

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

New Delhi this 23rd November, 1993.
O.A. No. 1423 of 1993.

Hon'ble Mr. S. R. Adige, Member (A)

(A)

Shri Pritam Lal Kalra,
s/o Shri Shyam Lal,
Electrician Under Chief Electrical
Foreman (TL), Northern Railway,
New Delhi

(By Shri B. S. Mainee) Applicant.

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Rly. Manager,
Northern Railway,
State Entry Road,
New Delhi

(By Shri B. K. Agarwal) Respondents.

JUDGMENT

The applicant Shri Pritam Lal Kalra, Electrician, Northern Railway, New Delhi has impugned the order dated 21.6.93 transferring him to Meerut (Annexure-AI).

2. It appears that the Railway Quarter No. 110/9, Thompson Road, New Delhi has been allotted to the applicant. Some Railway Officials inspected the premises on 27.1.93 and again on 10.2.93 and they reported to have found that the applicant was running a shop in the said premises, although the quarter was allotted to him for bonafide residential purposes. Accordingly a charge sheet dated 4.5.93, supported by statement of serious mis-conduct was served upon him (Annexure-I, II). The disciplinary proceedings are stated to be pending.

3. Meanwhile, the respondents appear to have transferred the applicant from Delhi to Meerut vide impugned order dated 21.6.93 (Annexure-AI).

(8)

and it is against this order that the applicant has come to this Tribunal.

4. Shri Maine, learned counsel for the applicant has stated that although the transfer is described as having been made on administrative ground, it is in fact punitive in character and has been made under pressure of Vigilance Department, and is founded on the charges levelled against the applicant. In this connection, he states that it is a well settled principle that an order of transfer should not be punitive in character as has been laid down in the ratio cited in C.S.J 1992(2) 130 and ATR 1990(2) 281. He has further averred that where misconduct is alleged, it should be treated as mis-conduct, and an order of transfer is not a substitute for taking action against mis-conduct. In this connection, he referred to ruling cited in ATR 1990(1) CAT, Jabalpur 379 'Rajeev Saxena Vs. Collector Excise'. Further, Shri Maine states that the applicant is due for retirement on superannuation has on 31.10.94 and, therefore, / less than a year of service to complete. A transfer at this stage, within two years of his retirement, is violative of statutory instructions and, therefore, is hit by the Tribunal's judgment reproduced in 'ATJ 1991 (1)CAT 469. He states that the violation of the guidelines regarding transfer also offends the ratio laid down in SLJ 1991(2)CAT 110. He, therefore, prays

(a)

that the order of transfer be quashed, because the representation dated 24.6.93 addressed to General Manager (Vigilance), Northern Railway has met with no result so far.

5. On behalf of the respondents, Shri B.K. Agarwal has stated that the transfer has been made in the administrative interest. He admits the existence of the departmental instructions that the staff should not be transferred from one station to another station within two years of the date of superannuation as contained in Circular dated 14.3.74. He states that these instructions are applicable only in ^{the} normal course and not in cases where the transfer has been recommended by the Railway Vigilance authority as in this case. He, therefore, contends that the transfer offer is neither malafide nor invalid and, therefore, the application is fit to be dismissed.

6. Admittedly, a ^{charge-sheet} has been served upon the applicant for unauthorisedly running a shop in the quarter that has been allotted to him. It is also admitted that the applicant is being transferred at the instance of Vigilance authority who has found him running a shop in the quarter. Under the circumstances, prima facie the transfer appears to be punitive in character. There is merit in Shri Mainee's contention that the transfer is no substitute for proper disciplinary action in

Case of mis-conduct, as held by this Tribunal in
ATR 1990(1)CAT, Jabalpur 379, more so, admittedly
when the applicant is to superannuate on 31.10.94
and the departmental instructions provide that the
staff should not be normally transferred from one
station to another station within two years of the
date of superannuation.

6. In the result, this application is allowed,
and the impugned order transferring the applicant from
Delhi to Meerut is quashed. It is, however, made clear
that the respondents are at liberty to proceed
against the applicant for his alleged mis-conduct
of running a shop in the residential quarter allotted
to him, and take such further action in consequence
thereof, as is permissible under law. No costs.

Adige
(S.R. ADIGE)
MEMBER (A)

ug