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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA.No.1143/93

Date of Decision: 24-9-93

Shri Krishnavir

Applicant

Versus

Union of India & Others

Respondents

Shri B.S. Mainee

Counsel for the applicant

Shri R.L. Dhawan

Counsel for the respondents

SINGLE BENCH JUDGEMENT
(delivered by Hon. Member(J) Shri C.J. ROY)

This OA has been filed by Shri Krishnavir, Tea Boy, against the order of the respondents dated 5-93, by which he was transferred from Railway Canteen, DRM Office to Loco-Canteen Delhi.

2. According to the applicant he was appointed as Casual labour Tea Boy in 1985 in the Railway Canteen under Station Superintendent Delhi Main Station. He was transferred from Delhi Main Station Canteen to DRM Office Canteen, New Delhi vide letter dated 21.9.1987 (Annexure A-2). He was absorbed as Tea Boy in September 1987 in accordance with the aforesaid letter against a regular vacancy. He was made to work as a Wash Boy/Safaiwala instead of Coffee/Tea Maker/Tea Boy to harass, humiliate and demoralise him. When his representation was rejected, he filed an OA 1994/92 on 31.7.92 in this Tribunal wherein, the order of the respondents dated 18.6.92 was set aside and quashed vide judgement dated 22.10.1992, and the Additional Divisional Railway Manager-(II)(ADRM in short) was directed to take a decision in the matter regarding the nature of appointment

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and functions of the applicant after giving a personal hearing to him. But the ADRM(II) did not give a personal hearing to him till 29.4.93 and kept him under suspension from 31.8.92 continuously and ~~was~~ revoked on 18.5.1993 subsequent to the notice of the OA was served on the respondents (ie. after a period of more than six months from the date of issue of judgement of this Tribunal, without any charge sheet or reason. On 29.4.93 the ADRM(II) gave a personal hearing to him and transferred him to Loco Canteen under pressure from rival Trade Union. The fact that he is sought to be transferred along with post to Loco canteen, Delhi is a proof of defect that he was being transferred not in exigency of service but on extraneous reason. The order of transfer has not yet been given to him and he has arranged a copy unofficially. He has prayed for quashing the impugned order as it has been passed by the respondents under pressure of the rival Union(URMU) against whom he has filed a suit in the civil court for quashing the election proceedings.

3. The respondents have stated in the counter reply that in the administrative interest, Tea Boy, is at time utilised as Wash Boy and vice versa and written instructions in the matter were issued to the applicant vide letter dated 18.6.92 (Annexure R-1). The employees of staff canteen, DRM office New Delhi, made a complaint against the applicant that he

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does not attend to his duties and passed away his time by roaming elsewhere after making his attendance. The Senior Divisional Personnel Officer passed an order booking off the applicant from duty vide notice dated 12.8.92 (Annexure R-3). From 12.8.92, the applicant did not turn up for work and remained on unauthorised absence from duty. He came to the staff canteen on 31.8.92, snatched the Attendance Register from Assistant Canteen Manager and forcibly marked his attendance without asking for duty in writing after having remained on unauthorised absence from 12.8.92 to 28.8.92. Vide order dated 31.8.92, the Senior Divisional Personnel Officer placed the applicant under suspension (Annexure R-4). The subsistence allowance of the applicant was, after the expiry of three months period, increased to 75%, which belies the allegations levelled by the applicant. Vide order dated 13.5.93 (Annexure R-5), his suspension was revoked. The applicant was transferred vide order dated 13.5.93 which he refused to receive when served by the Canteen Manager. The ADRM(II), in compliance of the directions of this Tribunal laid down the duties and functions of the applicant. As the impugned order has already been effected on the same date, the interim order already passed by the Tribunal stands infructuous and therefore be vacated.

4. The applicant has filed a rejoinder more or less asserting the same views as stated in the application.

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5. I have heard the learned counsel for both parties and perused the documents placed on record.

6. During the course of the argument, the learned counsel for the applicant submitted that the impugned order is a punitive order and passed as a result of colourable exercise of power in a malafide manner; There is no exigency of service to transfer the applicant with the post and, as such, the facts and circumstances of the case clearly prove the malafide nature of the impugned order; The averment of the respondents that the impugned order was served on the applicant by the Canteen Manager on 13.5.93 is absolutely wrong; The rules about the service of notice on the Railway employees provide that in case a railway employee refuse to accept the notice, this fact has to be authenticated by two witnesses; According to law, an incumbent in one cadre cannot be shifted to the other cadre without his consent; The cadre of Tea Boy and Wash Boy are two distinct cadres; They have no authority to utilise the Tea Boy as a Safaiwala/Wash Boy; If there is an allegation of misconduct, it must be treated as misconduct and proceeded with, in accordance with the Railway Servant (Discipline and Appeal) Rules, 1968; The order of revocation of suspension does not bear any date (Annexure A-5); Despite the order of this Tribunal the applicant was given personal hearing only on 22.10.92, after a period of six months.

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7. The learned counsel for the respondents admit the fact that the Tea and Safaiwala/Wash Boy are two different cadres. The document placed on record contradicts with the submissions made by the learned counsel for the respondents in regard to the nature of duty allotted to the applicant in the capacity of Tea-Boy, wherein, the duties of removing of cup plates and tea pot from table and to put them into the wash basin, clean the table, and return of crockery in neat and clean condition to the Canteen Manager belongs to the Safaiwala/Wash Boy. In the transfer order, it is clearly mentioned that the applicant has to work as Wash Boy also.

8. The Railway Board's circular No.E(NG)II/90-1/12 dated 27.5.92 in regard to formation of recruitment rules for Canteen employees (Statutory and Non Statutory(Recognised)) canteens on Railways/Production Units, clearly distinguishes the cadres of Safaiwala/Cleaner/Washboy - Coffee/Tea Maker/Tea Boy - Kitchen Assistant Grade-II and Watchman, who otherwise hold the same pay scale of Rs.196-232/750-940(Annexure-I).

9. It is a settled law, if the transfer from one cadre to other cadre is made, the consent of the applicant should be obtained. Without the consent of the applicant, Tea Boy cannot be asked to perform the duties of a Wash Boy.

10. In the case of Ramphal Sharma versus Lt.Governor, Delhi Adm. in OA 2307/91 decided on 16.10.92 in this Tribunal by a Division

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Bench that under FR 14(a), the cadre of an employee cannot be changed without ascertaining his willingness.

11. As regards the misconduct committed by the applicant like snatching of the attendance register, not appearing for duties etc. I am at a loss to understand, why a show cause notice was not issued to him alleging the misconduct before resorting to the extreme step of transfer to the Loco Canteen. Even if he is transferred elsewhere, what is the guarantee that he will not repeat the same again. Secondly, the post itself has been transferred to the Loco Canteen from the DRM Office. No where, has it been stated, except in the argument, that the post stood vacant there and even if a post stands vacant there, the applicant could not have been picked up for transfer, particularly so, by way of punishment for alleged misconduct committed by him, and entrusted to carry the functions of a Safaiwala/Wash Boy. Besides, it is not denied that the applicant is the junior most person in the cadre.

12. In a case decided in the MP State Administrative Tribunal, Jabalpur in OA.Nos.3247, 3101, 3111, 3196 of 1992 with 239 and 243 of 1992 delivered on 11.2.1992 (1992(II) CAJ (SAT) 129), it was held that the reason for their transfer as mentioned in the impugned order is administrative grounds viz. 'As a result of committing irregularities in execution of work'. The applicants submitted that the order casts stigma on their career and,

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therefore, the impugned order is punitive. The argument must be accepted. The applicants were not given any opportunity to show cause against the irregularities in execution of the work allotted to them. In the absence of any such opportunity, the respondents could not reach a conclusion that the applicants committed the alleged irregularities nor they could be transferred on that ground to other places.

13. In the case of Rajeev Saxena Vs. Collector of Central Excise (ATR 1990 (1) 378), it was held that the transfer is no substitute for a proper disciplinary action and in fact, whenever there is a serious allegation against a Government servant, he should not be transferred but his conduct properly investigated and appropriate disciplinary action taken, if necessary.

14. The case of H.S. Srivastava versus State of MP (CSJ 1992(2) page 120, also states that punitive transfer order without show cause notice is illegal.

15. As regards the allegation of the respondents that the applicants refused to accept the transfer order, is not substantiated with any proof nor documentary evidence. The rule clearly states that if the applicant refuses to accept the notice of transfer, it should be supported by two witnesses in writing on whose presence it was refused and notice should be sent by post to the residence if the employee is not present in the office and finally pasted on the notice board of the office as well as the residence of the employee. The relevant

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portion of the Discipline, Appeal and Conduct Rules on this

subject is reproduced below for convenience:-

"(7).....

- (a) Where the railway servant is present in the office, the order/notice should be served on him in person. If he refused to accept the same or evades its service on him on one plea or the other, the fact of his refusal etc. should be recorded in writing and signatures of the witnesses in whose presence the Order/Notice is attempted to be served on him, taken in support of such attempt. The order/Notice should be deemed to have come into effect from the date it was so attempted to be served on the employee concerned irrespective of whether he accepts it or not.
- (b) If delinquent employee is not present in office, the Order/Notice should be communicated to him at his last known address by the notice sent by post, it should be deemed to have come into effect from the date of such acceptance thereof, unless it specifies any subsequent dates from which it has to take effect.
- (c) In case the railway servant concerned does not accept the order/Notice and the same is returned undelivered by the postal authorities with the remarks such as "Addressee not found" or "Refused to accept" etc. it shall be pasted on the Notice Board of the Railway premises in which the employee concerned was working last, as well as in a place in the last noted address of the railway servant....."

16. It is clear that the respondents have not followed the above rules and regulations in regard to the service of the impugned order dated 5/93 on the applicant.

17. The impugned order alleged to have been issued to the applicant on 18.5.93 stands to reason because there is no evidence on record to show that the applicant has received it, nor the impugned order itself contains any date. Even the order of (No.724-E/2/10009/P-4 dated 5/93) revocation of suspension/contains any date except for the noting below showing the correspondence(in original) to have taken place on 17,18 and 19.5.93 and finally marked to AS-P4 (in Hindi).

18. An OA 1944/92 was filed by this applicant in this Tribunal and was disposed of on 22.10.92 with a direction to the respondents to afford an opportunity to the applicant of personal hearing by ADRM-II and to take a decision in the matter in regard to the nature of appointment and functions of the applicant. After/
filing of this OA in the Tribunal

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the applicant was kept on suspension and no action was contemplated against him. The applicant was finally given personal hearing only after a period of six months. This delay in pursuing the matter forces to believe that this could be due to union pressure.

18. In an other similar incident, in the instant case, an interim order dasti was granted on 25.5.93. The confidential record of the applicant maintained by the respondents goes to show that the order dasti has been served on the respondents on the same day (as at pp.7 of the personal file) through Law Branch suspending the implementation of the transfer order for a period of 14 days from 25.5.93 to 7.6.93, which was sent to the Superintendent P-4 for further action on 17.6.93, who in turn sent it to DPO/ADRM-II on 17.7.93. The counsel for the respondents states that he has received the order in time but could not place it before the higher authorities for immediate action, which cannot be believed by any stretch of imagination. This delay on the part of the respondents confirms the contention of the applicant that the delay is due to Union pressure.

19. In the complaint received by 10 persons working in the canteen about the misconduct of the applicant, it is not clear how do the two signatures bear the date 22.10.80, while the applicant has joined the service only in 1985 and the action to book off the applicant with immediate effect has been taken

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after 11.8.92. This further strengthens the benefit of doubt that this could be on account of inter union rivalry.

20. This situation has been analysed in the case of Mohan Das versus Union of India and others (ATR 1990(1) CAT 68), the relevant portion of which, is reproduced below:-

"It thus appears that behind what has been stated to be administrative reasons, the real reason for the applicant's transfer is the inter union rivalry and because the respondents considered the applicant to be indisciplined. For reasons discussed earlier, this action cannot be considered to be malafide. However, the transfer guide lines as such have not been strictly followed in effecting this transfer of the applicant. The respondents could take a view that certain activities of a trade union leader or member are not in the public interest. However, at the same time when it is claimed that the transfer is for administrative reasons, the transfer guide lines should be followed. As held by this Tribunal in the case of N.C.Jha (OA 337/86) decided on 12.8.88, the Tribunal can interfere in a order of transfer when the guidelines laid down by the Government are not followed."

21. The case of Suman Rani Das versus Union of India (ATR 1992 (2) page 42) states that the order of transfer passed not due to administrative expediency but because of pressure by Union is not bonafide or in the interest of administration and as such is liable to be quashed.

22. The revocation of suspension by the respondents on 13.5.93 and transferring the applicant on the same date to Loco Canteen Delhi, clearly adds to the doubt that this act has been carried out in a sort of urgency. Assigning the duty of a Safaiwala/Cleaner to a Tee Boy is against the interest of principles of natural justice, against the cadre rules, bad in law and purely arbitrary.

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23. It could be seen that the respondents are relying on Annexure R-1 order dated 18.6.1992

(in Hindi), which has already been quashed in the which was otherwise an Annexure A-1 order). previous OA.1944/92 on 22.10.1992/ It is

pertinent to mention that this applicant is transferred in the place of one Shri Jot Singh, who was promoted to officiate as Salesman from the post of Wash Boy vide Annexure A-2 order dated 21.9.1987. So, it is abundantly clear that the applicant herein, has been posted to work in the vacant post of Jot Singh, Wash Boy, but in the name of Tea Boy.

24. The functions of Tea Boy was fixed by the competent authority in compliance of the direction of this Tribunal. I am at a loss to understand, as to why, should the competent authority fix this kind of mixed duties of a Tea Boy and Wash Boy to this applicant alone, when there are 19 canteens through out Delhi and all the Tea Boys working there are discharging duties only as Tea Boy. It would certainly

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give an impression that it is done in order to reduce the status of the applicant from Tea Boy to Safaiwala/Wash Boy/Cleaner. The Tribunal only directed the respondents to fix the duties of a Tea Boy to the applicant and did not direct them to reduce the status of him. The respondents miserably failed to prove in all directions that this transfer is in public interest. The claim of the applicant that the transfer is mala fide, punitive, against statutory rules, arbitrary and on the interference of trade union, seems to be apparent after perusing the records produced before the Court.

26. When the misconduct is alleged in 1980 as stated (supra), how could the action be initiated in 1992 and how could this letter find place in the file produced by the department.

During the course of argument, it was brought to my notice that the applicant joined only after 1984. If there is any alleged misconduct against the applicant, the department should have initiated action in accordance with rules rather than recourse to punitive transfer. It is also urged before me during the course of argument that the applicant has not been paid salary. I feel that there is some thing more that meets my eye. Besides there are catanae of judgements delivered by different courts in favour of the applicant. The case of Union of India versus H.N. Kirtania clearly states that the power of the Administrative Tribunal to interfere with an order of transfer made in

colourable exercise of power and on certain pre-notions which may be malafide in nature.

27. The applicant in this O.A. has made out a strong case for interference of this Tribunal. I, therefore, set aside and quash the order of the respondents dated 5/93, by which the applicant was transferred from Railway Canteen, DRM Office, New Delhi to Loco Canteen, Delhi and direct the respondents to assign the duty only of a Tea Boy to the applicant. They are further directed to pay the applicant all the salary due to him. The above directions shall be complied with, preferably and expeditiously, within a period of 15 days from the date of communication of this judgement. No costs.

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(C.J. ROY)
MEMBER (J)

24/9/93
24/9/93