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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 826 of 1987

C.P. Sharma

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Applicant.

Versus

Union of India & others

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Respondents.

Hon'ble Ajay Johri, A.M.

In this petition filed under Section 19 of the Administrative Tribunals Act XIII of 1985 the petitioner, C.P. Sharma, who was working as a Head Clerk under the Station Superintendent (SS), Northern Railway, Varanasi, has challenged the order dated 14.5.1987 passed by SS transferring the petitioner from Varanasi to Lucknow. The petitioner started his career under the Station Master (SM), Kashi on 11.2.1954 as a Clerk. Over the years he got promoted as Sr. Clerk and then as Head Clerk and is still working at Varanasi. He has alleged that on 11.5.1987 there was some dispute about non-reporting of certain Yard staff on which there was a heated argument with the Chief Yard Master (Goods) (CYM(G)), who got annoyed with him and who assaulted the petitioner against which the petitioner filed a First Information Report (FIR) on 11.5.1987 with the Station Officer, GRP, Varanasi and a case was registered against the said CYM(G) under Sections 121 of the Railways Act and 123 of the Indian Penal Code. On 12.5.1987 the petitioner was directed to see the Additional Divisional Railway Manager (ADRM), Lucknow at Varanasi Cantt. He met ADRM and explained the whole position to him and also reported against CYM(G) about his having developed a habit of illtreating his juniors. According to the petitioner ADRM did not send for CYM(G) nor sought his explanation. Thereafter instead of taking appropriate action against the guilty officer the

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petitioner was given the order transferring him from Varanasi to Lucknow. As the petitioner was greatly annoyed with the illegal and mala fide behaviour met out to him and he felt sad that he had been assaulted he made a request for his voluntary retirement effective from 1.6.1987 but later on he withdrew this request on 19.5.1987. The petitioner has further said that his services were satisfactory and he continued in service till 24.5.1987 at Varanasi. Thereafter he was not allowed to work, ~~and~~ ^{On} 5.6.1987 he was required to attend the office for producing certain papers in connection with a meeting. On 10.6.1987 another request was received from SS for the same papers for another meeting of the Housing Committee which was fixed for 12.6.1987. On 8.7.1987 he was once again directed by SS to produce certain files and registers in regard to substitutes. During this period the petitioner states that he had been ill and he was unable to attend the office. On 13.7.1987 SS asked the Railway Medical Authorities to examine the petitioner and if he is fit he should be discharged. The petitioner says that he has not joined his duties till now in view of his ill health and he is still on medical leave and has filed medical certificates. On 14.5.1987 he was given the transfer orders. According to him the impugned transfer orders are wholly illegal and mala fide and they have been ^{not} ~~not~~ signed by the proper authority. He has also claimed protection under certain existing circulars where it has been said that transfers may not be made in mid session because his son is a student of I.Sc. (Final) and his studies will get dislocated. The petitioner says that his wife has also not been maintaining good health for the last about four years and she is bed-ridden and, therefore, if he is transferred it will adversely affect his wife. He has, therefore, sought relief for setting aside the transfer order and for issue of a direction that the respondents may not interfere in the discharge of his duties.

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2. In their reply opposing the application the respondents have said that there was some private scuffle between the petitioner and CYM, but it has no concern with the present case. They have further averred, the petitioner has unsuccessfully tried to fraud ADRM by saying that he was the one who failed in his duties to call for an explanation from CYM. According to the respondents the orders of transfer were passed by the competent authority on the administrative grounds and without any discrimination or mala fide. While the petitioner was on leave he was asked to attend office as certain papers were in his possession and they were needed for the use of the Housing Committee but the petitioner did not hand over those papers and illegally retained the relevant documents in his custody. He, therefore, exhibited an indefinite pattern of behaviour. They have further said that by his behaviour and ~~not~~ proceeding on transfer and reporting sick with a private doctor only confirms that he is not obedient Government servant and he wants to retain himself at Varanasi and in the Government quarter occupied by him. The order communicated by SS has been issued by a competent authority and the transfer has been made on administrative grounds. According to the respondents illness of his family could not be a reason as medical facilities are available at the place of his transfer.

3. In his rejoinder affidavit the petitioner has reiterated and reaffirmed what he had said in his application. He has stressed that the order of transfer is absolutely illegal and in the circumstances of his case one sided. He has also denied that he retained any documents illegally. According to him the transfer order is only as a result of the action taken against him and not on administrative grounds. He has not been receiving any salary since August, 1987 and, therefore, he is suffering on that account as well.

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4. I have heard the learned counsel for the parties. On behalf of the petitioner it was contended that the transfer order is mala fide and as a result of a dispute with the CYM the petitioner has been relieved with immediate effect but no Pass or Last Pay Certificate or proper transfer orders have been handed over to him. His medical report has not been accepted ^{3/4 p} ~~which~~ ^{3/4} supports the plea of bias. According to the learned counsel either both the persons should have transferred or none should have transferred. The transfer was also in the middle of the school session and if the transfer had to be made from the seat it could have been made by shifting the petitioner to some other position. The petitioner has been working satisfactorily. His confidential reports are also satisfactory, therefore, the transfer order is bad. The learned counsel for the respondents while opposing these contentions submitted that the petitioner has made no departmental representation against the transfer and the transfer cannot be connected to the dispute as it was a private dispute and it does not prejudice or make the transfer order mala fide. The petitioner instead of reporting to the Railway Doctor has reported to a private Doctor and if he contends that the order given to him are not transfer orders then in any case the application is pre-mature and should be dismissed. So according to the learned counsel for the respondents there is no violation of any service rule neither there is any unfair labour practice nor there is any victimisation.

5. During the course of arguments reliance was placed by the learned counsel for the petitioner on a judgment delivered by the Patna Bench of the Central Administrative Tribunal in the case of Bishwanath Prasad v. Union of India (1987 (4) A.T.C. 6). In this case the petitioner was working as Inspector in the Central Excise Department. He was be-set with a number of family problems and so he submitted an application to the Department requesting

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for permission to proceed on voluntary retirement. Subsequently his family condition changed and the petitioner was able to make arrangements so he withdrew his earlier application but he received an order retiring him voluntarily with effect from the date he had given the notice without taking into consideration his application for withdrawal of the voluntary retirement. Subsequently his application for withdrawal was rejected. It was held by the Patna Bench that the application for withdrawal of the notice though filed within time was rejected without recording reasons and without affording the opportunity, so the matter was remitted to the competent authority under Rule 48 to consider the matter afresh and dispose it of according to law. In the petitioner's case his request of voluntary retirement has perhaps not been processed at all because when he withdrew the same before it became effective the Department has taken no action to retire him, according to his request. Therefore, there is no case for placing reliance on the judgment of the Patna Bench. However, in regard to administrative action in para 53 the Patna Bench had observed that no order, administrative or quasi-judicial, affecting a subsisting right or having a civil consequence, can be passed without conforming to the principles of natural justice. These considerations were applicable mainly to cases affecting a civil right or consequences. According to the Patna Bench they are not applicable to administrative orders such as those relating to grant of leave or to transfers and postings, where an employee cannot claim any kind of right as such. The question of voluntary retirement does not exist in the case of the petitioner and, therefore, the ratio of this judgment is not under consideration for the disposal of this case.

6. The learned counsel has further relied on the case of Hira Lal Dhar Dubey v. Jokhu Singh and others (1987 (4) A.T.C. 521), a decision of ^{the} ~~the~~ ^{Chairman} ~~Bench~~ of the Tribunal. In this case following the judgment

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of the Kerala High Court in the case of Pushpakaran v. Chairman, Coir Board, (1979 (1) SLR 309 (Ker.)) this Bench had observed that the Court would not judge the propriety or sufficiency of formation of opinion as to the existence of exigencies of service in matters of transfer by objective standard except where the subject process is vitiated by mala fides, dishonesty, etc. It was further observed that the right to transfer is a powerful weapon in the hands of the employer and behind the mask of innocence there may be sweet revenge, a desire to get rid of an inconvenient employee. In such case it becomes necessary to tear the veil of deceptive innocuousness and see what actually motivated the transfer. It was further observed that a transfer can uproot a family and cause irreparable harm to an employee. In the petitioner's case there is no doubt that there was an altercation between him and his superior, so much so that the petitioner had to rush to the police to file a FIR and he had also complained against CYM, his superior, to ADRM when he had called him for interview. It was after hearing the petitioner and giving him interview that the orders of transfer were issued by the competent authority at Lucknow transferring the petitioner out of Varanasi. When such a situation arises that there is indiscipline in the organisation on account of may be private fights but during office hours between the seniors and those who are subordinate the exigencies of service come into play and to maintain a harmonious efficient working atmosphere in the organisation, the employer has to take suitable action to bring normalcy to the situation. When ADRM went back to his Headquarters the transfer orders of the petitioner were issued and the petitioner instead of carrying out the transfer continued to remain sick and alleges that even today he is not fit to work. He reported to a private Doctor when the Railway Doctors are readily available at Varanasi. These actions go to indicate that the petitioner is making an attempt to bypass

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the transfer orders one way or the other, ³¹ and ^{situations} In such ~~cases~~ the administration is not left with any choice but to separate the two warring parties and in his wisdom the competent authority has transferred the ³¹ petitioner from Varanasi to Lucknow. I, thus, do not find that this action can be classified as a mala fide action on the part of the respondents.

7. The learned counsel for the petitioner has also relied on another instruction issued by the Railway Board ³¹ ~~under~~ of their letter E(NG)II-78TR/82, dated 7.2.1980 on the subject of periodical transfer of the non-gazetted staff. This letter lays down that the principle governing periodical transfer of station staff should also govern shifting of staff working in sensitive jobs in the Pay Bill Sections, Stores Offices, Accounts Offices etc. and a system of rotational shifting of Clerks from desk to desk in such offices will meet the requirements. These principles, according to the Railway Board's orders have to be followed in respect of the sensitive posts in all departments including the Medical Department. When the petitioner got his impugned telegraphic transfer orders he made no attempt to seek departmental remedy against the same. If he had any personal problems he could have highlighted the same in his representation. For education of children normally employees are allowed retention of quarters if they are occupying Government accommodation. He could have requested for the same. He could have also requested for a rotational transfer to some other seat as he is suggesting through his learned counsel before this Tribunal. The petitioner has chosen to follow none of these lines of action instead he has filed this application before this Tribunal. It has been time and again said that the responsibility of good administration is that of the Government and transfer is an implied condition of service. It is only the authority concerned, who would be the best judge to decide how to distribute its man power. For taking this

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decision there are numerous factors that come into play. There could be exigencies of service. There could be a situation as in the case of the petitioner where there has been indiscipline in the office due to fight amongst the Incharge and the subordinate. The only thing to be seen is that the transfer has been made after exercise of power honestly, bona fide and suitably. The circumstances of the case and the facts as they have been put do not bring out that this has not been done.

8. In the case of Shanti Kunari v. Regional Deputy Director, Health Services, Patna Division, Patna and others (AIR 1981 S.C. 1577) the Hon'ble Supreme Court opined that the High Court had rightly declined to interfere with the impugned order. In para 2 of the judgment the Hon'ble Supreme Court observed so:-

"Transfer of a Government servant may be due to exigencies of service or due to administrative reason. The Courts cannot interfere in such matters. Shri Grover, learned counsel for the appellant, however, contends that the impugned order was in breach of the Government instructions with regard to transfers in the Health Department. If that be so, the authorities will look into the matter and redress the grievance of the appellant."

In another case which has been relied on by the learned counsel for the respondents, ³⁴ in the case of The Hindustan Lever Ltd. v. The Workmen (AIR 1974 S.C. 17), the Hon'ble Supreme Court had said that the transfer of an employee from one Department to another is at the discretion of the Manager provided the terms and conditions of service are not affected. If the order of transfer is *prima facie* valid the burden of proof that it is invalid lies on the workman. In the instant case in the absence of any finding that the order of transfer was *mala fide* or vitiated by unfair labour practice the award of the Court directing the reposting of the workman in the original department was bad and should be set aside. In this case, which was an appeal by the Hindustan Lever Ltd. an employee, who

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was Incharge of the Animal Feeding Stuff Department in the factory at Ghaziabad was transferred to some other section. There was a dispute about his transfer from the Animal Feeding Stuff Department to the other Section and about his promotion and these disputes were referred to the Labour Court for adjudication. In the petitioner's case the transfer has not affected ^{by him} adversely ^{in regard}. The terms and conditions of his service and nothing has been brought before me to show that it was an unfair labour practice, as alleged. The administration asking the Doctor to examine the petitioner because he was submitting private medical certificates and had not reported to the authorised Medical Attendant cannot be branded as an unfair labour practice. As a matter of fact the respondents had no alternative but to ask the Railway Doctor to examine the petitioner to determine whether he was feigning sickness or he was actually sick.

9. It is, therefore, clear that the application does not call for any interference by this Tribunal in the matter of transfer of the petitioner. He will be at liberty to put in his departmental representation bringing out his personal difficulties and seeking for relief as entitled under rules in regard to retention of the quarter, etc. if he feels that it is necessary in the interest of education of his children.

10. On the above considerations the application is dismissed with costs on parties.

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MEMBER (A).

Dated: April 22, 1988.

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