

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

C.A. NO. 67 1939
T.A. NO.

DATE OF DECISION

Manoj Kumar PETITIONER

Sr. D. Sharma Advocate for the
Petitioner(s)

VERSUS

U.O.I. & ors RESPONDENT

Sr. A. K. Gaur Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. K. J. Raman, A.M.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches ?

✓ Yes
✓ Yes.

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 67 of 1989

Manoj Kumar Applicant.

Versus

Union of India & others Respondents.

Hon'ble K.J. Raman, A.M.

This is an application under Section 19 of the Administrative Tribunals Act, 1985. The applicant, Sri Manoj Kumar, who was working as a Store Clerk of the Northern Railway under the Carriage & Wagon Superintendent, Bareilly, has challenged, by means of this application, his transfer from Bareilly to Laskar by the impugned order dated 25.10.1988. The respondents are the (1) Union of India through the General Manager, Northern Railway, New Delhi, (2) the Divisional Railway Manager, Northern Railway, Moradabad, and (3) the Carriage and Wagon Superintendent, Northern Railway, Bareilly. The relief sought for by the applicant is that the transfer be stayed and the applicant be allowed to be on duty at Bareilly till disposal of a criminal case initiated against him at Bareilly, or till disposal of this case by the Tribunal. The applicant has also prayed that the respondents be restrained from transferring the applicant to Laksar or any other place during pendency of the criminal case or this case before the Tribunal. A more or less similar interim prayer was also made which was considered and rejected on 15.2.89. The learned counsel for the applicant thereafter sought to amend the application seeking mainly the cancellation of the transfer order as the relief in this case. Considering the circumstances of this case, it was decided by this Tribunal to hear the parties and decide the case on the basis of the fact that what is now sought to be claimed by the applicant is the cancellation of the transfer order. It may be noticed that even the earlier relief

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claimed by the applicant included this ingredient of the cancellation of the transfer order, at least till the cases were decided.

2. The case was heard finally when Sri D. Sharma and Sri A.K. Gaur, learned counsel for the applicant as well as respondents respectively, concluded their arguments. The applicant has not submitted a copy of the transfer order. However, he has annexed a copy of a proforma which refers to the transfer order and gives other particulars of service of the applicant including the date on which he was spared (25.10.1988), the date on which he had to join at the other end, etc. The contention of the applicant is that the transfer order was issued after falsely implicating the applicant in a criminal case and that this was due to the enmity of Sri L.N. Saxena, Carriage & Wagon Superintendent (CWS), Bareilly, towards the applicant. To back up his case, the applicant has referred to some alleged complaint made by him to the Police authorities on or about 10.12.1982. The applicant said that he was stopped by the two sons of Sri L.N. Saxena, CWS, Bareilly and they demanded one bottle of wine from the applicant and threatened him with dire consequences in case of failure to provide the same. The applicant makes/further allegation that the sons of Sri Saxena came to assault the applicant many times in the year 1983 and also on several other years. The applicant then proceeds to say that on 10.8.1988 he received a memo from Sri L.N. Saxena, CWS, for the issue of 205 Litters of Diesel Oil which was collected by a Fitter, Sri Jai Prakash Sharma, who brought the same to the Store. Thereafter, the document in question relating to the issue was collected by the RPF personnel and shortly afterwards the drum containing the Diesel oil was also taken away by them. According to the applicant, on that very date he sent several telephonic messages on 10.8.1988 mainly to the effect that RPF staff and the CWS were trying to entangle him in the case, though on a reading of the plaint the connection and the conclusion are not so obvious. It is stated that the said Sri Jai

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Prakash Sharma was arrested and released on or about 11.8.1988. The applicant was asked to attend the RPF office on 12.8.1988. When he did so on 12.8.1988, he was arrested by the RPF and was allegedly forced to give certain statements. It is alleged that he was beaten up and had to be hospitalised for four days. The applicant states that he had sent a written complaint on 18.8.1988 to various authorities including the CWS. The applicant avers that he was placed under suspension on 26.9.1988, due to the influence of the CWS. The suspension was, however, revoked on 25.10.1988 and simultaneously the impugned order of transfer was delivered to him. The applicant states that his wife had given birth to a child a few days before and he had family problems. His representation against the transfer was not heeded to by the respondents. The applicant states that he was falsely implicated in the case by the RPF staff in league with Sri Saxena, CWS, and if he is transferred from Bareilly he would not be in a position to pursue his prosecution case and that in his absence all his witnesses would be tortured. According to the applicant, there is some Railway Board's letter of 25.3.1967 under which no staff should be transferred whose conduct is under investigation. It may be stated straight away here that no copy of any such letter has been submitted along with the pleadings nor during the personal hearing.

3. The respondents have opposed the application. Though Sri Sharma, CWS, has not filed any counter affidavit on his own (he has not been impleaded by name) the reply filed contains his side of the matter regarding the allegations contained in the application against him. It is stated that there was no such incident at all in 1982. It is alleged that

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the applicant's name was Sri Baboo Lal and not Sri Manoj Kumar at that time in 1982. The applicant changed his name only about 4 years ago as Sri Manoj Kumar. The alleged complaint to the police authorities, referred to above, was made in the name of Sri Manoj Kumar (Annexure '2' to the application). This allegation of the respondents has not been controverted by the applicant in his rejoinder affidavit, particularly about the change of name. The respondents state that the applicant's version of indent for diesel oil is false and that the alleged indent was forged. It is stated that the applicant was arrested by the RPF, Bareilly on 12.8.1988 in a case under Section 3 of the R.P.(U.P.) Act (theft of stores). The respondents aver that the applicant was transferred as a result of administrative exigency because of the registration of the case in Crime No.49 of 1988 under the said Act. It is denied that Sri Sharma was behind the said transfer or the criminal case. The respondents have denied the contention of the applicant that he could not be transferred because his conduct is under investigation.

4. During the hearing the learned counsel for the applicant reiterated the contention that the criminal case was cooked up against the applicant on account of the enmity of Sri Sharma, CWS, towards the applicant and that the transfer was due to the said case initiated against the applicant. In such circumstances, he argued that the transfer order should be treated as mala fide and should be quashed. In this connection he relied on a decision of the Calcutta High Court in S.V. Singh v. Union of India & others (1988(2) SLR 545). The learned counsel for the respondents on the other hand argued that there was no mala fide in this case and the transfer was made because of the criminal case against the applicant and due to administrative exigency or public interest. He stated that the appropriate authorities had decided that in view of the serious criminal case of theft against the applicant, who was the Store Keeper, he ought not to be kept in that position or

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place in the interest of administration. Since there was no mala fide involved, ~~said~~ such administrative decision ought not to be interfered with.

5. As already briefly indicated, it is quite doubtful if there was any incident of the type mentioned by the applicant, in the year 1982, particularly in the context of the change of name of the applicant only four years' back. If his name was changed to Sri Manoj Kumar only four years' back, he could not have given a complaint to the police authorities in that name in 1982. Even otherwise, no credence can be put in the contention of the applicant that an incident of this type in 1982 was the basis of the alleged false case in 1988. There is no specific action or omission of Sri L.N. Saxena, CWS, which is alleged in the pleadings and which can be reasonably held to support the allegation of the applicant that Sri Saxena colluded with the RPF authorities in foisting the said case on the applicant. The story of conspiracy between Sri Saxena and the RPF authorities against the applicant is totally devoid of factual evidence.

6. Since no mala fide has been established, the only question ^{which} remains is whether the fact that a criminal case has been ^{on} initiated against the applicant is per se sufficient and proper ground for quashing the impugned transfer order, since admittedly the transfer has been made solely because of the said criminal case. The learned counsel for the applicant has not been able to cite any authority for holding so. In S. Sivakumar v. General Manager, S.Rly., Madras and another (1989 (3) SLJ (CAT) 191), a somewhat similar question of transfer in the face of pending enquiry was considered. An enquiry, in a complaint against the applicant, was pending. He was transferred. The applicant challenged that he could not be transferred as it was a penal action. It was held that when even a person under suspension can be transferred, there was nothing wrong

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in transferring a person where proceedings were pending. It was observed as follows :

"When a person can even be placed under suspension pending inquiry into certain charges and since, according to instructions of the Govt. in the event of such suspension, pending enquiry, being prolonged, the alternative of revoking suspension and transferring the individual should be considered, I see no reason as to why in public interest, a person should not straightaway be transferred when disciplinary proceedings are separately under contemplation."

7. In Luthful Haque v. Union of India & others (1989

(3) SLJ (CAT) 381), which followed a decision of the Allahabad High Court in Amar Singh & others v. Union of India (1982 (3) SLR 529), an employee challenged his transfer. No mala fides were established. Also, there were complaints against him and because of those complaints he was transferred in administrative interest. It was held that the said transfer order could not be interfered with.

8. The above decisions/quite applicable in the present case. Finally, a reference may be made to the principles enunciated by the Hon'ble Supreme Court in Union of India v. H.N. Kirtania (1989 (3) SLJ 44). Accordingly, transfer of a public servant made on administrative grounds or in public interest should not be interfered with, unless there are strong /pressing grounds rendering the transfer order ~~as~~ illegal on the/violation of statutory rules, or on grounds of mala fides. In this case it has not been shown that there has been violation of any statutory rule; nor have grounds of mala fides been established.

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9. In the result, the application fails and is dismissed with no order as to costs.

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~~MEMBER (A).~~

Dated: January 25, 1990.

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