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Reserved

Central Administrative Tribunal, Allahabad.

Registration Review Application No.45 of 1986

A.K. Srivastava                      ....      Applicant

Vs.

R.K.Vyas and others              ....      Respondents.

Hon. D.S.Misra, AM

Hon. G.S.Sharma, JM

( By Hon. G.S.Sharma, JM)

This review petition is directed against our judgment and order dated 23.10.1986 dismissing the claim petition of the applicant under Section 19 of the Administrative Tribunals Act XIII of 1985 ~~in~~ (Registration O.A.No.199 of 1986.)

2. In his claim petition no.199 of 1986, the applicant had sought two reliefs - (i) the cancellation of the order of suspension of the applicant and (ii) cancellation of the order of his transfer from Lucknow to Amritsar. In our order sought to be reviewed, it was stated that the claim for revocation of suspension was not pressed before us and the transfer of the applicant was found to have been made in accordance with rules and as such, his claim petition was dismissed.

3. The petition for review was moved by the applicant on 6.11.1986 with the allegation that the arguments in the case were concluded on 29.9.1986 while the judgment was delivered on 23.10.1986 and it appeared that long gap between the hearing



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and the judgment had resulted in the omission and misinterpretation of some of the points raised by the learned counsel for the applicant before us resulting in miscarriage of justice to the applicant. The cause shown for review, strictly speaking, is not under the purview of Order XLVII Rule 1 Code of Civil Procedure. In our opinion, it is neither necessary nor possible for a Court or Tribunal to make a mention of every ~~relevant~~ <sup>unimportant &</sup> or irrelevant plea or oral submission made before it in its judgment. The common practice is that only material points are discussed in the body of the judgment and unimportant or irrelevant facts are omitted. Otherwise, the judgment may become a voluminous document without any advantage to the parties. Anyhow, as the ground taken by the applicant reflects upon the Members of this Bench and as we believe in the maxim "justice should not only be done but it should also appear to have been done", we will like to consider all the 15 points raised in para 5 of the review petition by the applicant, which has been contested on behalf of the respondents.

4(i). PARA 5(i)

It has been stated in para 5(i) of the review petition that the averments made by him regarding his honesty, integrity and appreciation of work in para 6(i) of his claim petition were not denied in the reply by the respondents and we did



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not take notice of this fact. The allegations made in para 6(i) of the claim petition have been specifically admitted by the respondents in their reply and there is no question of not denying such allegations. We are, however, of the view that the honesty, integrity and appreciation of work were not relevant for the purpose of the case of the applicant as he was not being victimised for the lack of honesty, integrity or appreciation of work. These things are not relevant and we are still of the view that they have no bearing on the case of the applicant on merits. An official may remain good, efficient and honest throughout his service but if he commits any wrong, he is liable to action for the same.

4(ii) PARA 5(ii)

In para 6(ix) (a) of the claim petition the applicant had challenged the validity of the order of revocation of his suspension on the ground that he was suspended by Assistant Personnel Officer, Alambagh, Lucknow but the order of suspension was revoked by Assistant Controller of Stores, who was not a higher authority than the Assistant Personnel Officer and that the order of revocation of suspension was, therefore, illegal and incompetent. As a matter of fact, this



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question did not arise for consideration as the applicant had given up his challenge against the order of revocation of his suspension. Anyhow, we are considering this fact now and we feel that the objection taken by the applicant in the review petition is based on some misunderstanding. It is apparent from the order dated 14.1.1986 of the Railway Board reproduced in para 8 of the supplementary counter affidavit of the respondents that it was the Railway Board which had ordered to revoke the suspension of the applicant along with 4 other persons and transferred them to the places noted against their names. The Railway Board itself had transferred the applicant to Amritsar Stores according to this order. Annexure 1 to this supplementary reply further shows that the General Manager had issued the order of transfer in compliance with the direction of the Railway Board and only it was communicated by the Dy. Controller of Stores. The suspension was, thus, revoked by a competent authority and the challenge to the validity of the said order is ill-founded and not correct.

4(iii) PARA 5(iii)

In our judgement, circular letter no.E (D&A)65-RG-6-5 dated 25.3.1967 of the Railway Board relied upon by the applicant for the purpose that during the pendency of inquiry against him, he should not have <sup>been</sup> transferred, was duly considered in para 5 of the judgment. The circular letter is not mandatory as it gives the discretion to the competent



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authority by using the word 'normally', <sup>that is</sup> a non-gazetted staff should not normally be transferred from one Railway division to another division till the finalization of the departmental or criminal proceedings. But in the case of the applicant, the departure from the normal course was made because the applicant was involved in a serious case and he was placed under suspension on that ground. For about 16 months, when the investigation/preliminary inquiry remained pending, the applicant was kept under suspension and when it was finalised and the applicant was served with a charge sheet, the higher authorities had desired that his suspension may be revoked and he may be transferred to some far off place from Lucknow. It is, therefore, wrong to say that this thing was not given due consideration by us in the judgment and we still feel that the departure made by the respondents by transferring the applicant during the pendency of the departmental proceedings against him does not contravene the spirit of the circular letter relied upon by him.

4(iv) PARA 5(iv)

The fact that the applicant had supported his claim petition by an affidavit while the reply submitted on behalf of the respondents was not supported by any affidavit,



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is also of no consequence in the eye of law. Firstly, the Act XIII of 1985 and the rules of procedures made therein by the Government of India simply provide that an application and reply should be verified. This was done by the respondents. We further find that the socalled affidavit sworn by the applicant and filed along with his claim petition, is simply a waste paper. It contains only 2 paragraphs. The first para states that the applicant is acquainted with the facts of the case and in the second para, it has been stated that full facts and circumstances of the case have been mentioned in the accompanying application. There is nothing in this affidavit to state that all the facts stated in the application are correct and as such, this affidavit does not give any weight or credence to the contents of his application and his contention raised in the review petition has no force.

4.(v) PARA 5(v)

Regarding the inconsistency in the two replies or counter affidavits filed by N.U.Khan on behalf of the respondents, it appears from the record that <sup>with</sup> in the first reply filed on their behalf, they had not filed the copy of the order dated 4.2.1986 of the Railway Headquarters but only its relevant extracts were reproduced in para 10 of the



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reply. With the supplementary reply, the respondents filed the copy of the relevant communication dated 28.1.1986 having a noting dated 4.2.1984. The date of the noting 4.2.1984 appears to be incorrect and for the figure 86, the figure 84 appears to have been written by mistake as below that date, there is another noting dated 2.2.1986. There is one other noting of January 1986 on this letter filed with the supplementary reply as an Annexure. This annexure shows that the General Manager Vigilance had informed that the Railway Board have ordered for revocation of the suspension orders of the employees <sup>and ordered as under.</sup> This order relates to 6 employees including the applicant. All were under suspension and 5 of them were transferred to different places while for the sixth official, separate orders were to be issued by the Board. The discrepancy in the two replies is there but the same stands explained by the annexure dated 28.1.1986 and the averments made in the first reply should be deemed to have been amended by this annexure. It further appears from the allegations made in para 8 of the supplementary reply that the Member (Mechanical) of the Railway Board vide his order dated 14.1.1986 had ordered that suspension order may be revoked and they may be transferred as under. Instead of 6 employees mentioned in the letter dated 28.1.1986, only the names of 5 employees including the applicant were mentioned in the order dated 14.1.86



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of the Member (Mechanical) and the applicant was ordered to be transferred to Amritsar Stores. There, thus, remains no inconsistency in the stand of the respondents now. The applicant alone was not concerned with these orders but there were 4-5 other officials for whom these orders were issued and nothing had been brought to our notice to show that all these documents were manufactured subsequently and they were not issued on the dates on which they appear to have been issued.

4(vii)            PARA 5(vii)

The allegation of the applicant in this para that the decision of the Railway Board consisting of 5 Members could not be ignored or flouted by one Member or authority, is also of no force as the circular letter dated 25.3.1967 of the Railway Board is not mandatory and gives sufficient discretion for making transfer in suitable cases.

4(viii)           PARA 5(viii)

We have already pointed out above that in para 8 of the supplementary reply, the order dated 14.1.1986 of the Railway Board has been quoted and annexure 1 filed with this reply is the order issued by the General Manager on the basis of the said order. There is, therefore, no dispute about the fact that the transfer of the applicant was ordered by the Railway Board and his contention to the contrary is not correct.



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4(ix) PARA 5(ix)

It has already been stated in the above para that there was a valid order of transfer of the applicant from Lucknow to Amritsar and the contention of the applicant is not correct.

4(x) PARA 5(x)

The contention raised in this para by the applicant is not based on any evidence. The transfer of 4 other employees with the applicant, as shown in the aforesaid annexure, was pleaded by the respondents in para 20 of their supplementary reply. In his supplementary rejoinder, the applicant had simply stated in para 22, that the circumstances of each individual vary and if some other persons had surrendered themselves to illegal and oppressive order, the applicant cannot be made bound by the ignorance and guidelines adopted by other persons. His contention in the review petition that no official was transferred out of Lucknow, is, therefore, without any substance and there has been no discrimination against the applicant on any ground.

4(xi) PARA 5(xi)

The ground taken in this para is based on some misunderstanding on the part of the applicant. This Bench had given no finding as stated by the applicant. It had simply quoted the fact narrated by the respondents in their reply. In any case, this observation or finding has no bearing and is not material for the decision of this case.



4(xii) PARA 5(xii)

The fact that the order of suspension and the order of revocation of suspension are not on standard form nos.2 and 4, in our opinion, has no significance. The order of revocation of suspension is on standard form no.4 while the order of suspension is in standard form no.1. Nothing has been shown to prove that any important information or fact has not been mentioned in these orders and they are in any way vague or incomplete. This contention is thus, of no force.

4(xiii) PARA 5(xiii)

The ground taken in this para is also devoid of any force. Simultaneously, the Railway Board had ordered that the suspension of the applicant be revoked and he be transferred to Amritsar. In our opinion, there was no illegality in making such order and it was not necessary for the respondents to allow the applicant to resume duty first at Lucknow and only thereafter to serve him with an order of transfer.

4(xiv) PARA 5(xiv)

It has been stated in this para that this Bench did not consider <sup>the</sup> likely hardship of the applicant due to his transfer to a distant place when he is required to defend himself in a departmental proceeding at Lucknow. It appears from the



stand of the respondents that that the charge against the applicant on the basis of which he has to defend himself, is of serious nature. He was first suspended on account of that charge and when the preliminary enquiry was over, it was not considered necessary to keep him under suspension but it was thought necessary that he should be transferred to a distant place. Not only the applicant himself was transferred to Amritsar but four other officials involved with him, were also transferred from Lucknow to different places. It was, therefore, in the interest of administration as well as in the interest of the charged officials that they should be transferred from Lucknow and should not remain under suspension any longer. The respondents have assured the applicant in their replies that they will afford all possible help to him in defending himself in the departmental proceeding. In any case, it is for the applicant to convince his departmental authorities to transfer him to some other place in case, he is not interested in going to Amritsar in the present atmosphere prevailing there. As far as this Tribunal is concerned, we cannot issue any direction in this connection as in that case, no transferable Govt. employee will like to serve at Amritsar till the things are normalised there.



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4(xv) PANA (xv)

It has been stated in this para that the transfer of the applicant from Lucknow to Amritsar at the instance of the Vigilance Officer amounts to punishment and contravenes the provisions of Art.311 of the Constitution. He has placed his reliance on Sangam Lal Vs. Director of Education ( A.I.N. 1957 Allahabad-70) in which it was held that where on the complaint of his superior officer, as regards the work of the civil servant, he is transferred to some other post, it cannot be regarded anything else than a punishment awarded to him and cannot be considered to be an order passed as a pure administrative measure. In this case, the applicant is said to be involved in some case of serious nature. No document has been produced before us to throw light regarding the allegations against the applicant in that case but it was the common stand of both the parties before us that the applicant is involved in some serious case at the instance of the Vigilance Department of the Railway administration. He is not being transferred from Lucknow on account of any dissatisfaction regarding his work <sup>routine duties or</sup> but <sup>and</sup> his suspension was revoked only with the idea that the applicant shall not remain at Lucknow



where the disciplinary proceedings have to take place. Transfer of Government employees in such a situation cannot amount to punishment. The administration has not only to look to the convenience of the employee, but has also to take care of its <sup>own interest and</sup> work. The working of an official in the same office where some irregularities or illegalities were committed by him, during the course of inquiry, is certainly not in the interest of the administration and as such, we will not like to interfere with the discretion exercised by the respondents in transferring the applicant from Lucknow. It is apparent from the stand of the applicant that he is interested in staying at Lucknow even if he remains under suspension and we cannot give him such option, which is not warranted by law and the rules relied upon by him.

5. The applicant also placed his reliance on B.L.Rastogi and others Vs. The Railway Board (1974 LAB.I.C. 918) in which it was held that instructions issued under Para 157 of the Railway Establishment Code are to be treated as rule and their contravention is illegal. He also placed his reliance on Bhabesh Chandra Bhadra Vs. Divisional Superintendent(P) N.E.Railway and others (1973 LAB.I.C-382), (F.B.) in which it was held



by the Gauhati High Court that where an order of transfer of an employee from one railway to another is passed pending a criminal proceeding against him, the order cannot be given effect to until finalization of those proceedings or of any departmental proceeding that may be initiated against him in connection with the incident. In that case, the Assam High Court had considered Rule 146 of the Railway Establishment Code relating to inter-railway and inter-division transfers, and also S.R.36. The letter and the rules placed before the Hon'ble Judges of the High Court <sup>did</sup> had not contained the word 'normally' and as such, we are unable to follow the said decision.

6. No other point has been pressed before us and the apparent result is that the decision handed down by this Bench in the case of the applicant on 23.10.1986 did not suffer from any lacuna or mistake. All the points arising for determination in the case of the applicant were considered but a mention of only material facts was made in the body of the judgment, which <sup>wrongly</sup> led the applicant to <sup>the</sup> believe that the result of the <sup>case</sup> applicant could be different in case the points raised by him in his review petition were specifically considered. We find no force in this apprehension and see no reason to make any amendment in the judgement delivered by us.



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7. The review petition is accordingly  
dismissed without any order as to costs.

Sharma

14.1.1987  
Member (A)

Sharma

14.1.1987  
Member (J)

Dated 14 .1.1987  
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