

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 10TH DAY OF JULY, 2001

Original Application No.1190 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA,A.M.

Manik Kumar Mukherjee, aged about 37 years, son of Shri Pran Kumar Mukherjee, r/o H.No C 33/204-21 B, Mohalla Chandua-Chittupur, hari nagar Colony, varanasi atpresent employed as A.S.M in N.E.Railway

... Applicant

(By Adv: Shri S.P.sinha)

Versus

1. Union of India through the Secretary Ministry of Railway Board, New Delhi.
2. The Director Vigilence,Special Squad,Railway Board, Rail Bhawan, New Delhi.
3. The Divisional Railway Manager, N.E.Railway. ... respondents

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA applicant has challenged the order dated 26.11.1992(Annexure 1) by which he was relieved from the Ministry of Railways w.e.f. 26.11.1992 to report to D.R.M(P) Varanasi Division<sup>✓</sup>, N.E.Railway. Erailway.

The facts in short giving rise to this application are that applicant was serving as A.S.M Varanasi. By order dated 30.10.1991 he was appointed as Investigating Inspector in the scale of Rs.1600-2660 in Railway Board. The order of appointment further provided that the appointment will be purely temporary and he would be reverted back to his parent Railway immediately after completion of his assignment in Board's office or if his services are no longer required. The letter further provided that lien of the

applicant shall be on a substantive post in Railway which during posting on deputation in may be retained temporary ~~burden~~ to the department. He should be considered for all selections and promotions as he was still in the Railway. The learned counsel for the applicant has submitted that as the appointment of the applicant was on regular basis, while reverting him back to his parent department xxxxx a notice ought to have been given to him. Relying on Para 8 of the C.A learned counsel has submitted that in fact action against the applicant was taken on account of the alleged misconduct which took place on 12.10.1992 and 13.10.1992 against which FIR was lodged against the applicant and he was in police custody for some time. The learned counsel has submitted that applicant has been reverted back to his parent railway on account of misconduct stated in para 8 and he ought to have been given an opportunity of hearing before passing the impugned order. the order being in violation of principles of natural justice cannot be sustained.

Shri V.K.Goel learned counsel for the respondents on the other hand submitted that applicant's appointment as Investigating Inspector was on temporary basis for a short time. In fact he was under deputation which could be terminated at any point of time and no opportunity of hearing was required. Shri Goel has also submitted that in fact applicant by letter dated 14.10.1992 requested for repatriation to Varanasi Division of N.E.railway and the repatriation is based on his own request.

Shri Sinha, however, submitted that the request for repatriation was withdrawn by the letter dated 25.11.1992(Annexure 5 to the OA).

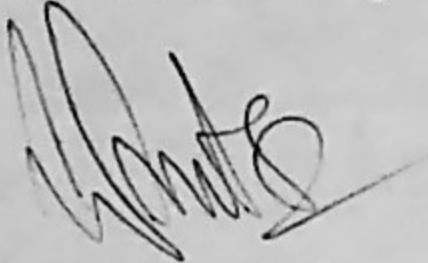
We have carefully considered the submissions made by counsel for the parties, in our opinion the question for determination for us is, whether the order impugned is an order simplicitor of repatriation or it causes stigma to the applicant and if so, whether the applicant was entitled for opportunity of hearing. It cannot be disputed that the terms and conditions of the appointment as Investigating Inspector were such that the applicant retained his lien in parent department and his posting in the Ministry as Investigating Inspector was on deputation basis. Appointment order also provided that he shall be considered for all ~~such~~ <sup>selections</sup> and promotions in his parent cadre, as he was still <sup>in</sup> the Railway. Thus, the respondents could repatriate the applicant even before completion of the assignment.

Now the question is whether the incidents dated 12.10.1992 and 13.10.1992 mentioned in para 8 of the CA were only motive for passing the order dated 26.11.1992 or they were foundation for passing the order. A perusal of the order dated 26.11.1992 clearly shows that on the request of the applicant /for his repatriation was already passed. However, it could not be implemented on account of the leave on average pay from 2.11.1992 to 25.11.1992. By the impugned order only the applicant was relieved w.e.f. 26.11.1992 for which orders were already passed earlier. In these circumstances, the alleged incidents mentioned in para 8 of the CA could be only termed motive for quickly reverting the applicant back to his parent department, but the incidents cannot be termed as foundation for the order. The action for repatriation was taken on the basis of the application of the applicant himself which was moved on 14.10.1992. In these facts and

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circumstances, no stigma has been caused against the applicant and the action of repatriation was not based on the alleged misconduct of the applicant. In such circumstances, there was no question of affording any opportunity of hearing to the applicant. The order does not suffer from any illegality.

The OA is accordingly dismissed with no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: 10.7.2001

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