

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

(19)

Original Application No. 624 of 1996

Allahabad this the 17th day of April 1998

Hon'ble Mr. D.S. Baweja, Member (A)

Uma Shanker Lal S/o Late Manohar Lal, aged about 50 years, presently posted as Sorting Assistant in the Office of Sub Recording Officer, Railway Mail Service, A-Divn., Varanasi R/c 28/118, Telia Bagh, Distt Varanasi Cantt.

Applicant

By Advocate Sri A.V. Srivastava

Versus

1. Union of India through Secretary, Ministry of Communication, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Sr. Superintendent, Railway Mail Service, A-Divn., Allahabad.
4. Sub Record Officer, Railway Mail Service, A-Divn, Varnasi.
5. Azaz Ahmad, Sr. Superintendent, Railway Mail Service, Allahabad.

Respondents.

By Advocate Sri N.B. Singh

[Signature]

ORDER

By Hon'ble Mr. D.S. Baweja, Member (A)

The applicant while working as Sorting Assistant in the office of Sub Record Officer, Railway Mail Service, 'A' Division, Varanasi, has been transferred as per the impugned order dated 17.5.96 from Varanasi to Mirzapur. Being aggrieved by this order, the applicant has filed the present O.A. on 03.6.96 seeking the relief of quashing the impugned order dated 17.5.96 with all consequential benefits.

2. The applicant has stated his case as follows;

The applicant is an active member of National Union and in the year 1995 was elected as Divisional Secretary. One Sri Kedar Nath Tiwari who was the Divisional Secretary Union, of the other union named All India Union retired from service on 31.8.95. However, Sri Kedar Nath Tiwari being the office bearer of the All India Union under the patronage of the higher officials of the department, continued to visit the office and interfered ^{with} the working of the office and also misbehaved with the employees. Several complaints were made by the National Union against Sri Kedar Nath Tiwari to the higher authorities. However, no action was taken by the authorities and Sri Kedar Nath Tiwari continued to visit the office and interfered with the working in the office particularly that of the applicant. On 12.3.1996, Sri Kedar Nath Tiwari came to the office and tried to interfere in the working of the office. The applicant protested against the same and made complaint to the Officer-in-Charge. This irritated Sri Kedar Nath Tiwari who assaulted the applicant and the applicant was injured. The applicant lodged a F.I.R. against Sri Kedar Nath Tiwari. The various unions also jointly ^{made} complaint of

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the incident to the higher authorities. The respondents inquired into the matter and thereafter an order dated 20.3.96 was passed, restraining the entry of Sri Kedar Nath Tiwari into the office during working hours. The applicant was also transferred as per order dated 19.3.96 to Allahabad. The matter about the transfer of the applicant was represented by the National Union to the higher authorities and the transfer order of the applicant was cancelled as per order dated 04.4.96. However, All India Union continued to pressurise the the higher authorities for taking action against the applicant and also threatened that if no action is taken, they will resort to indefinite strike. The order restraining entry of Sri Kedar Nath Tiwari into the office, was ~~also~~ withdrawn as per order dated 16.5.96 and the applicant was again transferred by the impugned order dated 17.5.96 to Mirzapur in place of Sri Pradeep Kumar who had made a request ^{for} to transfer ^{to} Mugalsarai.

3. The applicant has assailed the transfer order on the following grounds;

(a) The transfer^{order} has been passed not in the interest of administrative exigencies but under the pressure of rival union i.e. All India Union and the order is punitive in nature.

(b) The respondents passed the order arbitrarily and with malafide intentions. The applicant being the Divisional Secretary of the National Union apart from other demands of the staff, made complaint about the working of respondent no.5. The respondent no.5 did not appreciate this and has transferred the applicant with oblique motive and malafide intentions.

(c) Sri Pradeep Kumar has been transferred to Mugalsarai on his ^{own} request while the applicant has been transferred to Mirzapur in his place keeping vacancy at Varanasi.

4. The respondents have filed the counter-affidavit as well as the supplementary counter-affidavit in reply to the rejoinder affidavit. The respondent no.5 who has been made as respondent by name, has also filed separate counter-affidavit. The respondents have submitted that both Sri K.N. Tiwari and ^{the} applicant belong to the rival unions and having bitter relations and have been making complaints against each other. Rival complaints were made for the incident of 12.3.96 when the quarrel took place between the applicant and Sri K.N. Tiwari. The matter was inquired into by the Assistant Superintendent. Based on his inquiry report, the Controlling Officer ordered the transfer of the applicant from Varanasi to Allahabad and restrained the entry of Sri K.N. Tiwari into the office in order to maintain discipline and ensure smooth working of the office. The transfer order dated 03.4.96, however, was subsequently cancelled as the approval of the Post Master General which was necessary for transfer of the union official, was not obtained. After the cancellation of the order of transfer on 04.4.96, the Post Master General ordered further inquiry into the incident through Assistant Superintendent of Post Offices(Vig.). Based on the inquiry of the Vigilance Branch, Post Master General ordered the transfer of the applicant to Mirzapur and accordingly transfer order dated 17.5.96 was issued. The respondents further submit that the order restraining the entry of Sri K.N. Tiwari into the office during working hours, was subsequently withdrawn after a period of 2 months after reviewing the situation. The respondents further submit that there is no irregularity in transfer of Sri Pradeep Kumar to Mugalsaria and po.

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at Varanasi has not been filled up due to interim order passed by the Tribunal. In view of these facts, the respondents maintaining that the transfer order has been passed on the administrative grounds with the approval of the competent authority and, therefore, no irregularity has been committed.

5. As indicated earlier the respondent no.5- Azaz Ahmad, Senior Superintendent, Railway Mail Service A-Division, Allahabad ^{who} has been made the respondent by name, has filed counter-affidavit, strongly contesting the allegations made against him by the applicant. He denies that any patronage was given to Sri K.N. Tiwari by him or the other officers. He further submits that the transfer order was not passed under any undue influence or pressure of All India Union. He also submits that the transfer order passed earlier transferring the applicant to Allahabad was cancelled only on technical ground as prior approval of the Post Master General was not obtained which was necessary as the applicant was an office bearer of the union. In view of this, the allegation of the applicant that Sri K.N. Tiwari started pressurising the higher authorities for transfer out the applicant from Varanasi after his first order of transfer was cancelled, is vague. ^{and hence len} He further submits that the order of restraining the entry of Sri K.N. Tiwari in the office during working hours, was reviewed after 2 months keeping in view the fact that he is the Divisional Secretary of the Union and required to visit the office in connection with the union activities and not ^{account of} on any soft corner by the respondents ^{No 5} for Sri K.N. Tiwari.

6. The applicant has submitted the rejoinder-reply for the main counter as well as for the supplementary counter affidavit. However, no rejoinder has been filed for the counter-reply of respondent no.5. The applicant has controverted the contentions of the respondents and re-affirming the averments made in the O.A. in support of his claim. The applicant has submitted that the respondent no.5 had transferred the applicant as per order dated 19.3.96 in utter haste without obtaining the approval of the competent authority for transfer which establishes that respondent no.5 had a soft corner for the union of Sri K.N. Tiwari. Further the respondents have disclosed in the counter-affidavit that the applicant has been transferred based on the inquiry conducted on the orders of the Post Master General. The applicant was neither informed about the the said ---inquiry nor any copy of the report was furnished to the applicant. The applicant was legally entitled for show-cause prior to his transfer so that he could state his position before the higher authorities. Such an inquiry conducted at the back of the applicant and without any show-cause notice, could not form the basis for transfer and such a transfer is punitive in nature. As such the transfer order is illegal, arbitrary and against the principle of natural justice.

7. As per order dated 05.6.96, it was provided that if the applicant has been ^{not} relieved of the charge, he shall not be transferred from the present station of posting. This interim order was continued from time to time till the pronouncement of the order.

8. Heard the arguments of Sri A.V. Srivastava,
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learned counsel for the applicant and Sri Satish Mandhyan brief holder to Sri N.B. Singh, learned counsel for the respondents. During arguments, the learned counsel for the applicant relied upon the order of the Full Bench dated 27.4.1988 in the case of 'Sri Kamlesh Trivedi vs. Indian Council of Agricultural Research and another .

9. Since the respondents had disclosed in the counter-affidavit that the decision for transfer had been taken by the competent authority based on the inquiry conducted by the Vigilance Branch, the respondents were directed to produce the copy of the inquiry report and the order~~s~~ passed thereon by the Post Master General ordering transfer of the applicant. These documents were made available by the counsel for the respondents during the hearing.

10. In the matter of transfer as held by the Hon'ble Supreme Court in catena of judgments, the scope of judicial review is very limited. In this connection, it will be appropriate to re-produce para-4 from the judgment~~s~~ of the Hon'ble Supreme Court in the case of *Mrs. Shilpi Bose and Others Vs. State of Bihar and Others A.I.R. 1991 S.C. 532*;

*In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if

a transfer orders is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

This scope has been reiterated in various subsequent judgments i.e. 'State of M.P. Vs. S.S. Kaurav 1995 S.C.C. (185) 660', 'Rajendra Roy Vs. Union of India A.I.R. 1993 S.C. 1236'. Keeping in view the parameters laid down by the Hon'ble Supreme Court, I will now proceed to examine whether the grounds of challenge advanced by the applicant come within the laid down parameters warranting judicial interference.

11. The applicant has stated that the transfer order is not ^{issued} in the interest of administration but on other considerations. He has challenged the transfer order mainly on two grounds; First ground is that the applicant made several complaints against the respondent no.5 - Azaz Ahmad, Superintendent of Railway Mail Services Allahabad which was not appreciated by him and with oblique motives and malafide intentions, the applicant has been transferred by him. On going through the submissions made by the applicant in support of this contention, and I note that the applicant has made this allegation in para 4.24. The applicant has ^{however} not mentioned any details of the complaints made to the higher authorities. The applicant has brought on record copies of several letters, said to have been written to the higher authorities. On going through these letters, I find

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that the focus of these complaints is mainly on the working of Sri Kedar Nath Tiwari, Divisional Secretary of the rival union. The applicant himself has stated that the respondent no. 5 took charge only in September, 1995 and I note that some of the complaints have been made even before the respondent no.5 took charge of the office. The respondent no.5 has been also made as a party by name and he has filed a separate counter-reply strongly refuting the allegations made by the applicant against him. The respondent no.5 has contended that no patronage had been given by him or by the other officers to Sri K.N. Tiwari and the transfer has been effected with a view to maintain discipline and ensure smooth working in the office and also to avoid any unpleasant happening. It is noted that the applicant has not filed any rejoinder-affidavit to the counter-affidavit of the respondent no.5. Keeping these facts in view, I find that of malafide allegations against respondent no.5, are vague, and based on surmises and conjectures. It is, therefore, difficult to draw any inference of malafide against the respondent no.5. Further the transfer order though initially was passed by the respondent no.5 but the same was cancelled by the Post Master General. Finally the transfer order under challenge has been passed by the Post Master General. However, it is noted that there is no allegation of malafide against the Post Master General. There is also no whisper of the averment that the respondent no.5 had arranged the transfer by influencing the Post Master General. Even if for a moment the contention of the applicant is accepted with regard to the allegation against respondent no.5, then the authority who has transferred ^{the applicant,} ~~is then~~ equally a party to the malafide action as he has not applied in his own mind in arriving at the conclusion warranting transfer

of the applicant in the interest of administration. However as indicated above, no malafide has been alleged against ^{the} Post Master General. Further the respondents have disclosed the reasons for transfer and validity of the same to justify the transfer in the interest of administration has been deliberated subsequently. Keeping the above observations in view, I am not inclined to subscribe to the view of the applicant that the transfer has been motivated on account of the complaint made against respondent no.5.

12. The second ground of attack is that transfer has been done under the pressure of rival union and the order is punitive in nature. The applicant has brought on record several documents at A-1 to A-8, A-10, A-15 and A-18 to bring home the point that complaints had been made to the higher authorities against the working of Sri Kedar Nath Tiwari of the rival union. On going through these documents, its not difficult to infer that intense inter union rivalry was existing between the National Union to which the applicant belongs and was the Divisional Secretary and All India Union of which Sri Kedar Nath Tiwari was the Divisional Secretary. The applicant has stated that Sri Kedar Nath Tiwari had retired on 31.8.95 but he continued to visit the office. The applicant alleges that Sri K.N. Tiwari interfered with the working of the staff and particularly of the applicant and also misbehaved with the staff. This interference of Sri Kedar Nath Tiwar was brought to the notice of the higher authorities. It is also noted that the complaints at A-1 to A-4 have been written before the respondent no.5 was posted at Allahabad. This shows that the tussle between the two rival unions was continuing even before the posting of respondent no.5

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against whom as discussed earlier, the applicant has alleged showing of soft corner to All India Union. The rivalry between the union culminated into the incident on 12.3.96 when some altercation/quarrel took place between the applicant and Sri K.N. Tiwari. As per the version of the applicant, he objected to the visit of Sri Tiwari during office hours. When he brought ^{the same} to the notice of ~~the same~~ ^{he} Officer-in-charge, he was assaulted by Sri Tiwari and ^{he} also suffered injury for which he lodged the F.I.R. However, it is noted from the averments of the respondents that the version of the Officer-in-charge with regard to the incident, is different. A fact finding inquiry was ordered as the rival unions had been demanding action against each other. The respondents have disclosed that the fact finding inquiry revealed that both the applicant and Sri Tiwari were responsible for the incident. The respondents further contend that with a view to maintain discipline in the office and ensure smooth working and avoid any unpleasant happening in future, it was considered expedient to transfer the applicant from the present office and accordingly the transfer order was issued for Allahabad by respondent no.5. A restriction was also imposed on the entry of Sri K.N. Tiwari during the office hours. The respondents have further stated that since the applicant was an office bearer, ^{of the Union} the approval of Post Master General (P.M.G.) was necessary before transferring the applicant and, therefore, the transfer order to Allahabad was cancelled on direction of P.M.G. The applicant has, however, contended that respondent no.5 cancelled the transfer order on his own when he realised that complaints have been made to the higher authorities. However, taking into view the facts brought out by the respondents, this contention of the

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applicant is not tenable. From the averments of the respondents, it is noted that after cancellation of the transfer order, Post Master General ordered a fact finding inquiry by the Vigilance Branch at his level. After inquiry of the Vigilance Branch, the Post Master General came to the conclusion that in the interest of administration, the applicant ^{has} ~~is~~ required to be transferred out of Varanasi.

13. Keeping in view the background detailed in para-12 above, the issue now remains for determination is whether the contention of the applicant that the transfer order is punitive in nature, is sustainable. As indicated earlier, the respondents have disclosed in the counter-affidavit that the competent authority came to the conclusion that the transfer of the applicant was warranted in the interest of administration based on the vigilance inquiry report. Copy of the vigilance inquiry report and order passed thereon by the Post Master General have been produced by the respondents during the hearing as directed. The applicant in the rejoinder-affidavit and also during the hearing strongly contested that the conclusion arrived at by the competent authority to transfer the applicant on the basis of the inquiry report was illegal and arbitrary as the inquiry had been conducted at the back of the applicant and no show.cause opportunity was given to the applicant to explain his position. On going through the inquiry report and other documents brought on record by the respondents, this argument of the applicant is not tenable as the statement of the applicant while conducting the fact finding inquiry had been recorded, to get his version of the incident. Further it is also

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noted that the vigilance report not only covers the incident which took place on 12.3.96 but covers several other incidents involving the applicant on account of inter-union rivalry, specially on account of Sri K.N.Tiwari of the All India Union. ^{Based} On the averments made by the either parties and the other material brought on record, it is not difficult to infer that there was intense inter-union rivalry existing between the two unions and several complaints were being made against each other and the office atmosphere was charged ^{particularly} ~~politically~~ due to objection raised by the applicant on the activities of Sri K.N.Tiwari who had since retired from the service. ^{under} ~~with~~ such a situation, the competent authority was required to take a decision. In this connection, I refer ~~red~~ to the judgment of the Full Bench in the case of Sri Kamlesh Trivedi as ^{cited} ~~referred to~~ the above and relied upon by the applicant. On going through this order, it is noted ^{that} in para 11 and 12, the various situations under which the transfer in the interest of administration may be warranted without recording any findings with regard to misconduct either on the basis of the complaints or otherwise, have been detailed. Further in para-13 referring to the judgment in the case of K.K. Jindal, which was the subject matter of the Full Bench's consideration, it is stated that K.K. Jindal does not laid down the proposition that when the complaints were received and exigencies of services required that a transfer be made, an inquiry must necessarily be held into the complaint before transfer could be ordered. Further it also does not ~~lay~~ ^{lay} down that if the transfer is made on the receipt of the complaint, it would be deemed to be penal in nature. All that is laid down in K.K. Jindal's case ^{is} that a finding as to misconduct and a finding which attaches stigma to the employee not

preceded by an inquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer. In the present case, the administration was faced ^{with} the situation ^{where} whether the atmosphere in the office was getting charged on account of the activities of the rival-- union. One of the option with the competent authority could be to initiate disciplinary proceedings against the applicant based on the incident dated 12.3.96 or to remove the applicant from the scene to another office, since Sri K.N. Tiwari who had retired, could not be moved out. The competent authority based on the fact finding inquiry came to the conclusion that in the interest of the administration, it would be necessary to transfer the applicant to another station to maintain discipline and peaceful atmosphere in the office. It is further noted that no finding with regard to the misconduct has been recorded against the applicant and the transfer order does not say so. The transfer has been actuated mainly on the ground of situation of indiscipline and unrest ^{prevailing} ~~atmosphere~~ in the office on account of activities of Sri K.N. Tiwari and the applicant. I ^{therefore} am convinced that the competent authority has arrived at this conclusion not with any extreneous consideration or with malafide intentions but based on the appraisal of the situation through his own independent fact finding inquiry and in the interest of administration. The transfer order under such a situation, cannot be deemed to be penal in nature. The applicant during the arguments also brought to my notice an order of this Bench in 'O.A. 1050 of 1996 ^{decided on} ~~dated~~ 09.1.96 in the case of Ram Sewak Vs. Union of India and Others', which the applicant contended ^{is} directly applicable to his case. I have gone through this order carefully. It is noted that here also the inter-union rivalry was existing

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and pressure was being ~~made~~^{exerted} by either parties for the transfer. However, the Bench took a view based on the facts of the case that transfer order is punitive in nature because of the facts that the respondents had not taken any plea that the transfer of the applicants was necessitated to restore peace and harmony in the office where the applicants ^{had} ~~were~~ working. In the present case, as indicated earlier, the respondents have taken this plea and the necessary documentary evidence to support their contentions with regard to the reasons warranting transfer, have been disclosed. This order therefore, is not of any help to the case of the applicant. Keeping in view the above deliberations, I have no hesitation to come to the conclusion that the transfer order has been passed by the competent authority in the interest of administration and not actuated by any malafide or colourable exercise of power to punish the applicant.

14. In the result of the above, I am unable to find any merit in the O.A. and the same is accordingly dismissed. No order as to costs. The interim order passed on 05.6.97, stands vacated.

[Signature]
Member

/M.M./