

S

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No. ~~2524~~ 2524 of 1993.

New Delhi, this the 7th day of January, 1994.

Hon'ble Mr B.N.Dhoundiyal, Member(A).

Shri Manoj Kumar
son of Shri Ram Swaroop
Store Clerk
under Carriage and Wagon Superintendent
Northern Railway,
Moradabad. Applicant.

(by Mr B.S.Mainee, Advocate)

Versus

Union of India: through

1. The General Manager,
Northern Railway
Baroda House,
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Moradabad. ... --- , Respondents.

(by Mr K.K.Patel, Advocate).

O R D E R

B.N.Dhoundiyal, Member(A)

This application has been filed by Shri Manoj Kumar, who was working as Store Clerk under the Divisional Railway Manager, Moradabad. He is aggrieved by the order of transfer from Moradabad Division to Ferozepur Division dated 25.8.1992, which according to him, is in violation of the Railway Board Instructions and is of punitiveⁱⁿ nature. There are two criminal proceedings pending against him and in violation of the Railway Board's Circular dated 4.3.1965, he^{was} transferred from one Railway administration to another till after the finalisation of the criminal proceedings against him.

21

2. A counter has been filed by the respondents, in which the main averments are these. The applicant was appointed on 22.4.1982 as Store Issuer. He was detected carrying away^a diesel drum unauthorisedly on 10.8.1988 and a case was registered against him under Railway Protection(UP) Act in the Court of ACJM/Barielly which was finalised on 13.7.1992. He was subsequently transferred to Moradabad. On 24.5.1992, the then DME Carriage & Wagon Shri Triloki Nath was assaulted while he was inspecting Moradabad Yard. A challan was filed in the Court and the petitioner was one of the suspects in the said occurrence. The petitioner was placed under suspension on 19.6.1992. Suspension was revoked on 8.8.1992. Subsequently, he was transferred to Laskar against which he filed an application before the Allahabad Bench of this Tribunal, which was dismissed on 25.1.1990. Thereafter, he was transferred to Ferozepur by order dated 28.5.1992 but he remained absent since 21.8.1992.

3. On 6.12.1993, this Tribunal passed an order staying the transfer. This interim order continues till date.

4. I have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant has cited a number of rulings to stress that this transfer order is liable to be cancelled as it is violative of the guidelines/rules, punitive in nature and does not take into account the problems faced by the applicant. (*). He has also contended that the

(*) 1.S.L.J 1991(2) 110 CAT
2.S.L.J 1992(2) 589.
3.A.T.R.1990(1) 379.
4.ATR 1990(2) 281.
5.SLJ 1990(1) 481.
6.ATR 1986(1) 304
7.ATJ 1992(2) 455.

Ln

only reason given for the transfer, by the respondents in their counter is that the applicant refused to accept the transfer order from Mandi to Laskar. According to him it shows that there is no exigencies of service for transferring the applicant from Moradabad to Ferojpur. The learned counsel for the respondents has referred to Rule 226 and 157 of the Indian Railways which entitles the president to transfer the Railway Servants to any other department of railway or railway establishment. Rule 157 authorises the President to issue circulars. However, these Circulars are to be treated as advisory and not mandatory as held in a number of cases.(*). He has particularly referred to the case of Union of India vs. H.N. Kirtania, 1989(3)(JT-131), wherein it has been held that such transfer orders should not be interfered with by the Tribunals unless these are malafide, illegal or in violation of statutory rules.

4. While the above-mentioned legal position is well-settled we have to examine this case in the light of Railway Board's Circular dated 4.3.65, which states:

"In Board's letter No.E(D&A)62RG6-15 dated 29.3.62 it was stipulated that non-gazetted staff whose conduct is under investigation for charges meriting dismissal/removal from service, including those under suspension, should not be transferred from one railway administration to another till after the finalisation of the departmental or criminal proceedings

- 2W
- (*) 1.SLJ 1986(2)(CAT 92).
2.SLJ 1989(3)(CAT 191)
3.SLJ 1989 CAT 381.
4.1982(3) SLR 529.
5.F.B.Judgments (CAT 80)
6-1989(3) J.T.20.

against them. These instructions were reiterated in para 1 of Board's letter No.E(D &A) 6ORG6-30 dated 28.7.62.

Cases however come to the notice of the Board where the accused railway servants were transferred during the pendency of investigation or enquiry into their conduct, in spite of the above instructions. The Board desire that the instructions referred to once again should be brought to the notice of all concerned to ensure strict compliance there of."

This was re-iterated in another Circular dated 25.3.1967, the relevant extract of which is as under:

"The Board have considered the matter further and have now decided that non-gazetted staff against whom a disciplinary case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway/Division till after the finalisation of the departmental or criminal proceedings irrespective of whether the charges merit imposition of a major/or a minor penalty."

This shows that the railway administration have themselves imposed restriction on their power of transfer and in case of Non-Gazetted Staff, normally they should not be transferred from one Railway Division to another till after the finalisation of the departmental or criminal proceedings.

In this case though one of the criminal proceedings has been finalised, it is admitted that another criminal proceeding is still pending.

5. In the facts and the circumstances of the case, it is held that in this case there is no ground for not following the guidelines of the

Lw

9

: - 5 - :

above Circulars and the impugned order of transfer dated 25.8.1992 is liable to be quashed, and it is accordingly quashed. It would, however, be open to the respondents to transfer the applicant anywhere within the division.

6, The O.A. is disposed of with the above observation. There will be no order as to costs.

B.N. Dhoundiyal
(B.N.Dhoundiyal)
Member(A) 7/11/94.