

A3
1

(b)

RESERVED.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION O.A. NO. 699 OF 1986

M.P. Nim

.....

Applicant

Vs.

The Union of India & others

Respondents.

Hon. D.S. Misra- AM
Hon. G.S. Sharma - JM

(Delivered by Hon. D.S. Misra- AM).

....

In this application under section 19 of the Administrative Tribunals Act No. XIII of 1985, the applicant has sought the quashing of order dated 26.8.86.

2. The admitted facts of the case are that the applicant was working at Agra Cantt. under the Central Railway as Yard Master. The grievance of the applicant is that the order of transfer is in violation of the instructions contained in Railway Board's letter dated 24.12.85 regarding the posting of Schedule Caste and Schedule Tribe Officers at initial appointment/promotion/Transfers (Copy. Ann. XX-A) The applicant has alleged that the transfer has been made due to the hostile attitude of Sri O.P. Mallik, Agra Area Officer, who has been harassing the applicant by issuing charge sheet, memos and inflicting punishments for no fault of the applicant. The applicant has cited two instances when he was given charge sheet for dereliction of duty while working as

BL

A3
2

7

-2-

Cabin Assistant Station Master and in one case, he was awarded minor punishment of withholding of increment for a period of two years on 6.5.86 which was reduced to withholding of increment for one year in appeal. The applicant was thereafter transferred as Yard Master vide order dated 26.8.86.

3. In the reply filed on behalf of the respondents, it has been stated that the applicant has been transferred in the interest of administration and instructions of Railway Board are only meant for guidance of Officers dealing with the staff and there is no bar in transferring a SC/ST employee in the exigencies of service; that the applicant did not make any representation about his transfer; that the transfer is not malafide; that the applicant has not exhausted the departmental remedies available to him.

4. We have heard the arguments of the learned counsel for the parties. The learned counsel for the applicant contended that the transfer was made due to the bias on the part of Sri O.P. Mallik and not on administrative grounds and is liable to be quashed. He has cited the decision of the Allahabad High Court in Dinesh Chand Sharma, vs, Union of India & others-1982 Labour & Industrial Cases-962 in support of his contention. The petitioner in that case was transferred following his protest against being required to attend the office beyond the normal working hours and it was held that the transfer was not made in the normal course.

15

A3
3

-3-

in the interest of service but had been directed for some extraneous consideration. Accordingly, it was not a valid order and the same was quashed. Learned counsel for the applicant contends that the order of transfer of the applicant has been made due to the personal prejudice of Sri Malik, Area Officer. In support of this contention, he mentioned the remarks of Sri Malik contained in the inspection note dated 17/18-2-1986. On that date, the applicant was working as Cabin Assistant Station Master at ACC-C-Cabin Agra Cantt. In his remarks about the work and knowledge of the applicant, Sri Mallik expressed his dissatisfaction and further observed "I fee it is most unsafe to put this man in Cabin, SS/ACC is advised to avoid utilising this man on Cabin."

He further observed as follows:

" D.S.Jhansi is requested to look into this and shift this man to some unimportant station on narrow guage area. This CASM is responsible for detaining S.O. link for one hour in section RKM Agra. He detained food-grain special, for one hour in the same section and link express for 20 mts. All these detentions have taken place because this man is completely dependant on leverman and he does not know working of this cabin".

After sometime, the applicant was served with memo of chargesheet dt. 3.4.86 under R.11 of the Railway Servants (Discipline and Appeal) Rules 1968. In this memo of charges, it is stated that while working as CASM at AGC on 28.3.86 the applicant acted in a careless and indifferent manner. In that he gave engineering block on point no. 30/C without informing SS/SR Dy SS on duty resulting

Kw

A3
4

(a)

-4-

in detention to 12 trains for different periods. Prior to this he was placed under suspension w.e.f. 30.3.86. The reply dated 10.4.1986 was not found satisfactory by the Senior DOS, Jhansi, who imposed the penalty of with-holding increment for a period of 2 years without postponing his future increments. The applicant made an appeal to the D.R.M., Jhansi who reduced the punishment of with-holding the increment from 2 years to 1 year vide his order dated 18.6.86. Yet another chargesheet was served upon the applicant vide memo dated 7.5.86 in which it was alleged that Sri M.P.Nim, while working as CASM, AGC acted in a careless and indifferent manner in that he allowed line clearance for VIP/Special without consulting Dy, SS, AGC and JHS Control and also failed to receive the same with the result that 166 DN and 123 DN were detained for 53 minutes and 10 minutes respectively. In his reply to the chargesheet, the applicant stated that he was not on cabin duty at Agra Cantt. on the alleged date and time and the allegations made against him were incorrect. ~~xxxxxx~~ By an order dated 17.6.86 a penalty of with-holding increment for a period of 3 years was imposed by Sr.DOS Jhansi. The applicant made a representation on 27.6.86 and by an order dated 18.8.86 the chargesheet dated 7.5.86 and the order imposing penalty was cancelled. In the above-mentioned case, the applicant was also placed under suspension w.e.f. 6.5.86, which was revoked by an order dated 27.5.86. On 18.8.86 another memo of Chargesheet under Rule 11 of Railway Servants (Discipline and Appeal) Rules 1968 was served on the applicant on the same allegations which were

✓

A3
5

-5-

contained in the memo dt. 7.5.86. Learned counsel for the applicant contends that the above mentioned incidents support the contention of the applicant that the order of his transfer was not made on administrative ground, but due to the prejudice on the part of Sri Mallik Area Officer and also because the applicant is a scheduled caste officer. We have considered these contentions and we are of the opinion that the above mentioned incidents clearly disclose short-comings in the performance of the duty assigned to the applicant. The movement of trains on busy stations like Agra Cantt. is coordinated by several functionaries of the railway administration. The failure or short-coming in the discharge of duties by a single functionary may result in detention of trains and sometime serious accident. Senior Officers responsible for movement of trains can not overlook such short comings or careless working by individuals, and it is their duty to take action for short comings in the performance of duties assigned to individuals. We are also of the opinion that the above incident do not disclose any prejudice on the part of Sri Malik and other officers supervising the work and conduct of the applicant. The inspection note dated 17.2.1986 of Sri Mallik discloses serious short-comings in the knowledge of the departmental rules of the applicant and his suggestion for utilization of the applicant on a small station on the narrow gauge does not appear to be based on any prejudice on his part. The applicant was transferred six months' after the recording of the inspection note by Sri Mallik and only after watching the work of the applicant by his/ ^{superior} officers.

bl

11
A3
6

-6-

We are of the opinion that the ratio of the above mentioned case of the Allahabad High Court is not applicable to the present case.

5. Regarding the second contention of the applicant that the transfer has been made in violation of Railway Board's Circular dated 24.12.85. It is stated in this circular that the Railway Board had desired in its letter dated 19.11.1970 and 14.1.1975 that the transfer of SC/ST employees should be confined to their native districts or adjoining districts or the places where administration can provide quarters and these instructions should be followed to the maximum extent possible, subject of course to the exigencies of the service. The applicant has not alleged that there is no residential quarter available at Banda. The applicant has also not disclosed his native district. The applicant has already joined at Banda. We are of the opinion that the applicant has failed to establish that the impugned order of transfer is violative of the instructions contained in the various instructions of the Railway Board regarding the transfer of SC/ST employees of the Railway Administration.

For the reasons mentioned above, there is no merit in the application and the same is dismissed without any order as to costs.

S. Narain
J.M.

Bhama
A.M.