

CENTRAL ADMINISTRATIVE TRIBUNAL

BENCH ALLAHABAD

(AS)
(B)
(A)

D. A. No. 196/87

Madan Lal Applicant.

vs.

Union of India & ors..... Respondents.

Hon'ble Mr. D.K. Agrawal, J.M.

Hon'ble Mr. K. Obayya A.M.

(By Hon. K. Obayya, A.M.)

This Application under Section 19 of the Administrative Tribunals Act, 1985 was filed for quashing the order dated 08.07.1986; transferring the applicant to Bhusawal Division in the Central Railway and order dated 13.02.1987, by which he was relieved of his duties and also the letter dated 05.06.1986 of Chief Personnel Officer (Commercial, Bombay), and to pay salary to the applicant for the period 20.07.1986 to 13.01.1987; regularising the period in accordance with the rules.

2. The applicant joined Central Railway in the post of 'Ticket Collector' in 1964. He was promoted to the post of 'Travelling Ticket Examiner' in 1972 and thereafter in 1984 he was further promoted as 'Head Travelling Ticket Examiner' and posted at Agra Cantonment, Jhansi Division, Central Railway. He was served with the charge-sheet on 17.06.1986 for collecting Rs 35 as illegal premium from three passengers and allotting accommodation to them. The applicant denied the charge and thereafter the inquiry proceeded. Before conclusion of the inquiry by order dated 08.07.1986, he was transferred from Jhansi Division to Bhusawal Division. He was also relieved of his duties on 13.02.1987 and asked to join in his new station, but the applicant has not turned ^{up} at the new station.

3. The contention of the applicant is that the inquiry was not completed and his transfer from Jhansi Division to Bhusawal Division was a punishment which should not have been

done without notice or opportunity. He made representation to the authorities but no decision was taken on that. One Shri G.M. Mishra, who was also transferred along with the applicant was, however, retained by cancelling the Transfer Order and this amounted to discrimination. The applicant further contends that if his transfer from Agra was necessary in the interest of administration, he could have been transferred to any place within Jhansi Division. It is alleged by the applicant that the Transfer Order is malafide and in contravention of the guidelines. It is also stated that the Transfer Order was not issued by the competent authority.

4. The respondents filed a counter in which they have stated that a charge for imposition of major penalty has been served on the applicant for receiving illegal gratification and the transfer to Bhusawal Division was in the interest of administration; based on the report of Vigilance Inspectors' Team. It is also stated that Transfer Order is passed by the competent authority and that transfer is made in public interest and there is no malafide. It is also stated that Sri G.M. Misra died, in the meanwhile, his transfer could not be affected.

5. We have heard Shri Bashisth Tiwari, learned counsel for the applicant. He took us to the illegal issues involved in this case. He contended that the transfer of the applicant amounted to infliction of punishment; as such the Transfer Order without any opportunity to the applicant or notice, is illegal and against the principles of natural justice. His further contention was that the Transfer Order is not issued by the competent authority; as such the order cannot be sustained. The learned counsel cited the cases of K.V. Jindal vs. G.M. Northern Railway, reported in ATR 1986, Vol-I, CAT, page 304 & Brij Mohan Chopra vs. Union of India & ors. reported in AIR, 1987 SC, page 949 in support of his contentions.

6. We have considered the contentions raised by the learned counsel for the applicant. The Rly. Servants Disciplinary Appeal Rules, 1968 deal with the procedure for imposition of

~~does~~ punishment. Rule 6 contains the penalties under the head 'Minor Penalties' and 'Major Penalties'. In none of these penalties, transfer is mentioned as a punishment. Hence, it cannot be construed that transfer is a punishment, in accordance with the rules, though, transfer may sometimes work out to be a hardship.

As transfer is not a punishment under the rules, non-issue of a notice or denial of opportunity, will not make a Transfer Order invalid or illegal. The contention of the counsel is that transfer should not have been made, without notice or opportunity therefore, it has no force. The next contention of the learned Counsel for the the applicant was on the question of jurisdiction. We have verified the impugned order (Annexure-III). At the there is a note indicating that a bottom of the order copy is marked to the Chief Personnel Officer, Bombay - for information with reference to his letter dated 05.06.1986. The stand of the respondents is that this Transfer Order has been passed by a competent authority, and in para 6 (XXIX) of the petition, the impugned order is challenged on the ground, that the DRM followed the directions of the C.P.O.Bombay in issuing the order. This leaves us in no manner of doubt, that the Transfer Order were passed by a competent authority.

7. It is well settled that transfer is an administrative act. It is an incidence of service; and that a Government servant, who holds a transferable post, is liable to be transferred from place to place. He has no right to insist on posting or transfer at a particular place. The competent authority has to take many factors, like stay of a Government servant at a particular place, his reputation and specific inputs required at a particular office or stations, and the Courts or Tribunal would not interfere in transfer matters unless, the transfer is vitiated by mala-fides, dishonesty and so on.

8. The facts of this case disclose that the Transfer Order was issued by a competent authority and the attending circumstances are that an inquiry about the integrity of the applicant is pending; and that transfer is in the interests of

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administration. No mala-fides, illegality is established. In the circumstances, we see no merit in this application. The application is accordingly dismissed, with no order as to costs.

9. In passing, we would like to comment on the lackadaisical manner, in which the Central Railway Administration pursues its cases in the Tribunal. The counter is a sad commentary and we would like to draw the attention of the General Manager, Central Railway, that their cases in the Tribunal are pursued with seriousness and concern necessary in such matters.

A copy of this order to be sent to G.M., Central Railway, Bombay.

By Registrar

R. Bhargava
ADM. MEMBER

August 23rd, 1990.
Allahabad.

(KARN)

D.K. Chaudhury
23.8.90.
JUDL. MEMBER