

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1292 of 1996

Allahabad this the 27th day of November 1998

Hon'ble Mr. S.K. Agrawal, Member (J)

U.S. Singh S/o Tej Bahadur Singh R/o Central Colony, Moghalsaria, Varanasi.

Applicant

By Advocate Sri S.K. Dey/ S.K. Misra

Versus

1. Union of India through the General Manager,
E. Railway, Calcutta.

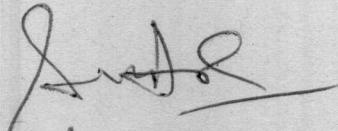
2. The Senior D.E.N.(2) E.Railway, Moghalsarai.

Respondents

By Advocate Sri G.P. Agrawal.

O R D E R (Oral)

By Hon'ble Mr. S.K. Agrawal, Member (J)


In this O.A, under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the impugned order of transfer dated 07.11.96.

2. In brief the facts of the case as stated by the applicant are that the applicant

entered in railway service on 16.3.1987 on the post of Gangman. He being Gangman was allowed to work as storekeeper. He filed an O.A.No.548 of 1996 for claiming difference of pay and another O.A. No.571 of 1996 for promotion to the post of P.W.M.II. Because of these two cases, the respondent and P.W.I. A.B. Tewari and S.K. Tewari become annoyed with him and he was threatened for evil consequences. It is further submitted that a false police case was registered against the applicant under Section 323/504/506 I.P.C. ~~was~~ at Police Station G.R.P. Moghalsarai and thereafter the applicant was suspended and he was charge-sheeted. It is stated that without revoking suspension order, the applicant was transferred from Moghalsarai to Aurangabad vide impugned order dated 07.11.1996 which was motivated by the respondent and P.W.I. A.B. Tewari and S.K. Tewari. Therefore, by this O.A. the applicant has submitted to quash the impugned order of transfer.

3. The counter-affidavit was filed. In that the counter, it is stated by the applicant never worked as storekeeper because there was no sanctioned post in P.W.I. till date. It is further submitted that the case against the applicant was registered under Section 323/504/506 I.P.C. as on 16.10.96, the applicant attacked upon Sri S.K. Tewari Design. P.W.I./3/CDMR by stabbing him with knife in the presence of Sri Jageshwar, Sri S.N. Mishra and others. It is also denied that the applicant was transferred with any malafide motive and it has been

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stated clearly that competent authority has transferred the applicant in administrative interest and to maintain discipline and safe working of the respondents. It was also stated that the applicant tried to threaten to the supervisor and workman and used to remain absent and negligent towards his duty. Therefore, he was transferred. Therefore, on the basis of the averment made in the counter-affidavit, it was submitted that this O.A. be dismissed with cost.

4. The rejoinder was also filed, re-iterating the facts mentioned, in the O.A.

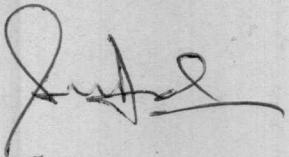
5. Heard, the learned lawyers for the applicant and learned lawyer for the respondents and have perused the whole record.

6. Learned lawyer for the applicant argued that the impugned order of transfer is passed upon malafides and the competent authority has no right or power to transfer the applicant from Moghalsarai to Aurangabad. ☺

7. On the other hand learned lawyer for the respondents has submitted that the applicant was transferred in the interest of administration and details have been given in the counter-affidavit. He has further stated that the respondents have full power to transfer the applicant, therefore, this Tribunal should not interfere in this order of transfer.

8. Malafides can be established either by direct evidence or on the basis of the circumstances mentioned in the case. In this case, there is no direct malafides imputed against anybody. No one has been made party against whom any malafides have been imputed. In 'Express News papers (P) Ltd. Vs. Union of India(1986) 1 S.C.C. 133', it was held that "where malafides are alleged it is necessary that the person against whom such allegations are made, should come forward with an answer, refuting or denying such allegations."

9. In 'Shankarnayayana Vs. State of Karnataka (1993) 1 S.C.C. 54' Hon'ble Supreme Court observed that "it may not always be possible to demonstrate infact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of malafides from the facts pleaded and established. Such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation surmises and conjectures." In the instant case, the applicant failed to establish the malafides either directly or indirectly against the respondents, who transferred him.

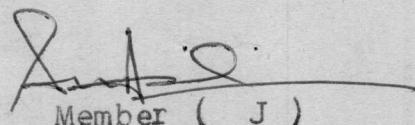


10. No doubt, the applicant has filed two original applications for redressal of his grievance and no doubt, the criminal case has been registered. He has been suspended and chargesheeted with major penalty but it does not mean that he cannot be transferred during the

period of suspension or during the pending proceeding against him. In the counter, it has been made very specific that the applicant has been transferred in the interest of safety and discipline of railway employees and detailed counter-affidavit has been filed for this purpose. Therefore, I can only say that the applicant has failed to establish the fact that he was transferred because of malafide intention or bad motive behind him.

11. The applicant has also not proved the fact that the person who had transferred him, was not competent to transfer. The transfer is an incident of service and an employee under the Government, can be transferred at a place where administration feel it convenient in the administrative interest. The applicant cannot claim eminency. This Tribunal can only interfere if transfer is based on malafides and infraction of professed norms. In the present case the applicant has failed to establish anything in his favour.

12. I, therefore, dismiss this O.A. with no order as to costs.


Member (J)

/M.M./