

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 27 day of February, 1996

Original Application No. 672 of 1995

CORAM:- Hon'ble Mr. S. Das Gupta, A.M. DISTRICT : MIRZAPUR

Gulab Chand S/o Shri Hori Lal,
R/o Bishundharpur,
Head Post Office-Civil Lines,
Mirzapur.

(By Sri S. S. Sharma, Advocate)

..... Applicant

Versus

1. Union of India owning and representing
the Northern Railway - Notice to be
served upon The General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Divisional Manager,
Northern Railway,
Allahabad.

(Sri Prashant Mathur, Advocate)

..... Respondents

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By Hon'ble Mr. S. Das Gupta, A.M.

Under challenge in this application filed under Section 19 of the Administrative Tribunals Act, is an order dated 29-6-1995 by which the applicant has been transferred from Mirzapur to Chola near Ghaziabad. The applicant has sought quashing of this order and also compensation for the injury caused to him by the malicious order of transfer together with special costs of this application.

2. The applicant was transferred from Khurja to Mirzapur on his own request by the order dated 10-8-1983. Since then, he has been working at Mirzapur as a Booking Clerk. He has claimed that his performance at Mirzapur is completely unblemished and there is neither any vigilance case nor any major penalty charge sheet against the applicant, yet the impugned order has been passed transferring him to Chola in total contravention of the Railway Board's direction regarding transfer of employees who belong to SC/ST communities. While the substantive challenge to the impugned order of transfer is on the basis of the Railway Board Circular dated 14-1-1975, which imposes certain restrictions on the authorities in the matter of transfer of SC/ST communities employees, the applicant has also pleaded his personal ^{loss} resulting from such transfer.

3. The respondents have filed a counter reply in which it has been alleged that the applicant, while

working as a Booking Clerk at Mirzapur had committed serious irregularities which were detected during a vigilance check and accordingly action was taken under the DAR and a charge sheet for major penalty has also been issued. It has been further submitted that the irregularities detected being of serious nature, the authorities concerned took a decision to transfer the applicant on administrative ground. It is the contention of the respondents that these constitute sufficient reasons for transferring the applicant out of Mirzapur. The respondents have also alleged that the applicant was also charge sheeted in the past on several occasions ~~resulting in imposition of major penalty, while working at Mirzapur itself.~~

4. The applicant has filed a rejoinder affidavit in which he has denied that there was any irregularity detected during vigilance check. He has also denied initiation of any disciplinary action against him with the serving of a major penalty charge sheet till date.

5. I have heard learned counsel for both the parties and perused the pleadings on record. The applicant's challenge to the impugned order of transfer is based mainly on the instructions contained in the Railway Board letter dated 14-1-1975. This letter enjoins that the employees belonging to the SC and ST should be transferred very rarely and for very strong reasons only. It is not in dispute that the applicant belongs to the SC community. The question which, therefore, squarely falls for ~~determination~~ determination is whether the transfer of the applicant

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~~has~~ can be made in disregard of the instructions contained in the aforesaid letter of the Railway Board and, if not, whether the transfer of the applicant is for very strong reasons. The other ~~plea~~ taken by the applicant do not require serious consideration as these relate to his personal difficulties and it is well settled now that such difficulties will not come in the way of the administration transferring any employee in the exigencies of public service.

6. Several Benches of the Central Administrative Tribunals including Allahabad Bench have consistently taken a view that the instructions contained in the Railway Board letter dated 14-1-1975 imposing certain restrictions on the authorities concerned in the matter of transfer of SC/ST employees are in the ^{nature} of statutory rules, contravention of which would render an order of transfer invalid even if such an order is purported to be in the exigencies of service. This is not in the nature of guidelines, or administrative instructions, the contravention of which would not be fatal to the validity of an order of transfer as laid down by the Hon'ble Supreme Court in the case of Shilpi Bose and many other cases. This view was taken by the Jodhpur Bench of the Tribunal in the case of B.S. Verma Vs. UOI reported in 1994 (1) SLJ (CAT) p.91. Even in earlier case of S.S. Verma Vs. UOI reported in (1993) (23) ATC, 956, the same Bench had taken a similar view. The Ernakulam Bench of the Tribunal had also taken similar view in the case of

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K Ramachandran Vs. DGIR reported in 1994 (27) ATG 650.

The Allahabad Bench of the Tribunal has also taken a consistently concurring view. It will be surprising to mention the case of Shisupal Singh Vs. UOI in OA No.560 of 1994 decided on 3-1-1995 in OA No.560 of 1994. It is, therefore, clear that the transfer of SC/ST employee can be made very rarely and then for very strong reasons only.

As I have not been given the data either by the applicant or by the respondents as regards the number of transfers to which the applicant has been subjected over a period of time, I cannot determine whether the impugned order of transfer can be called a rare one. However, coming to the reasons for the transfer, I find that according to the respondents it was on account of certain irregularities stated to have been committed by the applicant which were detected during the vigilance check. It is also their case that the applicant has been served with a charge memo for such misconduct. The applicant has totally denied these allegations in the rejoinder affidavit. The respondents have not annexed a copy of the charge sheet alleged to have been served on the applicant nor any other document which would indicate that the applicant was being ~~superseded~~ ^{tried} against on account of serious irregularity. In the counter affidavit, it was submitted that the records of the vigilance check would be produced at the time of hearing, if necessary. At the time of argument, the respondents were given time to produce the record of the disciplinary proceedings stated to have been initiated against the applicant. These records, however, were not produced for my perusal. In the absence of these records and in the absence of any document annexed to the counter affidavit

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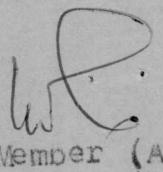
indicating that the applicant was being proceeded against, I am left with only ~~that~~ a bald assertion of the respondents that such was the case and the applicant's assertion controverting the same. ~~Even~~ ^{Reversing the assertion} argument made that the applicant is being proceeded against departmentally for certain alleged irregularities, I do not see any reason why it was necessary to transfer the applicant. If it is necessary to remove the applicant from the scene of his alleged misdeeds so that he does not get an opportunity to tamper with the documents or evidence, the best course would have been to place the applicant under suspension. The respondents, however, had not indicated ~~that~~ ^{u.} there was ~~the~~ need for transferring the applicant out of Mirzapur. They have only stated that the competent authority took this decision as the applicant had committed serious irregularities. In the absence of any reasons for shifting the applicant from the scene of his ^{alleged} misdeeds, the transfer would appear to be a direct consequence of such alleged misdeeds and, therefore, it would assume the ~~character~~ character of penal transfer. It is, therefore, a case where either there are no strong reasons for the transfer of the applicant or if such strong reasons arise out of the alleged irregularities committed by him, the transfer would assume the character of a penal transfer.

7. In view of the foregoing, I am of the view that the impugned order of transfer deserves to be set aside. I, therefore, quash the impugned order of transfer. In case the applicant has already been relieved from his post

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he shall be allowed to rejoin forthwith on that post and the intervening period shall be treated as having been spent on duty with all consequential benefits.

8. I do not, however, consider it necessary to award any costs to the applicant or to order payment of any compensation.


Member (A)

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