. A perusal of the departmental file as well as of the various contentions raised by the learned counsel for the applicant and the averments made in the OA along with the annexures goes to show that as early as in March, 1991, the working of the applicant was not to the liking of Senior Divisional Electric Engineer. The applicant has, of course, been sacked from treasurership of the URMU, but I have gone through the letter written by the said union informing the administration that the said official is no more the Treasurer and is also creating some panic in the establishment. The transfer order has come into effect in August, 1991 when the Divisional Electric Engineer in July, 1991 again wrote regarding the working of the

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applicant no more to the liking of the administration. Thus the contentions raised by the learned counsel for the applicant that the applicant has been a victim of rival union is not substantiated by the available material in the departmental file as well as on the record.

7. As regards the punitive action of the transfer, Kamlesh Trivedi's case (supra) clearly lays down that in administrative exigencies even if a person is not acting in the discharge of the duties to the liking of the superior, without attaching any stigma to his performance, he can be transferred. Para-13 of the said judgement is reproduced below :-

"It is clear that K.K. Jindal's case is not an authority for a proposition that when complaints are received and the exigencies of service require that a transfer be made, an enquiry 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 enquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer."

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The learned counsel for the applicant also assails the transfer on the ground of malafide. It is stated that ultimate order of the cancellation of (retaining the transfer) and superceding the order of ADRM cancelling the transfer is without any basis & without any reason under pressure of the Union activists. There is no material on record except surmises and conjectures.

In any case, the person in authority by virtue of having the higher office has a right to act administratively and that right of the higher authority cannot be questioned. Though normally administrative orders are desired to indicate certain reasons, but they cannot be equated with quasi-judicial orders where invariably reason follows an inference drawn or by a verdict given. Thus it cannot be said that the impugned order of retaining the transfer of the applicant from Chaziabad to Tughlakabad is in any way malafide. Moreover, if there was any personal animus with any of the officers of the department, then in the case where allegations of malafide are taken, that person is to be impleaded as a party by name and since there is no such personal allegation nor the person has been impleaded, so what the learned counsel wants to plead is that it is malice in law. Malice in law by itself has to be concluded and established from the facts and records. With the rejoinder, the learned counsel of course, has filed

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the proceedings of certain meeting of PNM and that too was presided over by the DRM, who ultimately has passed the impugned order, but that by itself will not give rise to an inference that there is malice available in the mind of the person passing the order or that he has been pressurised or that there was non application of mind in passing such an order. The learned counsel for the respondents has referred to the authorities of Mangj Kumar and Ram Naresh Gupta, reported in 1987(3) SLJ p-218 and p-448 respectively that the Court should be lukewarm in interfering with the orders of transfer which are solely on administrative grounds.

8. In this case had there been no earlier complaint of March, 1991 and July, 1991 by the supervising officer, i.e., the Senior Divisional Electric Engineer earlier to transfer, then the contention of the learned counsel for the applicant would have much weight and great force. However, when there is already a report that such a person is not discharging his duties to the satisfaction of the higher officers, then any motivation in the regard involving the union or other persons would be only presuming too much beyond commonsense.

9. The learned counsel for the respondents has also argued that in the case of Navay Chand Panda vs. Union

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of India of the Cuttack Bench, reported in 1987 (2) SLJ 625 on the point that in transferring a person on administrative grounds, there cannot be any arbitrary or discriminatory treatment of the person if the person has been chosen to be transferred out of his place.

10. In view of the above discussion, I find that the present application is devoid of merit and so is dismissed leaving the parties to bear their own costs. The stay granted in this case is vacated.

AKS

J. P. Sharma
(J.P. SHARMA)²⁴⁻⁵⁻⁹²
MEMBER (J)
28.05.1992