

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2045/1993

NEW DELHI, THIS 21st DAY OF JANUARY, 1994

HON'BLE SHRI C.J. ROY, MEMBER(J)

B.S. Negi
Manager (Canteen)
Departmental Canteen
Ministry of Environment & Forests
Paryavaran Bhawan
CGO Complex, Lodi Road
New Delhi-110 003

.. Applicant

By Shri R.K. Kamal with Shri Hemant Malhotra
Advocates

VERSUS

Union of India, through

1. The Ministry of Environment & Forests
Paryavaran Bhawan
CGO Complex, Lodi Road
New Delhi-110003

2. The Director
Departmental Canteen
Deptt. of Personnel & Training
Lok Nayak Bhawan, Khan Market
New Delhi-110003

3. The Under Secretary/Chairman(Canteen)
Min. of Environment & Forests (Dept Canteen)
Paryavaran Bhawan, New Delhi

4. Shri Tajbir Singh
Hony. Secretary (Canteen)
Departmental Canteen
Min. of Environment & Forests
Paryavaran Bhawan, New Delhi

.. Respondents

By Shri P.H. Ramchandani, Sr. Counsel

ORDER

In this application filed under Section 19 of the Administrative Tribunals Act, 1985 has assailed the order No.D.30016/17/93-C&A dated nil which is received by him on 17.9.93 by which he has been transferred to CR Section.

2. The case of the applicant is that he was appointed as Manager(Canteen) in the Departmental Canteen in the Ministry of Environment & Forests on 1.9.83 and he was upgraded to the

scale of Rs.1200-1800 from 3.5.88. He was given the status of government servant with effect from 1.10.91 by order dated 26.6.92, and pensionary/GPF benefits were also extended to him by order dated 4.5.93. By order dated 18.5.92 the applicant was asked to undertake the work entrusted by the Secretary instead of the work of Manager, by Respondent No.4. He made a complaint on 22.9.92 to Respondent No.3 but of no avail. On the other hand, it is alleged that the Respondent No.4 issued a memo dated 24.9.92 to the applicant making certain false allegations like shortage of certain items in the stock and holding the applicant responsible for the same and also directing him to deposit the cost thereof, whereas the applicant had already handed over charge of the stores to the Asstt. Manager Shri D.S. Rawat on 21.2.91. He explained his position vide his letter dated 28.9.92. The Respondent No.4 again issued an order on 23.10.92 directing the applicant to do the job of coupon clerk. Even thereafter, the Respondent No.4 issued some other Memos to the applicant, with the result the applicant was forced to report the matter to Respondent No.3 on 9.5.1993 for his intervention. Having received no response from him also, he reported the matter to the Director (Canteen), Respondent No.2 on 22.7.1993. When Respondent No.3 came to know of it, he issued another Memo dated 30.7.93 seeking his explanation inter alia threatening to initiate disciplinary action against the applicant. The applicant gave his explanation on 2.8.93. But the applicant states that he was shocked to receive the impugned letter on 17.9.93, which he further alleges that is highly malafide, arbitrary, unjustified and punitive in nature.

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3. The applicant vide letter dated 20.9.93 informed Respondent No.3 that his transfer order was not in consonance with the relevant rules and that the nature of work in CR section was totally different and unrelated to the job of Canteen Manager. On the same day, he addressed a letter to the Additional Secretary(Admn) reporting that a sum of Rs.6200 was short in the account of the canteen which amount had not been deposited by Respondent No.4 but was being used for his personal purpose, to which he received a reply on 20.9.93 itself from Respondent No.4. The applicant again addressed a letter to Respondent No.4 informing that his employment was governed by the Departmental Canteen Employees (Recruitment and Conditions of Service) Rule, 1980 which do not permit transfer of him to work outside. Since the higher authorities have failed to intervene in the matter, the applicant has approached this Tribunal praying for quashing of the impugned order dated nil received by him on 17.9.93.

4. I have heard Shri R.K.Kamal and Shri Hemant Malhotra, learned counsel for the applicant. The respondents have not filed their counter but Shri P.H.Ramchandani, learned counsel appearing for them orally argued the case and I have heard him.

5. The case of the applicant is that he is not governed by CCA(CCS) Rules but by GSR 54 of 17.1.81, i.e. Departmental Canteen Employees (Recruitment & Conditions of Service) Rules, 1980 that do not permit/provide for transfer of a regular canteen employee outside the departmental canteen. He therefore alleges that the transfer order is punitive in nature and without jurisdiction and that it would result in grave miscarriage of justice.

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6. It is important to note that the impugned letter neither bears the date ~~and~~ place nor it is in the form of an order or memorandum, as the case may be, even though it is signed by an Under Secretary to the Government of India. It also does not specify as to whom the applicant should report for duty to work in the "CR section". Thus, it only shows that this has been issued in a hurried manner without application of mind. This is so much so that the wordings "This is purely temporary arrangement" have been added to it as ^{with} an _{my} after-thought.

7. There is another Memo dated 20.9.93 to the applicant, issued by Respondent No.4, in the absence of Respondent No.3 who has issued the impugned order, wherein it is states as under:

His transfer in CR section has been made due to certain administrative reasons and this transfer has the approval of competent officer.

In CR Section, he will perform duties to be given by Assistant incharge and he will not have any difficulty in discharging his duties in CR Section.

He will work in CR section in the same post and same pay scale in which he has been working presently. His transfer is temporary and after administrative necessity is over, further decision regarding him will be taken.

8. There is also another Memo dated 13.12.93 to the applicant saying that "his transfer is purely temporary arising out of the need to conduct impartial enquiry and further decision will be taken keeping in view the findings of the enquiry report". This would suffice to suggest that the transfer is made during the course of alleged enquiry proceedings.

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9. The learned counsel for the respondents has cited the decision in OA 1009/93 dated 21.10.93 of the Principal Bench, dealing with the charge-sheet in the case of C type canteen Manager, wherein it is held that the canteen employees are governed by the CCS(CCA) Rules, 1965 and therefore the contention of the applicant that CCS(CCA) Rules are not applicable to him can not be accepted. But this is for disciplinary proceedings in a case of charge-sheet. Be that as it may, these rules that are framed are looked into for promotion, seniority and cadre. That apart, the applicant is granted the status of a Government servant. Even a Government servant can not be transferred in a malafide and arbitrary way that is punitive in nature.

10. Going into the another aspect, para 9, Chapter II, of the Rules framed under Article 309 of the Constitution of India, published in the Gazette of India on 17.1.81, relating to Departmental Canteen Employees says that the seniority of members of the service in a particular category of posts shall be determined on the basis of continuous length of service in a departmental canteen or, as the case may be, in a group of departmental canteens, provided that if the length of continuous service of two or more members serving on the same category of posts is equal, their seniority shall be determined on the basis of their dates of birth. Para 10 says that for the purpose of promotion, each canteen or, as the case may be, a group of canteens under the same Managing Committee shall be considered a separate and independent unit and promotion to next higher posts of eligible members of the Service shall be made within the canteen or group of canteens, as the case may be, provided that nothing herein

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shall debar a member of the Service from applying for any post which is to be filled by direct recruitment in the canteen in which he is working or in any other canteen.

11. Chapter IV of the said rules deal with conduct, disciplinary proceedings and suspension etc.

12. Schedule A of Rule 3, 4 and 5(1) of the Rules, deals with posts in the departmental canteens and tiffin rooms, as detailed below:

S.No.	Name of post	Ministerial or Non-Ministerial	Pay scales Rs.
1.	Sweeper	Non-Ministerial	160-275
2.	Washboy	-do-	-do-
3.	Bearer	-do-	-do-
4.	Coffee/Tea Maker	-do-	-do-
5.	Assistant Halwai	-do-	220-335
6.	Cook	-do-	-do-
7.	Clerks (Coupon, Kitchen, Office, Accounts & General duties)	Ministerial	-do-
8.	Salesman	-do-	-do-
9.	Halwai	Non-Ministerial	240-380
10.	Cashier	Ministerial	240-418
11.	Storekeeper	-do-	-do-
12.	Assistant Manager-cum-Store Keeper	-do-	-do-
13.	Manager (For D Type)	-do-	-do-
14.	Manager (For C type)	-do-	-do-
15.	Accountant	-do-	300-500
16.	<u>Manager (For B type)</u>	-do-	-do-
17.	Manager (For A type)	-do-	-do-
18.	Deputy General Manager	-do-	-do-
19.	General Manager	-do-	400-650

13. Here the applicant is Manager for C Type Canteen which is of a different cadre. FR/SRs define the cadre as "cadre means strength of service or part of service sanctioned as a separate unit". Thus, when the applicant is classified as a separate cadre, his cadre can not be altered to his disadvantage.

14. According to FR 11, the entire service of a government servant can be utilised by the government but he can not be utilised on a lower post to his cadre against his will.

15. FR 15(a) says that the "President may transfer a government servant from one post to another, provided that except on account of inefficiency or misbehaviour, or on his written request, a government servant shall not be transferred substantively to or, except in a case covered by Rule 49 appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14".

16. Therefore, a person can not be transferred from one cadre to another, lower in status and pay scale, by way of a short cut to avoid holding of disciplinary proceedings, especially when the respondents allege that there are some misconduct against the applicant. In view of this, in order to avoid disciplinary proceedings against the applicant, by way of punitive in nature, transfer can not be ordered from the post of Manager to CR Section where his work is lower in status.

17. It was argued by the respondents' counsel that the transfer in this case involves only change of room and that this would not give any hardship to the applicant. This argument can not be accepted because a person higher in status can not be asked to perform a duty of lower in status even in the same room or elsewhere. If so, it would amount to punitive in nature.

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18. Now going into the other phase of the case, it is important to note that if at all any enquiry proceedings are to be initiated against the applicant, the same should have been done in a proper way but transferring him on that count also would amount to punitive in nature, as has been held by this Tribunal and other courts in the matter of transfer, which are stated below:

19. While deciding the OA 26/86 dated 25.3.86 filed by K.K.Jindal Vs. General Manager, Northern Railway, as reported in 1986(2)-SLR, the Division Bench of the Tribunal have referred to various decisions on transfer, viz.,

P.Pushkaran V. Chairman, Coir Board, Kerala (1979(1)SLR 309): "Transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this, that transfers when effected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by courts".

"The right to transfer an employee is a powerful weapon in the hands of the employer. Sometime it is more dangerous than other punishments. Recent history bears testimony to this. It may at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the court is alerted, the court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This court can and should in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

Management of Syndicate Bank Vs. Workman-AIR 1966 SC 1283: "If an order of transfer is made malafide or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be the legal exercise of power given by law. But the finding of malafide should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds".

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Lachman Das V. Shiveshwarkar and others-AIR 1967 Punjab 76: When a transfer is made in violation of any legal provision or is otherwise malafide can be quashed by the Court, is now well settled".

Municipality of Bhiwandi and Nizampur V. M/s Kailash Zizzing Works-AIR 1975 SC 529: "An authority is not acting honestly where an authority has a suspicion that there is something wrong and does not make further enquiries".

20. Thus summing up, the Tribunal has held in the case of K.K.Jindal that the transfers made without holding any enquiry when serious allegations are levelled against the employee would amount to punitive in nature and is also colourable exercise of power and discriminatory and therefore the transfer as punishment can not be upheld.

21. Again, in the instant case, posting of a Manager(Canteen) outside his cadre can not be termed as of administrative nature, since a transfer which is punitive in nature ceases to be issued as an administrative exigency.

22. The learned counsel for the applicant has drawn my attention to the Hon'ble Supreme Court decision in CA 2164/1977 dated 2.11.78 (SLJ-1979) in the case of S.R.Venkataraman Vs. UOI wherein it has been held that "malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause". So, even if this transfer is passed without just cause or excuse, or for want of reasonable or probable cause, it amounts to malice in law. It is much more so, if the transfer is made against cadre as a short-cut to avoid disciplinary proceedings and lowering status thus resulting in punitive in nature.

19

23. In the circumstances and in view of the decisions cited on the subject of subject, I have no hesitation to hold that the applicant has made out a case and also that the transfer is arbitrary, malice and in violation of the rules on the subject. Malafide transfer is also bad in law when it is made as a short cut to avoid disciplinary proceedings that would amount to punitive in nature.

24. Therefore, the application is allowed. The impugned order dated NIL, stated to have been received by the applicant on 17.9.93 is quashed and set aside and the respondents are directed to allow the applicant to continue to work in the same place, where he was working prior to the issuance of the impugned order. The application is thus disposed of. No costs.

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(C.J. ROY)
Member (J) 21/1/94