

RESERVEDCENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABADDATED: THE 2nd DAY OF NOVEMBER 1998

CORM : HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO.490 OF 1997

M Dhan
Shri B.S. Nagar, Station Master,
Northern Railway, Etah (U.P.)

.... Applicant

C/A Shri K.S.Saxena, Advocate

Versus

1. The Union of India through Divisional Railway Manager, Northern Railway, Allahabad.
2. Shri R.D.Tripathi,
Senior Divisional Operating Manager,
D.R.M. Office, Northern Railway,
Allahabad.

.... Respondents

C/R Shri A.K.Gaur, Advocate.

ORDERBY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the Administrative Tribunal Act 1985 for cancellation of the transfer order dated 6.12.1996 of the applicant from Etah to Balrai Annexure-A1.

J.S.D. 5

2. The material facts giving rise to this D.A. are that the applicant on his own request where transfer allowance etc. is not allowed to the staff concerned asked for his transfer to Etah station, whereby his home village is situated where his old and ailing mother aged about 93 years and an incapacitated brother resides, was posted since 21st November 1995. Hardly after 6 months or so from the date of joining of the applicant at Etah, he was transferred from Etah to Sarai Bhopat vide Annexure -A4. He sent the representations to the Divisional Manager dated 15.6.96, March 1997 A1 and A6 respectively but no action was taken on the said representation. He is to retire as superannuation on 31st July 1999.

3. The allegation is to the effect that he was implicated in a false case of loading/unloading of rakes and placed under suspension along with A.S.M. Shri C.P. Sharma on 11.4.96, the revocation of which was made on 7.6.96 vide Annexure-A4. The identical lapses against the applicant and Shri C.P. Sharma were alleged, C.P. Sharma, A.S.M. who had been at Railway Station from 1986 was retained and the applicant was transferred to Sarai Bhopat. On account of upper caste lobby and bias of Shri R.D.Tripathi, Sr. DDM, Allahabad did not readily agreed to for transfer of the applicant on his own request until a reference in his connection was made to him (Commercial Railway Board, New Delhi vide his D.O.Letter dated 26.7.95 Annexure-2). The transfer of the applicant was ordered during the middle of academic session which is against the existing policy of Railway Administrations. Even the National commission of backward classes Govt. of India, New Delhi, has written letter dated 11.3.97 and 3.4.97 and suggested the transfer of the applicant vide Annexure-A1 and A-10. Shri C.P. Sharma was transferred from Etah to Jalesar City a choice station.

S.D.M.

4. The transfer order is challenged on the ground of victimisation by Shri R.J.Tripathi, the transfer is in middle of school session, two transfers in one year, not cancelled even after recommendations of Govt. Commission of Backward Classes of New Delhi and against the interest of the Railway Administration.

5. The respondents have disputed the allegations levelled against them and alleged that the applicant was transferred from Etah to Sarai Bhopat in the Administrative exigency on 23.5.96 as he has committed serious lapses at Etah, Shri C.P.Sharma submitted a representation, his representation was considered and was retained at Etah for a period of six months only. The irregularities committed by the applicant was found substantial by the fact finding enquiry, the applicant was transferred from Sarai Bhopat to Balrai on 6.12.96 but he has not joined so far, the applicant and Shri C.P.Sharma ^{Power Etah in} held responsible for the detention of diesel ~~first~~ each as 6.4.96 on account of which loss of Railway Revenue occasioned by false timings of unloading of rakes during the fact finding enquiry. No favour has been shown to Shri C.P.Sharma. Hence prayed for dismissal of O.A. with cost.

6. The applicant filed a rejoinder to the effect that the charges against him and Shri C.P.Sharma are under enquiry, until the findings of enquiry committee are not raised any Administrative action, is not justified. Further supplementary rejoinder was filed stating that even after the report is of enquiry committee the applicant was not found ^{guilty} ~~gentle~~ while Shri C.P.Sharma was held responsible for the same.

7. As transfer from Mota to Etah is on the request of the applicant himself, this transfer order passed on 21.11.95 cannot be taken into consideration for counting the subsequent

J.V.M.

transfer order dated 7.6.96 to that within a period of one year there has been two transfers. The applicant has remained in Mota for 6 years and transfer order dated 21.11.95 was at his initiation, hence it cannot be said that the administration transferred him twice in one year for Administrative reasons.

8. Even on his allegations in O.A. the applicant states that he was implicated in a false case of loading/unloading of rakes and placed under suspension along with A.S.M. Shri C.P.Sharma on 11.4.96 and the revocation of which was made on 7.6.96. The case was false or true, a conclusion to this effect can be arrived at only after disciplinary proceedings are conducted, even an enquiry for fact finding cannot serve the same purpose for the reason that in the said enquiry the person who has been said to have been found responsible has no opportunity to defend the same. It is an enquiry behind the back of the officials concerned, hence the said enquiry gives rise only to a prima-facie case for charge-sheet or disciplinary action.

9. On perusal of the whole O.A. along with C.A., R.A. and S.R.A. I do not find that the applicant ever applied for stay of transfer order as was done by Shri C.P.Sharma, hence it cannot be said that Shri C.P.Sharma was favoured by the Administration and applicant was not at all favoured accordingly.

10. By supplementary rejoinder affidavit it has come on record that though a notice for submitting representation or submission was issued by O.R.M. to the applicant and Shri C.P.Sharma separately but the report of the enquiry officer in respect of the applicant is to the effect that the allegations levelled against the applicant are not based on facts and not true one

while C.P.Sharma has been held responsible. The enquiry officer's report is dated 2.5.98.

11. This being the subsequent event which has seen the light of the day only after a period of two years from the date of the transfer. If an Administrative action does not result as expected it cannot be said that the act of the administration was malafide.

12. For malafides it is also alleged that only after a reference by the advisor (Commercial) Railway Board, New Delhi Annexure-A2, the transfer order dated 21.11.95 was made. I do not find any malice in this respect for the reason that there is no allegation of malice prior to his posting at Etab hence this fact is also not found to be having any bearing in the matter. It can be a matter to connect the things which do not exist but subsequently came into existence.

13. I do not find any reason of upper caste lobby led by Shri R.O.Tripathi only for the reason that he has not considered the representation sent by Additional Commissioner of backward classes, Govt. of India, New Delhi.

14. As the applicant is due to retire on 31st July 1999, the report of the enquiry officer is on record, after consideration of the said report, if the applicant chooses to apply for his transfer he may file a representation before the competent authority for suitable consideration thereof.

15. A person coming on transfer on his request is not entitled to continue on the said post even when he is said to have involved in loading/unloading of rakes and a disciplinary action was to be taken.

END

16. Learned counsel for the applicant relied on 1992 Supreme Court Cases (L & S) 127 Shilpi Bose and others v. State of Bihar and others. The proposition was laid down in the said authority is that if a transfer is made on request to avoid hardship is reasonable and unassailable, no mandatory rule violated thereby displaced employee holding transferable post, liable to transfer, courts should not interfere with transfers. In the said case the grievance of the displaced employee came for consideration who was holding transferable post, when another incumbent is transferred against his post on request to avoid hardship. The present case differs from the said case for the reason that though the applicant came to Etah on his own request but he was transferred due to his involvement in loading/unloading of rakes.

17. 1998 (2)(CAT) All India Service Law Journal Shivendra Khampariyal v. Union of India and others decided by Central Administrative Tribunal following Shri Kamlesh Trivedi v. Indian Council of Agricultural Research and another reported in (1988) 7 ATC 253 transfer may be made on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is under in the ~~excellency~~^{exigency} of service without giving any finding of the allegations it would not be initiated. It leads to conclude that there is no illegality in transferring an employee pending ~~the~~ conclusion of employee of an enquiry into the charges against him. The transfer order passed by respondents do not attach any stigma against the applicant as the charge-sheet has been issued to the applicant which is yet to be concluded. I cannot come to the finding that transfer is punitive.

18. (1994) 28 ATC 246 N.K.Singh v. Union of India has been laid down as under:-

SAJ

"Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all the government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

19. The learned counsel for the applicant relied on 1989 SCC(L & S) 483 Union of India and others v. H.S.Kirtania, the said authority decides that just after recording a finding that transfer order is legal and valid, not vitiated by ^{unfairness} ~~enquiries~~ or malafides, tribunal exceeds its jurisdiction in directing that all arrears of salary with allowances be paid to the employee and not release order be issued until payment of all amounts when the employee had already been released. The said case does not help the applicant for the reason that question of payment of arrears of salary and allowances is not to be decided in this O.A.

S. (J) 1/

20. The learned counsel of the applicant relied on A.I.R. (1993) Supreme Court 763 M.Shanker Narayanan, I.A. v. State of Karnataka and others, for the proposition that if a challenge is made as ground of malafides, malice in fact must be based on factual matter. I do agree with the said proposition of law and keeping in view the said principle the findings in respect of malice is recorded.

21. Guidelines cannot be observed in every case, cannot come in the way of a decision to transfer in the public interest (1998) 37 ATC 561 Roshan Lal v. Union of India and others decided by Central Administrative Tribunal, Delhi. The applicant is to retire on 31st of July 1999 has no bearing in the transfer order made on 7.6.96.

22. The applicant has failed to establish malafides, repeated transfers, due to retirement on superannuation on 31.7.99 - a ground not made at the date of transfer, being of upper caste, hence applicant is not entitled to any relief.

23. In the result, the O.A. is liable to be dismissed and is dismissed accordingly with no order as to cost.

S.D.W
MEMBER (J)

Gc