

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No. 1014 of 2001

Allahabad, this the 26th day of September, 2003. 12

Hon'ble Mrs. Meera Chhibber, J.M.

Nijamuddin,
S/o Sri Qamruddin
R/o B-1111/2, Karel Scheme,
G.T.B. Nagar, Allahabad, and
working as Bhishty Under Chief Health
Inspector, N.Railway, Allahabad.Applicant.

(By Advocate : Shri A.S.Dubey)

Versus

1. Union of India,
through its General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway, Allahabad
Division, Allahabad.
3. Divisional Commercial Manager,
Northern Railway Allahabad Division
Allahabad.
4. Mohd. Azahar Shams
D.C.M., Allahabad Division,
Allahabad.
5. Chief Health Inspector,
Allahabad Railway Station,
Northern Railway, Allahabad.Respondents.

(By Advocate : Shri P.Mathur)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M. :

By this O.A., applicant has challenged the suspension order dated 24.3.2001 (Page-24) and order dated 9.4.2001 (Page -25), by which he was transferred from C.H.I. Station Allahabad to Tundla for three months and the order dated 31.7.2001 (page-23) by which his representation has been rejected.

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2. It is submitted by applicant that he had been working as a Bhishty since 24.3.78 under Chief Health Inspector, Northern Railway. His work is to give water to the Sweeper for washing and cleaning the platforms or waiting rooms and other adjacent places at the Railway Station.

3. His case is that on March 2001 respondent No.4, Mohd Azahar Shams, D.C.M., Allahabad Division had come on inspection and he asked the applicant to do some other work, which was refused by applicant, therefore, he made it a prestige issue and threatened him. It was a result of this incident that applicant was suspended vide order dated 24.3.2001 w.e.f. 23.3.2001 by the C.H.I.

4. Being aggrieved, he gave ~~no~~ ^{number} of representations but neither any chargesheet was issued to him, nor he was given any reply. On the contrary, vide order dated April, 2001 he was transferred to Tundla, which shows malafide intention (Annexure-3).

5. Being aggrieved, and finding no reply, he filed OA No.604/01 challenging the order dated 9.4.2001 and suspension. The said OA was decided on 21.5.2001 by directing the applicant to move a detailed representation within a week and to decide the same by a speaking order and till such time his representation is decided, transfer order dated 9.4.2001 was not to be given effect to. (page-28). It is submitted by applicant that he had to send representation through registered post as Office refused to take the same, still no reply was given so he gave number of reminders as well. It is submitted by applicant that on one had he was still left under suspension while subsistence allowance was also not paid to him. Ultimately respondent ^{representation} was decided on 31.7.2001 communicated to applicant on 8.8.2001. Rejecting his request for cancellation of transfer on the

ground that there are serious complaints against him that he is not sincere towards his duties and is often found near reservation office indulging in tout activities.

6. Grievance of the applicant is that till date no chargesheet was issued therefore there was absolutely no justification to either suspend him or transfer him. His whole case is that these orders have been issued at the instance of respondent No.4 as he was personally prejudiced against applicant because as far as C.H.I. is concerned under whom applicant was working , he never had any complaint against the applicant. He has further submitted that he has old parents who are both suffering from Blood Pressure and Heart problem. He also has brother, sister, wife and 04 children therefore he has a big family to support but without giving him any reason, or subsistance allowance, he could not have been transferred . He has thus prayed that O.A. may be allowed.

7. Respondents, on the other hand, have denied the allegation of malafides and have stated that applicant was placed under suspension against the applicant with regard to his involvement in doubtful activities. He was transferred also on this ground in order to check these activities and in any case it was done only for three months giving him all admissible dues. In support they have relied on two letters written by Chief Reservation Supervisors (Annexure-GA-I & II). He has further submitted that applicant refused to take the transfer order accordingly report to this effect was sent to the Senior Divisional Personnel Officer on 30.4.2001 as he is the overall Incharge (Annexure-CA-III). Moreover, Chief Health Inspector had also taken steps to inform the authorities vide letter dated 17.5.2001



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(Annexure-CA-IV). By this letter Chief Health Inspector had informed the higher authorities that applicant did not take the transfer order. Thereafter he was directed to be taken on duty but inspite of reminders Shri Nizamuddin is not coming to the office. On 17.5.2001 he has sent his medical certificate through registered letter, therefore, appropriate action may be taken.

8. As far as subsistence allowance is concerned they have explained that individual has to submit a non-engagement certificate. Since he has not given any such certificate ^{subsistence} ~~subsistence~~ allowance could not be paid. It shall be paid as soon as he gives the certificate. They have further submitted that since applicant was absent from duty, the chargesheet could not be served on him.

9. They have, thus, submitted that this OA is devoid of any merit, as such it is liable to be dismissed.

10. I have heard both the counsel and perused the pleadings as well as original records. Perusal of the records reveal that he was suspended on 24.3.2001 ~~lx~~ w.e.f 23.3.2001 and transferred from Allahabad to Tundla for 3 months vide order dt. 9.4.2001. He refused to take the order which is evident from the report sent to Senior Divisional Personal Officer on 30.4.2001 (Annexure CA III) and by letter dated 17.5.2001 written by the C.H.I. (Annexure CA IV). Not only this, since applicant refused to take the revocation of suspension order dated 5.4.2001, the same was pasted on his door on ^{judicial B} 28.5.2001. He approached the Tribunal in his first OA, directed the respondents to dispose of his representation and till such time not to give effect to transfer order.

11. Even the representation was rejected on 31.7.2001

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and thereafter though he approached the Court, no stay was granted so at best his stay at Allahabad can be justified only till 31.7.2001 and thereafter it is not known why applicant did not join the office. His contention that suspension was not revoked is also not tenable as there are letters on record to show that he was not taking the order, therefore, his contention can not be accepted. Even otherwise, perusal of the order sheet shows that vide order dt. 4.12.01 this Tribunal had directed the respondent to pay the subsistence allowance to applicant within 2 weeks as per rules. Thereafter he was paid the subsistence allowance also therefore, contempt petition filed by the applicant was dismissed on 23.5.2002 and in the said order it was recorded specifically that applicant's suspension has been revoked on 04.5.2001 but even after that applicant did not join the duty and there is no justification forthcoming on this account from the applicant. Not only this, on 6.2.2003 this court had directed the applicant to report at Tundla for which necessary steps were directed to be taken by the department. The record reveals that the respondents issued necessary orders on 07.2.2003, but inspite of Court's direction, applicant still did not join at Tundla, instead of ^{joining at Tundla, 8} he sent his illness certificate and simultaneously his wife had given a representation to post him back at Allahabad, on the basis of ^{which}, respondents have now posted the applicant under C.H.I., Colony vide order dated 10.2.2003 in supersession of the earlier transfer order. I am informed that once his transfer order was issued for Allahabad, the applicant had joined on 20.2.2003. This clearly that the applicant was only avoiding to go to Tundla. I, therefore, give liberty to the respondents to initiate the disciplinary proceedings against the applicant for his unauthorised absence, if so advised in accordance with law, of course after considering his leave application, if any, sent by the applicant.

12. The very fact that the applicant was re-transferred to Allahabad on ^{the} representation made by his wife itself shows that the allegation of malafide is baseless. Even otherwise, he has not given any particular instances as to why the respondents no.4 should be prejudiced against him. He has merely made vague allegation without substantia substantiating the allegation, therefore, his contention of mala-fide is rejected. Since the applicant's transfer has already been done for Allahabad and he has already been paid his subsistence allowance also for the period of suspension, I do not think that any more order is required in this case. I would like to clarify here that the applicant would be entitled to his subsistence allowance and salary till 31.7.2001 only, when his representation was finally rejected. For rest of the period, if the applicant was unauthorisedly absent, he is liable to be penalised in accordance with law.

13. For the aforesaid reasons the OA has no merit and is accordingly dismissed. No costs.



Member J

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