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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1161 of 1993

Smt. Laxmi Rani w/o late Durbesh Lal,
a/a 30 years, r/o Railway Quarter No.-
24-B Type(II), Temp. Chopan.

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Applicant

Versus

Union Of India and three others

Respondents

Hon'ble Mr. S. Das Gupta, Member-A

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

This Original Application has been filed under section 19 of the Central Administrative Tribunal Act, 1985. It has been prayed that the impugned order dated 10.7.1993 (Annexure A-1), by which the applicant has been transferred from Chopan to Patratu, and also the order dated 9.7.1993, which has been referred to in impugned order dated 10.7.1993, be quashed and the respondents be directed to allow the applicant to continue as Khalasi in any other section or department of the Railway within Chopan.

2. Briefly stated, the facts of the case are that the applicant's husband working as Electric Chargeman under the Electrical Foreman, Eastern Railway, Chopan, died in harness and the applicant was appointed on compassionate ground as Khalasi under the Electrical Foreman, Eastern Railway, Chopan by the order dated 27.5.1991 (Annexure A-II). The applicant claims that her services have been excellent and she never gave any chance to her superiors of complaint against her conduct. Despite this, the impugned order dated 10.7.1993

transferring her from Chopan to Patratu has been issued by the.

Senior Electrical Foreman making a reference to the order dated 9.7.1993 of the Senior Divisional Personnel Officer, Eastern Railway, Dhanbad.

3. The applicant's case is that the impugned order of transfer has been issued in mala fide exercise of the power by the respondents. In order to establish the mala fide, she has averred that a quarter No. 24-B Type-II, which was earlier in dilapidated condition was later allotted to her after repairs and this was resented by the Senior Electrical Foreman-respondent No.3, who wanted the same quarter to be allotted to a man of his choice. The applicant claims that the respondent no.3 has been looking ~~after~~ for opportunity of transferring the applicant to some distant place and this has resulted in her being illegally transferred to Patratu, which is 300 Kms. away from her present place of posting. The applicant has also stated that she is a member of the Scheduled Caste and in terms of the instructions issued by the Railway Board, S.C./S.T. employees should be transferred rarely and only for very strong reasons and also such transfers should be confined to their native district. It has also been stated that there is no male member to look after herself and her small children. There are only a few well-wishers at Chopan to look after the family. In case she moves to Patratu, she will have to vacate her quarter at Chopan and will not be allotted a quarter at Patratu.

4. In their written statement the respondents have stated that the applicant is a quarrelsome lady. She had quarrelled and had misbehaved her superiors, as a result of which, she was earlier transferred on 24.4.92 to Patratu but on her request, the same order of transfer was cancelled

by the competent authority . However, one M.L. Pandey, Khalasi helper, reported to the Senior Electrical Foreman that he had been assaulted as well as threatened by the applicant. On receipt of this complaint, the Senior Electrical Foreman requested the Senior Divisional Electrical Engineer, Dhanbad to arrange a transfer of the petitioner to Patratu. The impugned order of transfer has accordingly been issued. They have also stated that the quarter No. 24-B Type-II was originally allotted in the name of her husband and she was required to vacate this on his death. She was allotted another railway quarter to her entitlement but she refused to vacate the quarter allotted to her husband . The respondents have contended that the transfer is an incident of service and an employee can be transferred from one place to another in exigency of service and an order of transfer shall not normally be interfered with unless the same is issued mala fide or is punitive in nature or in violation of statutory rules.

5. I have heard the learned counsel for both the parties and perused the record carefully.

6. It is, now, the settled position of law that an employee has no right to remain at any particular station ^{or} for any length of time at a particular station. The Supreme Court and the other Courts and Tribunals have consistently taken the view that the transfer is an incident of service and the Courts/Tribunals shall not normally interfere with the same . While there are a large number of cases in which this principle has been enunciated , it may not be out of place to mention a few. In the case of Rajendra Roy Vs. Union of India (AIR 1993 Supreme Court 1236), the Supreme Court held as follows:-

" It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

7. In the case of ^{State of} Punjab Vs. Joginder Singh Dhatt (AIR 1993 (SC) 2486), the Supreme Court holding that it is entirely for the employer to decide when and where and at what point of time a public servant is transferred from his present posting, recorded its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another.

8. In the case of Shilpi Bose Vs. State of Bihar (1992 Supreme Court Cases (L & S) 127) the Supreme Court has ruled that a Government Servant holding a transferable post has no vested right to remain posted at one place or the other and an order of transfer issued by the competent authority does not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order.

9. It is, therefore, clear that the Courts/Tribunal have limited jurisdiction in interfering with the orders of transfer of the employees. However, it is also clear that in case an order of transfer is mala fide or punitive in nature or is in violation of statutory provisions, the Courts/Tribunals can interfere in impugned order of transfer.

10. In the case before me, mala fide on the part of the respondent No.3 has been alleged, but the facts, on the basis of which the mala fide on the part of respondent no.3 is sought to be established, do not lay

a firm foundation for inferring mala fide . In the case of Rajendra Roy (Supra) it was held by the Supreme Court:

" It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestion."

From the facts pleaded, I do not find that there is any scope of inferring that there was any malafide on the part of respondent no.3

11. It has, however, been admitted by the respondents that the basis of transfer of the applicant is a complaint from one of her colleagues that she assaulted and threatened him. A copy of the Senior Electrical Foreman's report dated 24.6.1993 addressed to the Senior Divisional Electrical Engineer, Dhanbad was shown to me. I found therefrom that the report indicates that the applicant and M.L.Pandey were fighting with and abusing each other . Thereafter, the applicant went to the Police Station to file a report whereas M.L.Pandey went to the Railway Hospital for treatment. It is, therefore, clear that both, the applicant and M.L.Pandey, were guilty of misconduct and not the applicant alone. I have not been informed as to what action has been taken against M.L.Pandey. In any case the right course of action should have been to initiate disciplinary proceedings against the applicant and take appropriate action on conclusion of proceedings. Instead of doing this, respondents chose to transfer the applicant to a distant place. The transfer of a widow with young children to a distant place is bound to have a greater

penal effect than a penalty which could have been imposed on her for the alleged misconduct . Since no other ground for her transfer has been indicated in the written statement of the respondents, I cannot but conclude that the transfer was penal in nature.

12. I lastly come to the argument of the applicant that she should not have been transferred in view of the protections provided by the Railway Board in their circulars regarding the transfer of SC/ST employees. This provision came under scrutiny of the Jodhpur Bench of the Tribunal in the case of B.S.Verma Vs. Union of India (1994)(26 A.T.C.313) I quote the relevant portion of the observation made by Jodhpur Bench in this regard:

" The constitutional history particularly providing reservation under Article 16 and Directive Principles provided in Chapter IV of the Constitution needs scrutiny. So far as the question about the rights and privileges of the SC/ST is concerned, we should not overlook the provisions of Article 16 but we should also consider the provisions particularly the Chapter IV of the Constitution . Under Article 37 of the Constitution, it has been specifically mentioned that the provisions of Chapter IV of the Constitution are fundamental in the governance of the country. The very words " provisions are fundamental in the governance of the country " lead us to consider that they may be equated to some extent with the fundamental law of the country and any orders or directions issued for the purpose of implementation of the fundamental law of the country cannot be equated with ordinary administrative instructions but they stand on a higher pedestal than the ordinary administrative instructions. Directions were issued by the Railway Board on 14.1.1975 and we will have to examine the nature of the directions issued. In these directions nowhere it has been mentioned that the persons of SCs/STs should not be transferred as far as practicable like the circular relating to the spouses referred in the case of Union of India Vs. S.L.Abbas, on the contrary , the directions are prohibitory in nature , the relevant part of the directions reads as under:

" The Board have, therefore, decided that the employees belong to SCs and STs should be transferred very rarely and for very strong reasons only."

Thus, it prohibits general transfer or ordinary transfer. Thus, there are two ingredients of these directions. One is "very rarely" and the second important ingredient prohibiting the transfer is 'for very strong reasons only'. Again we will have to consider the word 'only' used in the last line. The word 'only' directs that no transfer should be effected in any case if both the ingredients are not fulfilled. Thus, it is not only prohibitory in nature but it also issues a mandate to the subordinate officers not to transfer any SC/ST employees against these directions so issued .It is not like an ordinary guideline where 'if' and 'buts' are there "

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13. This issue also came up for consideration before Ernakulam Bench of the Tribunal in the case of T. Abdulkader Vs. Union Of India (1994)(27 A.T.C.40). I quote the relevant portion of the order:

" 10. There is considerable force in the second contention as well, viz. the transfer order is contrary to the policy of the Government of India. In a recent judgment in K. Ramachandran Vs. Director General, All India Radio, New Delhi (DA 1411 of 1993) this Tribunal dealt with the case posing the following questions:

" A question as to whether a Scheduled Caste official having All India transfer liability is entitled to claim that he shall be posted only to his home town or nearby places as far as practicable and that he shall not be transferred to a 'far-off' place' in the light of the declared policy and programme of the Government to bring the members of SC/ST to the main stream arises for consideration in this case."

The Tribunal considered the issue at length and held as follows:

" 10. Thus, the officials belonging to SC/ST communities have special privileges, protection and benefits even in regard to posting and transfers notwithstanding the decisions of the Supreme Court in Gujarat State Electricity Board Vs. Atmaram Sungomal Poshani, Shilpi Bose Vs. State of Bihar and Union of India Vs. N.P. Thomas. These are cases of transfers concerning officials belonging other communities. The Supreme Court did not examine the scope and application of the Government of India circulars and instructions referred to above in these cases. No decision of the Supreme Court considering the application and effect of the above circulars and instructions was brought to my notice, which will mitigate against the above proposition. Hence, I answer the question passed in this case in the affirmative and in favour of the SC/ST Official.

Hence, it does not appear that the reason stated is bona fide and the background of the order indicates that the power of transfer is being abused by the Director General. In B. Varadha Rao Vs. State of Karnataka, said 'Transfer is always understood and construed as an incident of service... It is no doubt true that if the power of transfer is abused, the exercise of power is vitiated, and the Court or the Tribunal can quash it.'

14. In the case before me, the applicant is admittedly a member of the Scheduled Caste. In her case, therefore, the respondents should have been more circumspect in issuing order of transfer which, according to the instructions of the Railway Board, can be issued only rarely and that also for very strong reasons. From the facts averred, I find that an order was issued earlier also transferring the applicant from Chopan to Patratu

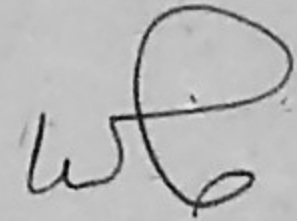
but the same was later withdrawn. She has, now, again been transferred to Patratu on the basis of a complaint made by one M.L. Pandey. The subject matter of the complaint is not such as would necessarily require the transfer of the applicant to another station. It could as well have been dealt with under the normal disciplinary rules. Such transfer can hardly be classified as one in the exigency of service and in public interest. This, coupled with fact that the applicant had in the recent past lost her husband and, therefore, would naturally be in disturbed emotional condition, impels me to interfere in the order of transfer, though the same is stated to have been issued in administrative interest.

In view of the foregoing, the impugned order dated 10.7.1993 is set aside. The respondents shall, however, be at liberty to proceed departmentally against the applicant for any misconduct which she may have committed, in accordance with law.

No order as to costs.

Dated 06.10.1994.

(S.M.)


Member-A