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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 1332 of 1994

Dated: 31st May, 1995

Jagpal Singh Kardam son of Sri Murli Dhar,
aged about 55 years, R/o 357 -C, Sen
Colony, Ghaziabad. ... Applicants.

(By Advocate Sri S.L. Kushwaha and
Sri G.S. Bequarar)

Versus

1. The Union of India, through the G.M.
Northern Railway, Baroda House,
New Delhi.
2. The D.P.O. N. Rly.
Allahabad.
3. The Senior Divisional Electrical Engineer,
T.R.D. Northern Railway, Allahabad.
4. Senior Divisional Electrical Engineer,
RS Northern Railway, Ghaziabad.

(By Advocate Sri P. Mathur)

O R D E R

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

This application has been filed under Sec. 19
of the Administrative Tribunals Act, 1985 challenging
the order dated 25.8.1994 (Annexure- A 1) by which the
applicant has been transferred from Ghaziabad to
Kanpur. It has been prayed that the said order be
quashed.

2. The applicant is working as Office Superintendent
at Ghaziabad since 1.10.1980. He claims that his
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conduct and performance have been acknowledged by the Railway Administration through cash awards. It is alleged that due to certain conspiracy against him, he apprehended that he might come to harm and, therefore, he sent a representation to the G.M. in this regard while he was in delhi on 23.8.1994. The respondents, however, issued the impugned order dated 25.8.1994 transferring him from Ghaziabad to Kanpur without quoting any reason for such transfer.

3. The applicant has challenged this order on the ground that it is a non-speaking order and is meant only to harass the applicant which he had apprehended and had, therefore, sent a representation to the G.M. even before the order was issued. It has been pleaded that he is a widower. There is no one to look after his younger daughter and a minor son who were school going children. It has been further pleaded that he is about 55 years of age, and therefore, has about only three years to retire. He should not, therefore, be transferred at this stage. It has been further pleaded by the applicant that he belongs to SC and by virtue of certain instructions of the Railway Board, the employees belonging to SC/ST should be transferred very rarely and only for very strong reasons and that such reasons do not exist in this case, the order of transfer is being passed only to harass him.

4. The respondents have filed a counter affidavit in which it has been stated that the transfer of the applicant is on administrative ground. Since the

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order of transfer is an order 'Simplicitor' and without any stigma, the same should not be interfered with. It has also been pleaded that this application has been filed without exhausting departmental remedies, and therefore, is not maintainable.

5. On the merits of the case, it has been averred by the respondents that the applicant's conduct had not been satisfactory all along and infact, there had been a lot of complaints of the staff working under his control. A photo copy of the complaint submitted by the 500 employees on 10.8.1994 has been enclosed as Annexure-C.A. 1 which was revealed that the behaviour of the applicant to the employees working in the shed was unsatisfactory and as such, they had requested the administration to transfer the applicant from Ghaziabad. The recognised union had also represented for the applicant's transfer. It has also been further averred that the applicant was in habit of making wild allegations against the higher officials for which he has been warned several times. The applicant had also indulged in his unfair practices exploiting castism, it is alleged. As a result of this, the applicant has been creating problems in the day to day working of the Loco Shed, Ghaziabad. In the interest of the smooth working of the Loco Shed, the respondents had decided to transfer the applicant on administrative ground.

6. The applicant has filed rejoinder affidavit reiterating the contentions made in the O.A. It has

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also been pointed out that an order dated 27.9.1994 has been issued by the respondents transferring one K.K. Gupta, OS from Kanpur to Ghaziabad in the same Loco Shed in which the applicant is continuing under an interim order passed by the Tribunal and the said Sri Gupta has been accommodated against the post transferred from Kanpur to Ghaziabad.

7. I have heard the learned counsel for the parties and have gone through the pleadings of the case.

8. During the course of arguments, Sri G.S. Bequarar, learned counsel for the applicant cited a number of decisions of the Supreme Court and various other Benches of the Tribunal in support of the applicant's case. These are :

- Director of School Education, Madras & others VS.
- (i) O.Karuppa Thevan and another (1994) 28 ATC, 99
- (ii) G. Suresh Kumar, R. Srikumaran Nath Vs. Union of India and others, ATR 1988 (2) CAT 245.
- (iii) Man Mohan Das Vs. U.O.I. & others, A.T.R. 1990(1) CAT 68.
- (iv) Shri K.K. Jindal Vs. G.M. N. Rly. & others, A.T.R. 1986 CAT 306.
- (v) S.S. Verma Vs. Union of India and others, (1993) 23 ATC 596.

9. I shall briefly refer to the various citations quoted above to see their applicability to the case before me.

10. In the case of O. Karuppa Thevan, the apex court set aside the order of transfer on the

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ground that the Respondents' children were studying in the school and the transfer should **not** have been effected during the mid academic session. The learned counsel appearing for the ^{appellant} applicant was unable to point out that there was such an urgency in the present case that the employee could not have been accommodated till the end of the academic year. This decision of the apex court is clearly on the basis of specific fact in that case and does not lay down any principle of law which is inconsistent with the law laid down by the apex court. In a series of cases like Shilpi Bose Vs. State of Bihar, Rajendra Roy Vs. Union of India and State of Punjab Vs. Jogendra Singh Dhatt.

10. In the case of Man Mohan Das, the applicant was an active member of trade union. It was alleged that his transfer was on account of Inter-Union ~~Rivalry~~ and thus malafide. While, this contention was not accepted, the Tribunal held that the transfer order was violative of certain ~~and~~ guidelines issued by the Government, and, therefore, could not be sustained.

11. In view of the recent decision of the Hon'ble Supreme Court in the case of Shilpi Bose, and similar other cases, I am of the view that the decision of the Jabalpur Bench in Man Mohan Das case is no longer good law.

12. In the case of K.K. Jindal, the principal bench of the Tribunal inter alia held that when the

applicant was transferred because he was indulging in undesirable activities, that amounts to arriving at a positive conclusion as regards his conduct. Transfer ordered upon reaching such a conclusion cannot be one made merely because of bad reputation but one based on a finding as to the conduct of the applicant which conclusion is not based on any inquiry conforming to Article 311(2) and the provisions governing disciplinary proceedings. This decision in my view is not applicable to the case before me since no conclusion as such regarding the conduct of the applicant has been drawn behind the back of the applicant nor is the order of transfer stigmatic.

13. In the case of G. Suresh Kumar, the transfer order was quashed on the ground that it had been passed in colourable exercise of power based on extraneous considerations. This decision, therefore, has applicability to the specific fact of that case and shall have no application to the case before me unless it is found that the impugned order of transfer has been issued in colourable exercise of powers based on extraneous considerations.

14. Lastly, in the case of S.S. Verma, the order of transfer was quashed by Jaipur Bench of the Tribunal on the ground that the applicant being a member of S.T., he should have been transferred only on account of very strong reasons and such ~~the~~ reasons were held to be non-existent in

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that case. Since the applicant before me is also a member of the S.C., I ^{shall} have presently considered the applicability of this decision to him.

15. 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 apex court has been consistently taking the view that transfer is an incident of service and the courts/tribunals shall not normally interfere with the same. For example in the case of Rajendra Roy, Vs. U.O.I., A.I.R. 1993, SC 1236, the Supreme Court inter alia held that unless an order of transfer is based on malafide ^{in violation} of the rules of service and ~~and~~ guidelines for transfer without any proper justification, the Courts/Tribunals should not interfere with the order of transfer. It was further held that in a transferable post, an order of transfer is a normal consequence and personal difficulty are matters for consideration of the department.

16. Similarly later in the case of State of Punjab Vs. Jogendra Singh Bhatt, A.I.R. 1993 SC 2486, the Supreme Court held that it is entirely for the employer to decide when and where and at what point of time, a public servant be transferred from his present posting and recorded

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its disapproval of courts below interfering with the order of transfer.

17. Also in the case of Shilpi Bose Vs. State of Bihar, 1992 S.C.C.(L&S), 127 the Supreme Court held that a Government Servant holding a transferable post had no vested right to remain posted at one place or other and that the 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. It would, thus be clear ^{to that} of the various pleas taken by the applicant before me to challenge the impugned order of transfer the one which relates to his belonging to S.C. community, do not deserve for consideration. All others relate to his personal difficulties which cannot be allowed to come in the way of the transfer which is stated to be in administrative exigency.

18. The plea that he should not have been transferred as he belongs to the S.C. community, however, stand on different footings. The applicant has annexed an extract of the guide-lines relating to transfer of S.C./S.T. employees issued by the Railway Board. It is very clearly stated in this guide-lines that the employees belonging to the S.C./S.T. community should be transferred very rarely and for very strong reasons only (emphasis supplied). This provision which affords certain

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protection to the S.C./S.T. employees from transfer came under scrutiny of various Benches of this Tribunal. In the case of B.S. Verma Vs. Union of India, 1994 (26) ATC, 313, the Jodhpur Bench of the Tribunal interpreted the said guide-lines issued by the Railway Board as prohibitive of the general or ~~order~~ ordinary transfer in respect of S.C./S.T. employees. Stressing the operative phrases in the guide-lines viz "Very Rarely" and for "Very Strong Reasons Only", the Jodhpur Bench of the Tribunal held that transfer of an S.C./S.T. employee will ^{not} pass the test of validity unless these two ~~crīterian~~ ^{criteria} are satisfied.

19. Similarly the Ernakulam Bench of the Tribunal in the case of T. Abdul Kader Vs. Union of India, 1994(27) ATC, 40, held that the officials belonging to SC/ST community have special previlage, protection and benefits even in regard to posting and transfer, notwithstanding the decisions of the Supreme Court in Gujrat State Electricity Board Vs. Atma Ram Sungopal Pashand, Shilpi Bose Vs. State of Bihar and Union of India Vs. T.P. Thomas. It observed that the decision of the Supreme Court in these cases were in respect of employees belonging to other communities and that the Supreme Court ~~didnot~~ examine the scope of guide-lines in respect of the transfer of S.C./S.T. employees.

20. I had infact, followed the above decisions in deciding the case of Smt. Laxmi Rani Vs. Union of India in O.A. No. 1161 of 1993 decided on 6.10.1994 by which the said O.A. was allowed and the impugned


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order of transfer was quashed. I, therefore, proceeded to apply the same test which I applied in the case of Laxmi Rani to the instant case before me.

21. The respondents made available to me the records dealing with the issuance of the order of transfer in respect of the applicant. On going through the noting, I was fully satisfied that there did exist very strong reasons in functional interest in transferring the applicant from Ghaziabad. This order certainly was not in colourable exercise of powers or for any extraneous considerations. Moreover, the applicant has had a very long tenure at Ghaziabad and, therefore, it cannot be said that the applicant has been transferred too frequently. Thus, both the criteria i.e. "Very Rarely" and for "Very Strong Reasons Only" are fulfilled in this case.

22. In view of the foregoing, I find no merit in this application and the same is dismissed. No order as to costs.

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Member (A)

(n.u.)