

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 8th day of March 1995.

Original Application no. 325 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member.

Kaushlendra Nath Dubey, S/o Shri Bhan Pratap, R/o  
Quarter no. 42 Railway Colony, Dankaur, Shyam Nagar  
Mandi, Sikandrabad, Distt. Bulandshahar.

... Applicant.

C/A Shri D.P. Singh/L.V. Singh

Versus


- i. The Union of India, through General Manager,  
Northern Railway, Baroda House, New Delhi.
- ii. The Senior Divisional Signal and Telecom  
Engineer, Northern Railway, Aligarh.
- iii. The Assistant Signal and Telecom Engineer, N. Rly,  
Aligarh.
- iv. Shri S.P. Sharma, ASI, R.P.F., Dankaur,  
Bulandshahar.

... Respondents.

C/R Shri Bharat Bhushan.

ORDER

Hon'ble Mr. S. Dayal, Member-A

 This is an application under section 19  
of the Administrative Tribunal Act, 1985. The  
application is against order of transfer dated

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21.01.94 passed by Respondent no. 2 transferring the applicant, a khalasi from Dankaur Railway station Bulandshahar, to Bharthana Railway Station, Etawah. The relief sought is by way of quashing of the order dated 21.01.94, directing to the respondents not to transfer the applicant from Dankaur and award of costs of the application. The grounds on which the relief is sought is that the transfer is malafide by way of punishment on the basis of an enquiry conducted by Respondent no. 4 without affording any opportunity to the applicant in accordance with the principles of natural justice.

2. None appeared for the applicant on the day of hearing. Since none had appeared for the applicant on earlier two dates also, the counsel for the respondents Shri B. Bhushan was heard. He drew attention to paragraph 13 of the reply filed by the respondents.

3. The respondents in paragraph 2, 11 and 13 of their reply has alleged that transfer order produced by the applicant as Annexure I to his application is forged. This transfer order at annexure I dated 21.01..94 shows that the applicant Shri K.N. Dubey, working as Khalasi at Dankaur Station was transferred to Bharthana Station. The respondents have produced a copy of what they have stated as the original transfer order at Annexure CA I. It shows

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that one Shri K.N. Dubey working as Khalasi Helper in the Revised Pay Scale of 800 - 1150 is transferred from Ajaybpur to Bharthana. They have claimed in paragraph 11 and 13 that the transfer was purely on administrative grounds and was not punitive. They have admitted in paragraph 5 of their reply that the applicant was working as Khalasi at Dankaur Station and that a charge sheet dated 18.12.93 was issued to him which also shows him as Khalasi at Dankaur.

4. A perusal of the pleadings shows that in response to facts stated in paragraph 4.12 of the Original Application which reads as under:-

"That, once the impugned order is passed by way of punishment then it become necessary on the part of the respondents to comply with the principle of natural justice and an opportunity may be given to the applicant before passing the impugned order dated 21.01.1994, in the present. There is complete non compliance of principle of natural justice and no opportunity whatsoever has been afforded to the applicant by the respondents before issuing the impugned order dated 21.01.1994."

the respondents have given in their reply in paragraph 16, the following facts:-

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\*That the reply to the contents of paragraph 4.12 is that the punishment order is issued after detailed enquiry by enquiry officer against the applicant and he found guilty. Full opportunity is given to the employee to represent his case through his Counsel.\*

5. Thus the respondents have admitted that transfer order was passed as a consequence of the charge sheet and it was certainly by way of punishment. The plea of the respondents that it was a bonafide transfer order for administrative reasons is thus not correct.

6. The applicant in his rejoinder has stated that since he was neither a Khalasi helper in the pay scale of Rs. 800-1150 nor was posted in Ajaibpur, and the respondents as CA I must relate to another employee and not ~~the~~<sup>to</sup> the applicant. He has made a counter allegation that the order filed by the respondents as CA I is a forged and fabricated one. He has reiterated that the transfer was by way of punishment and not for administrative reasons.

7. A conclusion is inescapable on the basis of last two paragraphs that the transfer order was a consequence of enquiry and issuance of charge sheet both in view of the proximity of dates of issuance of charge sheet to the transfer order and the admission of the respondents themselves in paragraph 16 of their reply. Therefore, it was punitive in nature.

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8. In consequence the order dated 21.01.94 pertaining to the transfer of the applicant has to be set aside. The second relief asked for by the applicant of direction to the respondents not to transfer him from Dankaur, However, is not admissible and the respondents would be free to transfer the applicant for administrative reasons <sup>at any point of time</sup>. The parties should bear their own costs.

*Handwritten mark*

*Signature*  
Member-A

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