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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this 26.....day of October 1994.

Original Application no. 1268 of 1993

Har Singh S/o Late Sri Hete Ram
R/o Vill. Nagla Kunji, P.O. Jawapur
Distt. Mainpuri.

.....Applicant

By Advocate Anand Kumar

Versus

Union of India & Others

.....Respondents

By Advocate A.K. Gour

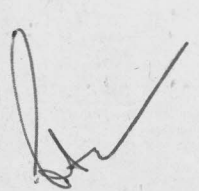
Hon. Mr. S. Dayal, A.M.

(By Hon. Mr. S. Dayal, A.M.)

ORDER

This is an application under section-19 of the Administrative Tribunal Act, 1985 seeking that the transfer order dt. 22.07.1993 may be quashed and all consequential benefits including back wages allowed and costs of application may be awarded to the applicant.

2. The grounds on which relief is sought are that frequent transfer of the applicant without substantive reasons is malafide, that the order of transfer by Respondent No. 3 is more harmful to his family than any other punishment, that the transfer of the applicant done while disciplinary proceedings are pending is against the principle of natural justice, that the respondent has not given any notice to the Union regarding transfer, therefore approval of the DRM or the General Manager is necessary, that action of transfer has been taken only against the applicant while several other persons were also responsible, that the order of transfer is colourable exercise of power on Respondent no. 3 that the transfer of the applicant while under suspension is against



the Railway rule, The transfer order is ~~by respondents~~ ^{motivated by the} respondents' ~~plead transmission~~ ^{intention} to harass the applicant and that the requests of District Magistrate as well as Senior Superintendent of Police Mainpuri for cancellation of his transfer orders have not been accepted.

3. It appears from the facts narrated by the applicant that the applicant was working as a Gangman in Gang No.4 at Kosma under permanent way Inspector, Mainpuri, but he was transferred to Churk on 16.05.1991 without any complaint or dissatisfaction with his service at Kosma. This transfer was cancelled on 06.08.1991. There after the applicant was again ~~transferred~~ ^{transferred} to Churk on 22.10.1991 but the transfer was again cancelled. When the applicant was posted at Bhogwan by order dt.21.12.1992, he was again transferred and posted to Sikohabad on 15.03.1993 but the order was cancelled and he was reposted to Bhogwan vide letter dt.08.04.1993. It is alleged that the applicant and his companions made noise and used unparliamentary language in a meeting of PNM on 19.05.1993. The applicant was suspended on 21.05.1993 and was under suspension till the time of making the application. He reported sickness on 19.05.94 and ~~claimed~~ ^{in the application that he was} still sick. The applicant was transferred from Mainpuri to Churk by order dt.22.07.1993. Shri Ram Awtar, Branch Secretary and Shri Gaharwan, Assistant Secretary, were also suspended but not transferred and their suspension orders were revoked. A decoity was committed on 01.04.92 in the house of the applicant and the District Magistrate as well as the Senior Supdt. of Police recommended cancellation of transfer on 26.06.92, 03.07.1992 and 16.07.1992 so that the applicant may protect his family from decoits. The applicant claims to be President of Northern Railway Men's Union branch at Sikohabad. Sufficient notice to the Union was necessary for his transfer but no such notice was given. He

has also stated that transfer order has not been served. He claims that frequent orders showed malafides on the part of the authorities. In addition he has claimed that transfer was by way of colourable exercise of power because Shri R.K. Goel was annoyed with the applicant. He has claimed that the transfer was punitive, that he was discriminated against, that transfer was made at the beginning of academic session and during the pendency of departmental proceedings and that the representation of the applicant dated 12.08.1992 has still not been disposed of.

4. The respondents in their reply have denied that the service of the applicant was satisfactory and have stated that the applicant was proceeded against departmentally and punished in the past. They have denied that he was required to stay with his family at Mainpuri because the applicant obtained transfer to Shikohabad by not revealing facts to the Assistant Engineer and the transfer was cancelled later on. They have said that the applicant evaded Service of letter of revocation of Suspension dated 28.07.1993 and transfer order dated 26.07.1993. It is mentioned that the suspension was resorted to on the report of the Assistant Engineer, Etawah. The respondents have ~~denied~~ ^{denied} that the applicant was a trade union official but Annexure CAIA shows that the respondents vide their letter dt.26.11.1992 refused to circulate the name of the applicant as President on the ground that he had been transferred to Churk on 29.10.1991 and was no longer working under 10 W, Mainpuri. The applicants in their reply have maintained that the original transfer order was of 23.11.1991 which was only stayed till June, 1993

5. The learned counsel for the applicant Shri G.C. Gehrana and Shri Anand Kumar were heard and learned counsel for the respondent Shri A.K. Gaur also presented his arguments. These have been considered. The counsel for the applicant cited AIR 1986 CAT 1904 to show that an order of transfer should not be arbitrary or discriminatory, 1988(2)SLR545 to state that transfer should be done

on a cogent administrative reason and is not an alternative to disciplinary proceedings and suspension, II 1988 ATLT (CAT) SN 30 to state that an employee should be posted on original place before transfer on revocation of suspension, 1988(11)ATC 326 to state that transfer in contemplation of department enquiry is bad, ATR 1989(1) CAT 378 to say that casual labourer is not transferable till regularisation, 1988(8)ATC894 to state that protection is available to recognised association/union office bearers for one term and 1993 SCC 918 to that if there is no material on record to show that transfer is made in public interest, such transfer would be unsustainable. The learned counsel for the respondent mentioned that transfer is an incident of Service, that no instance of malafide has been given that the work of the applicant was unsatisfactory and he was guilty of misbehaviour that he was not President of the Union and cited 1994 SCC L S 230 to say that tribunal can interfere in transfer cases only if malafide or statutory violation is established.

6. A meandering through the facts and pleadings in this case is worthwhile. It clearly shows that the applicant was an active member of the Northern Railway men's Union and became office bearer of the Shikohabad branch of the Union on or before 01.09.1992. The activities of the applicant were found inconvenient by the respondents and they sought to transfer the applicant to a place at the other end of the Division so that the applicant cannot guide the activities of the local union.

7. The respondents have tried to assure the Bench by calling the transfer a routine one made in pursuance of administrative exigency and have firmly denied that it is malafide or punitive. They have, however, said that the services of the applicant were unsatisfactory, that he was punished in the past and that he was involved in an act of indiscipline in a meeting of the Permanent

Negotiating Machinery immediately before the impugned transfer order was made..The circumstances, thus, indicate that this transfer order was made in lieu of punishment and is tainted by colourable exercise of power.

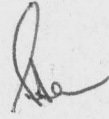
8. The respondents have taken pains to stress in their reply that the transfer order was originally made on 23.11.1991 and was kept in abeyance by the respondents till 22.07.1993 and the impugned order of was only implementation of the previous order. However, it is quite clear from the language of the impugned order that it is a new order made on the basis of the directions received from the Divisional Engineer. The orders of transfer of the applicant were made a number of times and cancelled as can be seen from Annexure-IV to the OA and the facts stated by the respondents in paragraph-5 of their reply. It is clear from these facts that no order of transfer of Oct. or Nov.1991, could have survived the subsequent orders of transfer and their cancellations.

9. In addition it is quite clear from the reply (Para-6) that the suspension order was served on the petitioner on 18.06.1993 and the transfer order was made on 22.07.1993 and suspension was not revoked till 28.07.1993 and served till a later date. It is not clear from the reply as to when the memorandum of chargesheet was served on 17.07.1993 or 17.09.1993 but it is clear that the transfer was made in contemplation of departmental enquiry.

10. The facts stated in the last four paragraphs show that the transfer order was made in colourable exercise of power and suffers from malice. Therefore, the impugned order is set aside. Since the applicant has maintained that he was on leave and has not worked nor has he claimed that he reported on duty, he shall not be entitled to any back wages and the period of absence should be regularised as leave.

11. The respondents shall pay the costs of the application to

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(Member-A)