

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 539/1993

NEW DELHI, THIS 13th DAY OF JANUARY, 1994

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

Shri Inder Raj
 Highly Skilled Fitter Grade I
 Diesel Shed, Tughlakabad, ^{North} ~~North~~ Roy.
 New Delhi-110044 .. Applicant
 By Dr. A.K. Kaul, Advocate
 VERSUS

Union of India, through

1. General Manager, Northern Railway
 Baroda House, New Delhi

2. Divisional Railway Manager
 Northern Railway, Delhi Division
 New Delhi

3. Sr. Divisional Mechanical Engineer (Diesel)
 Northern Railway
 Tughlakabad, New Delhi-110 044 .. Respondents
 By Shri S.A. Matto, Advocate

ORDER

This case, dismissed for default for non-prosecution, is restored back to the file on 26.11.93 on filing of MA 3491/93 by the applicant.

2. At the time of hearing of this case, the learned counsel for the respondents filed their reply after the MA is already allowed. This counter can not be looked into now in view of the fact that the case is already restored back to the file on 26.11.1993.

3. The applicant is working in Northern Railway as Highly Skilled Fitter Grade I (Diesel). He questions the order dated 22.1.93 (Annexure A) transferring him from Delhi to Ambala. He also assails the relieving order dated 23.1.93 (Annexure A-III) on the ground that the transfer is malafide, arbitrary and also punitive in nature.

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4. I have heard Dr. A.K.Kaul, learned counsel for the applicant and Shri S.A.Matto, learned counsel for the respondents.

5. It has been alleged by the applicant that prior to the issuance of tranfer order, between October-November, 1992 a theft of railway property has taken place and Shri M.A.Khan, Foreman, who is in overall supervision of the material, suspected that the applicant has the knowledge of the case and he may appear as a witness before the learned Railway Magistrate. When the case is still pending, fearing that the applicant may dispose against him in that case, Shri Khan determined that the applicant may be posted out so that he may not be available for giving evidence.

6. It is averred in para 4.7 of the OA that it was managed by Shri Khan in getting issued the order of suspension of the applicant. The applicant was put to great agony when he was placed on suspension vide order dated 6.1.93 (Annexure A-I) which he received on 7.1.93. The applicant made an appeal on 12.1.93 (Annexure A-II) for revocation of suspension.

7. When his grievance for revoking suspension was not redressed, the applicant approached his counsel for getting redressal and the Counsel filed a Suit for declaration in the Court of Sr. Sub-Judge, Delhi alongwith an apllication under 0.39 R.1 and 2 for injunction against the transfer. The learned Sr. Sub-Judge, Delhi rejected the Suit for want of jurisdiction.

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8. The letter No.DSL/TKD/ST/115/93 dated 23.1.93 received through Regd. post by the applicant on 19.2.93 relieving him from Delhi is questioned to be punitive in nature, malafide, arbitrary and motivated.

9. The respondents have filed their counter stating that the performance of the applicant is not satisfactory and he was transferred to Ambala on administrative grounds. They say that the applicant was placed under suspension by order dated 6.1.93 and it was revoked on 23.1.93 and on the same day he was transferred. They have denied that the transfer is arbitrary, malafide and punitive in nature.

10. The applicant has filed a rejoinder asserting the same points.

11. The short point for consideration is whether the transfer is on administrative exigency or it is vitiated by malafide, arbitrariness, motivated and punitive in nature, as alleged.

12. It is admitted by the respondents in para 4.2 of the reply that "The applicant while on duty on 6.1.93 during 8.30 to 1700 hrs. shift was assigned a job of fitment of rocker arm assembly and tappot phassing of locomotive No.16274 which he failed to do. Further he failed to attend to his duties upto 1410 hrs. after the lunch break was over at 1300 hrs. On being questioned about the noncompliance of the assigned job by his senior man Shri Ram Baboo, the applicant misbehaved and abused him. On the receipt of the said report of his misconduct and dereliction of duty, the applicant was placed under suspension vide letter dated 6.1.93. It is

further submitted that as the applicant had indulged in insubordination, misconduct, unbecoming of a government servant, the matter was scrutinised by the competent authority and in the interest of the administration, the suspension was revoked and transferred to the Ambala Division on 23.1.93".

13. The respondents have further stated in para 4.3 that "The applicant manhandled supervisor and this is an extremely serious act of misconduct on the part of the employee. The Diesel Loco Shed runs a large no. of important mail/express service of Northern Railway system and his continuance in the shed would have reflected on the morale of supervisors and staff and discipline in the shed. As such, he was transferred on administrative grounds to Ambala".

14. When there are grave allegations of misconduct against the applicant as stated above, the respondents ought to have conducted an enquiry and should have taken action, and if the charges are proved, to punish him in accordance with the law, but the only recourse to transfer is not contemplated. It is much more so because the Railway Board's letter dated 2.5.84 on the subject of Discipline amongst Railway Employee, para 5(xii) says that "Where disciplinary action is warranted, transfer on administrative grounds should not be resorted to". Therefore the action of the respondents is in violation of these guidelines. Besides, it is not denied by the respondents that the applicant is the eye witness to the theft as claimed by him. However, the respondents have not touched upon the allegations made by the applicant against Shri Khan in their reply. According to the pleadings, when the averments made in the OA are not denied in the reply, it

could be deemed to have been admitted. The claim of the applicant that he has become a witness in an incident involving Shri Khan and the allegations made by him against Shri Khan stand proved since they are unrebutted.

15. When there are serious allegations of misconduct against the applicant, I do not see anything that would stop the respondents to conduct an enquiry, take disciplinary proceedings against him than to recourse of punitive transfer order.

16. 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".

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".

17. 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.

18. When the transfer is punitive in nature, it loses the significance of being called transfer made on administrative exigency .

19. In the facts and circumstances of the case and in view of the rulings and guidelines cited supra, I have no hesitation to hold that the transfer of the applicant is arbitrary, malafide, motivated and punitive in nature. Therefore, the application is allowed and the transfer order dated 22.1.93 and the relieving order dated 23.1.93 are quashed and set aside. The application is thus disposed of. No costs.

heto
(C.J.ROY) 13/1/94
Member(J)