

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.1102/1998

WEDNESDAY, THIS THE 5TH DAY OF FEBRUARY, 2003

HON'BLE MRS. MEERA CHHIBBER .. MEMBER (J)

Lal Singh,
aged about 44 years,
S/o Late Shri Babu Ram,
R/o 21, Pakka Bagh,
P.O. Ram Lila Road,
Etawah.

...

APPLICANT

(By Advocate Shri Rakesh Verma)

Versus

1. Union of India, through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Allahabad.
3. The Divisional Commercial Manager,
Northern Railway,
Allahabad.

...

RESPONDENTS

(By Advocate Shri P. Mathur)

ORDER

By this O.A., the applicant has challenged the order dated 12.9.1998, whereby, the applicant was transferred from Allahabad Division to Lucknow Division.

2. It is submitted by the applicant that he was working as a Senior Booking Clerk at Etawah, Northern Railway. Vide order dated 18.9.1998, the applicant was placed under suspension without giving him any reasons as neither there was any departmental inquiry pending against the person nor any criminal case pending against him (Annexure-A2). That, while the applicant was still under suspension, he was



...2...

issued the order transferring him from one Division to the other without showing any particular place of posting. The grievance of the applicant is that this transfer is bad in law inasmuch as he could not have been transferred while under suspension and since at the time he was suspended, his head quarters was at Allahabad, he could not have been transferred to a different Division. He has also submitted that this order was passed in mid session of Schools and Colleges and since his children were studying, it would be difficult for the applicant to take his children to the transferred place at this juncture.

3. The applicant has further submitted that this transfer was infact, done by way of punishment as the respondents had conducted a raid in which, on the basis of report submitted by the Vigilance Department, a common order was issued transferring as many as 5 to 6 persons. It is further submitted by the applicant that this transfer order was challenged in the Tribunal by T.P. Sharma, Rajesh Sharma and Lal Singh (applicant in the present O.A.) and both the O.As filed by Shri T.P. Sharma and Shri Rajesh Sharma have already been allowed by the Tribunal quashing the orders as against them. Therefore, he cannot be discriminated against and he is also entitled to the same relief.

4. It is submitted by the applicant's counsel that in case there was any mis-conduct alleged on the part of the applicant, it was open to the department to deal with him departmentally, but, there could not have been a short-cut to transfer him out on the basis of any allegations made against him. In support of his contentions, he has relied on the judgment given by this Court in O.A. No.1079/98



...3..

decided on 10.01.2003 and O.A. No.1078/1998 filed by Shri Rajesh Sharma.

5. The O.A. is opposed by the respondents who have stated that the applicant along with other persons was found involved in financial irregularities. As such, they were placed under suspension and during the Vigilance check by the Vigilance Department of Northern Railway at Etawah station on 20.8.1998, the applicant was found charging Rs.250/- against the actual fare of Rs.238/- for 2½ tickets from Etawah to Basti II M/Express. Thus, he was trapped for charging Rs.12/- in excess from a passenger. It was for this serious lapse that he was suspended from 15.9.1998 and it was due to this serious irregularity that he was transferred from Allahabad Division to Lucknow Division. They have, thus, submitted that the transfer cannot be said to be illegal and the O.A. is liable to be dismissed. At the time of arguments, counsel for the respondents has submitted that after the filing of the counter, a D.E. was also initiated against the applicant which is still pending. He has also relied on the Circular dated 2.10.1998.

6. I have heard both the counsel and perused the pleadings as well.

7. A perusal of Annexure-CA1 shows that six persons were transferred by the impugned order dated 21.9.1998 from one Division to the other with the approval of the competent authority. Out of this, 3 persons have challenged their transfer order mainly on the ground that this transfer was punitive in nature and they could not have been transferred simply on the report submitted by the vigilance branch. I have seen the judgment passed in the other case and find



that in the case filed by Shri Rajesh Sharma, the Court had held that in case, there was some report from the Vigilance department, it was open to the department to initiate inquiry against the person concerned and he ^{he} could not have been transferred ^{out} / from one Division to the other as it would amount to punishment. In the case of T.P. Sharma, it ^{is} ~~was~~ seen that after the inquiry, the applicant therein was exonerated. Therefore, it was held by the Tribunal that when the very basis of the transfer order goes, the transfer order gets vitiated. This applicant also is impugning his transfer order on the same ground that it is punitive in nature.

8. Admittedly, the respondents have already initiated the D.E. against the applicant and if the applicant is ultimately found guilty, the department could be at liberty to pass appropriate orders against him ~~and~~ in accordance with law. But, this definitely would not give them a right to transfer him out from one Division to the other. It is seen that the applicant's rights were protected by the Tribunal as on 25.2.1999. The Tribunal was pleased to grant stay of the operation of impugned order as against the applicant. Therefore, he is continuing to work at Etawah. Since, the Tribunal has already taken a view in the case of Shri Rajesh Sharma, that respondents could not have resorted to transfer, in these circumstances, I do not think the applicant's case can be differentiated. Otherwise, that itself would amount to discrimination. Therefore, in order to have consistency in the orders passed by the Tribunal, the impugned order as far as the applicant is concerned is quashed and set aside. However, it shall be open to the



...5..

respondents to pass appropriate orders in the D.E. which is still pending with the respondents.

9. With the above directions, the O.A. is finally disposed of. No costs.

A handwritten signature, possibly reading 'B', followed by a horizontal line.

MEMBER (J)

psp.