

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 806 of 1995

Allahabad this the 3rd day of July 1997

Hon'ble Dr. R.K. Saxena, Member ( J )

Jawahar Lall Mallah, Head Clerk, aged about 39 years,  
S/o Late Dwarika Prasad, R/o Railway Quarter No. 1352 B,  
Manasnagar, P.O. Mughalsarai, District Varanasi U.P.

Applicant

By Advocate Sri A.K. Banerjee

Versus

1. Union of India through General Manager, Eastern Railway, Fairlie Palace, Calcutta.
2. The Chief Personnel Officer, Eastern Railway, Fairlie Palace, 17 Netajee Subhas Road, Calcutta.
3. The Divisional Railway Manager, Eastern Railway, Mughalsarai, District Varanasi.

Respondents

By Advocate Sri Amit Sthalekar

O R D E R

By Hon'ble Dr. R.K. Saxena, Judicial Member

This is an application moved by J.L. Mallah seeking the relief that the order of transfer dated 31.7.1995(annexure A-1) be quashed and direction be given to the respondents not to transfer the applicant till the finalisation of the criminal case pending with Special Court, Lucknow.

2. The facts of the case are that the

applicant is working as Head Clerk at Mugalsarai. Previously he was posted at Asansol and he exchanged the post with a junior employee and lost the seniority of Asansol. It appears that the applicant was arrested red handed on 25.6.93 for accepting the bribe of Rs.300/- from one Omkar Nath Rai for getting his pension papers expedited. The trap was laid by C.B.I. and it was in that trap that the applicant was arrested. He was, however, released on bail on the same day. It appears that the applicant had threatened the witnesses of the criminal case and, therefore, the Superintendent of Police, C.B.I. wrote a letter to the Divisional Railway Manager, Mugalsarai on 19/8/93 that the applicant was threatening the witnesses and therefore, he should be transferred to some other place. Accordingly, the impugned order dated 31.7.95 (annexure A-1) was passed whereby the applicant was transferred from Mugalsarai to Kanchrapara. The applicant made a representation but with no result and, therefore, he approached the Tribunal on the ground that during the pendency of a criminal case or inquiry, the employee <sup>could</sup> cannot be transferred because the railway board had laid down these guide-lines in the circular dated 16.8.62 (annexure A-6).



3. The respondents have opposed the relief claimed by the applicant. It is contended on behalf of the respondents that the applicant was involved in a case of taking bribe. The case is still pending in the court of Special Judge at Lucknow. It is contended that the Superintendent of Police of C.B.I. had written a letter that the applicant was threatening the witnesses and therefore it become necessary to transfer him. It is also claimed that the applicant was allowed to <sup>get</sup> pay the same salary and post and other allowances which were admissible to him at Mugalsarai. It is, therefore, contended that there is no force in the application of the applicant.

4. The applicant has filed rejoinder and stated that by joining the post at Kanchrapara, he would be away by 600 k.m. and thus, he would be put to great inconvenience in attending the case which was lauched against him. It is also mentioned that the allegation of witnesses being threatened, was untrue.

5. I have heard the learned counsel Sri A.K. Banerjee for the applicant and

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Sri Amit Sthalekar, learned counsel for the respondents. The record is also perused.

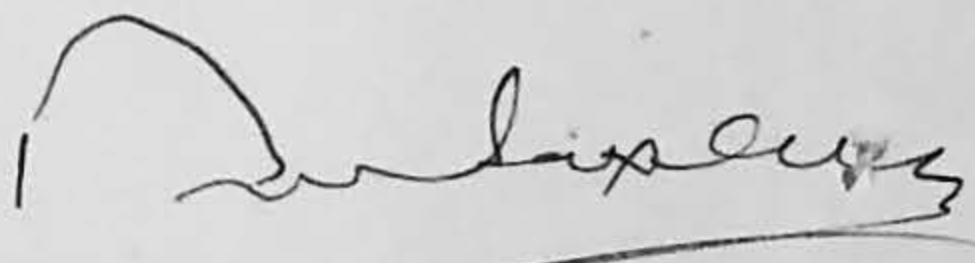
6. There is no dispute that the applicant was arrested in a case of ~~accepting~~ bribe of Rs.300/-. The contention of the applicant is that he was falsely implicated by Omkar Nath Rai. I am not concerned here with the case going on against the applicant. I am also <sup>not</sup> required to record any finding if the case was true or false. This very fact is true that the applicant is facing trial in the court of Special Judge, Lucknow. It is also admitted that the trial is under the Prevention of Corruption Act. The respondents have admitted that the applicant was transferred because the Superintendent of Police, C.B.I. had written a letter that the applicant was threatening the witnesses. The applicant denied the act of threatening the witnesses and in this connection my attention has been drawn towards annexure A-3 in which it was mentioned that the allegations of threatening the witnesses, were not found true. This report was prepared by Assistant Engineer and was addressed to Senior Divisional Engineer. The question arises as to whether the report of the Superintendent of Police, Vigilance should be <sup>given</sup> credence or the report of the Assistant Engineer



should be treated as correct. It may, however, be pointed out that it is not a matter of discussion and I am not required to record any finding whether the applicant had threatened the witnesses or not. It is, however, clear that the provisions under the Code of Criminal Procedure are to the effect that if an accused tries to win over or threaten~~ed~~ them, he can forfeit the right of bail. Here in this case the Superintendent of Police, C.B.I. has specifically written that the applicant was threatening the witnesses and in order to avoid such situation, it would be proper that he was transferred. The respondents then transferred the applicant by impugned order dated 31.7.1995. Thus, the legal position is quite clear that even the right of bail is taken away if the accused goes to the extent of threatening the witnesses. Here ~~is~~ the applicant is banking upon the Railway Board circular dated 16.8.62 (annexure A-6) in which it is mentioned that non-gazetted staff who may be facing investigation for charges meriting dismissal/removal from service ~~or~~ any criminal proceeding, should not be transferred till the investigation or criminal trial is over. This circular is valid in normal circumstances. Here it has been clearly stated by the C.B.I. that the applicant was threatening ~~with~~ the witnesses and

in such a situation law does not favour the concerned person. The result, therefore, is that the normal situation does not remain in existence as soon as this allegation of threatening the witnesses, is made. The circular letter cannot take place of the law of land. Besides, this circular lays down only a guide line and not any absolute right. ~~Own~~ - observation of the guide line cannot make the order of transfer illegal.

7. In view of the facts as discussed above, I conclude that there is no illegality in the order of transfer. The O.A., therefore, stands dismissed. No order as to costs.

  
Member ( J )

/M.M./