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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 1416 of 1993

Dated: 07 June, 1995.

Girraj Prasad, son of Sri Babu Lal,
working as Painter under I.O.W., Northern
Railway, Aligarh, R/o Railway Quarter
No. 43-C out house, station railway colony
behind railway institute, Aligarh. ... Applicant.

(By Advocate Sri Anand Kumar)

Versus

1. Union of India through G.M.,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Superintendent Engineer (IVth)
(D.S.E.) Northern Railway,
Aligarh.
3. Assistant Engineer, Northern Railway,
Aligarh.
4. Shri S.K. Sharma, Inspector of Work
(In charge) Northern Railway,
Aligarh. ... Respondents.
(By Advocate Sri A.K. Gaur)

O R D E R

(By Hon. Mr. S. Das Gupta, Member(A))

Subject matter of challenge in this application
filed under Sec. 19 of the Administrative Tribunals
Act, 1985 is an order dated 22.4.1993 (Annexure- A 1
passed by the respondent no.4 transferring the
applicant from Aligarh to Kanpur. The case set up
by the applicant needs to be stated briefly. He was
initially appointed on casual basis as a Painter
in December, 1974 in the Northern Railway, Aligarh.

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After being screened and medically examined, he was posted as Khalasi in which grade he worked continuously upto 26.8.1982 under P.W.II Aligarh. On 27.8.1982, he was subjected to a trade test ^{for the} post of painter and was declared successful. Having secured 80% mark in the trade test and having been declared out-standing, he was placed at the top of the panel. Also being ^{the} member of Schedule Caste, the applicant ranked senior to one Mahendra Pal who also took the trade test and secured less marks than the applicant. The applicant was thereafter promoted as Painter against the permanent vacancy whereas, the said Mahendra Pal was promoted also as a painter against the Extra Labour Appointment in Loco Colony, . Since then , the applicant claims that he had been working satisfactorily without any complaint against him up to 26.9.1992. Meanwhile, he was given cash award of Rs. 200/- on 11.11.1981 and Rs. 50/- on 16.4.1990 for his meritorious services as a Painter. ~~A~~ Photo-stat copies of the award certificates have been placed at Annexure- A4 and A5. The applicant, however, was posted as a Painter against the Extra Labour Appointment in Loco Colony on 26.9.1992 in place of Mahendra Pal who was posted against the permanent post which the applicant was earlier occupying. Thus, the applicant, ^{who} was a senior painter, ~~and~~ was appointed against a casual vacancy, whereas, Mahendra Pal , though, junior was posted against a permanent post. It is alleged that this was the

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beginning of harassment meted out to the applicant who S.C. employee. It is further alleged that while he was working as Painter, against an Extra Labour Appointment, a theft was committed on 31.3.1993 in the railway store by the men of Sri A.K. Sharma, Assistant I.O.W. Aligarh.

The applicant who is a member of an Union raised the issue before the higher authorities for making a proper inquiry in the matter. This annoyed both Sri A.K. Sharma, Assistant I.O.W. as well as Sri S.K. Sharma I.O.W. Incharge, Aligarh (respondent No. 4 in this case) and also other higher authorities as a result of which he started further harassing the applicant. The applicant was transferred from Aligarh to Kanpur by the impugned order dated 22.4.1993 so that the inquiry regarding the theft of the railway property maybe stopped. A representation was made by his wife for his retention at Aligarh, a copy of the representation dated 4.5.1993 is at Annexure-A 7. The applicant also represented to the Chief Engineer, Northern Railway as well as the Divisional Superintendent Engineer (IVth) on 5.6.1993 and 13.6.1993 (Annexure- A 8 & A 9). There was also a news paper report in Amar Ujala in its edition of 27.4.1993 regarding the harassment of the applicant, a copy of the report is at Annexure- A 10.

2. Apart from raising the plea that the transfer order was issued in malafide exercise of powers by the respondents, the applicant has also pleaded that in terms of the instructions contained in the Railway Board letter dated 24.12.1985 (Annexure-A2 an employee belonging to Schedule Caste/Schedule Tribe

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should be transferred very rarely and for very strong reasons only and these instructions have been violated by **transferring** the applicant who was a member of the S.C. and was thus entitled to the protection from transfer under the said instructions.

3. The respondents have filed a counter reply . This reply has been affirmed by Sri Achal Khare, the Divisional Superintending Engineer (IVth) Northern Railway, Aligarh. It has been submitted therein that the transfer is an incident of service and when an employee is transferred in the administrative exigencies, ~~on account of~~ the order of transfer cannot be challenged unless the same is actuated by malafide or is violative of statutory rules. It has been further alleged that the applicant had not atall, been working satisfactorily as claimed by him. He was warned for poor performance in the year 1990. It is further alleged that under the garb of the membership of unrecognised union, the applicant always tried to create hindrance in smooth functioning of the Railway Administration; that he always created indiscipline among the staff and that he always misbehaved with the superiors. It is further alleged that he was found involved in creating situations which were spoiling the image of the railway administration. It has been claimed that the applicant has already been served with a number of show cause notices and charge-sheet and despite being given chance to improve his working and conduct, he failed to improve.

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4. The applicant has filed a rejoinder affidavit reiterating his contentions made in the O.A.

5. We have heard the counsel for both the parties and carefully perused the pleadings.

6. The applicant has mainly taken two grounds for challenging the impugned order of transfer. The first ground is of malafide. He has sought to lay a foundation for imputation of malafide by narrating the incident involving the exchange of the post of Painter between him and Mahendra Pal and also claiming that he had brought to the notice of the authorities, the alleged theft by men of Sri A.K. Sharma, Assistant P.W.I. The reply of the respondents to the first allegation is strange, to say the least. I quote the relevant portion of the reply contained in para-10 of the counter reply.

" The applicant's contention that he is working against a temporary post is wholly irrelevant and immaterial because whether a person works on a permanent post or against temporary post, it does not in any way, affects his seniority, rank pay and grade and there is no status different at all. There has been no harassment to the applicant at all. He did not suffer any loss on this account and, therefore, the contrary allegations contained in paragraph under reply has been alleged simply with a view to give colour to the present case and there is no grain of truth in it."

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7. It would be clear from the above that there is no denial whatsoever of the allegations made by the applicant that he was shifted to a temporary post while Mahendra Pal was brought over to the permanent post occupied by the applicant. There is not a whisper in the counter reply as to what necessitated such exchange of post irrespective of the fact whether such exchange did not involve any loss of seniority, rank or pay etc. The respondents have not even pleaded that such exchange was necessitated by the exigencies of administrative requirement. I am of the view that the un-explained exchange of posts would create a strong presumption of bias against the applicant on the part of the respondents.

8. Coming to the alleged incident of theft of railway property, we find that the respondents have not denied that there was a report regarding theft of Railway property. It has only been stated that an inquiry was held and it was found that an allegation of theft was wholly unsubstantiated. As regards the applicant's role in making complaint, there is only a bald statement that he was not a party to it.

9. Apart from the above facts, the averments made by the respondents in the counter reply regarding the conduct and performance of the applicant would also tend to indicate strong

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bias existing against the applicant. Although it has been stated that the applicant has been indisciplined, he was issued a show cause notice and charge-sheet and that he was warned, no documentary proof whatever has been filed in support of such allegations. In para-15 of the Counter Reply in which these imputations have been made against the applicant, it has been merely stated that the original record in this regard shall be produced before the court at the time of hearing of this case. No such records were produced before me at the time of hearing. The applicant on the other hand annexed two certificates which appear to have been issued under the Signature of the District Railway Manager to show that his performance has been acknowledged by grant of cash award. The certificate dated 22.11.1981 (Annexure-A 4) indicates that he was granted cash award of Rs. 200 in recognition of excellent and commendable work done by him in the year 1981 in the construction of the Aligarh Railway Station Building. The other certificate (Annexure- A 5) indicates that he was granted a cash award of Rs. 50/- for excellent and commendable work done by the applicant. ~~as stated~~ In reply to the applicant's claim in this regard contained in para 4(iii) of the O.A., the respondents in their counter reply have averred that such averments are

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wholly misconceived and hence, denied. The respondents have not stated that the copies of certificates annexed by the applicant showing that he was granted cash award on two occasions are copies of forged documents. I have, therefore, no reason to disbelieve that the applicant's work and performance were actually recognised by the D.R.M. at least on two occasions. ^{by second} The letter of recognition is of the year 1990. Had the performance of the applicant and his conduct been so reprehensible as the respondents would have us believe, it is inconceivable that such a person would have been given a cash award in recognition of his performance.@@@

10. From the foregoing, I have no hesitation in holding that the applicant has been able to lay a strong ^{foundation to presume} ~~base~~ bias against him on the part of some of the respondents.

11. The next come to the ground taken by the applicant that the transfer order was violative of the instructions contained in the Railway Board letter dated 24.12.1985. A copy of this letter is at Annexure- A 2. It gives a reference to the Railway Board ^{earlier} ~~earlier~~ letters dated 19.11.1970, 14.1.1975 and 6.7.1978. The letter dated 24.12.1985 only reiterates the instructions contained in the earlier letters of the Railway Board ^{said} ~~enjoining~~ that the instructions contained in ~~the~~ ^{are} letters strictly followed. It is seen

from this letter that the letter dated 14.1.1975 contained instructions inter alia to the effect that the employees belonging to SC/ST should be transferred 'very rarely' and 'for very strong reasons only'.

12. The Railway Board's letter dated 14.1.1975 came under the judicial scrutiny of the Jodhpur Bench of the Tribunal in the case of B.S. Verma Vs. U.O.I. 1994(26) ATC, 313 and the Jodhpur Bench took the view that the instructions contained therein are prohibitive of general or ordinary transfer. It was further held that it issues a mandate to the subordinate officers not to transfer any SC/ST employees against the directions so issued and that while transferring such an employee, both the criteria viz 'very rarely' and 'for very strong reasons only' must be fulfilled. A similar view was taken by the Ernakulam Bench of the Tribunal in the case of T. Abdul Quadir Vs. U.O.I., 1994(27) ATC, 40.

13. From the averments, it is clear that the applicant has not been transferred frequently since he has been at Aligarh right from the date he was initially appointed. Can it, however, be accepted that the transfer of the applicant was for very strong reasons only? The only answer to this question that I find in the counter reply is that the applicant's performance was so unsatisfactory and he was creating so much hindrance in smooth functioning of the Railway Administration and ~~furnishing~~ its image to such an extent that he had to be transferred

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As I have already stated in the foregoing, the assertions of the respondents in their counter reply regarding the conduct and performance of the applicant ring hollow in the absence of any documentary evidence and in the face of the certificates and cash awards granted to the applicant for excellent performance. The respondents also did not care to produce any record before me at the time of hearing from which I could infer that genuinely there were very strong reasons for transferring the applicant. The transfer of the applicant is, therefore, violative of the Railway Boards instructions in this regard.

14. I am fully conscious of the limitations and the powers of the courts/Tribunals in interfering with the orders of transfer of an employee stated to have been issued in exigencies of public interest.

This case, however, is a case where there is a clear evidence of harassment being meted out to a member of the ^{Schedule Castes} who have been guaranteed certain safeguards not

only under the Constitution of India but also under the administrative instructions issued from time to time by various departments. The transfer order is also violative of the Railway Board's instructions regarding the transfer of SC/ ST employees which are mandatory in nature.

15. In view of this, I have no manner of hesitation in interfering in this case and holding that the impugned order of transfer is ~~wholly~~

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malafide and violative of mandatory instructions.

16. In view of the foregoing, the impugned applicant order of transfer is quashed. Incase, the applicant did not join the station to which he was transferred, the intervening period shall be regularised by grant of leave as ~~due~~ due. There shall be no order as to costs.

Member (A) :

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