

Received

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad This The 26/5 day of May, 2000.

Original Application No. 1547 of 1999

CORAM :

Hon'ble Mr. S. Biswas, A.M.

Smt. Mamta Srivastava wife of Dr. B.B.Lal
resident of New Colony Karkarmattha, Post Office-
D.L.W. Varanasi

..... Petitioner

(C/A Shri A.P. Srivastava & A.K.Jaiswal)

Versus

1. Union of India through the Chairman Railway
Board, Rail Bhavan, Baroda House, New Delhi.
2. Divisional Rail Manager Karmik
N.E.R. Railway, Varanasi.
3. District and Assistant Controller of Stores,
Northern Eastern Railway, Gorakhpur.
4. Divisional Controller of Stores, Northern
Eastern Railway, Varanasi.

..... Respondents

(C/R Shri P. Mathur)

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ORDER

1. The applicant, Srimati Mamata Srivastava Head Clerk posted in Store under the Divisional Store Controller's Office Varanashi has impugned the transfer order dated 03.11.99 by the respondent transferring her from Varanashi to Gonda Diesel Depot with her salary and status intact.

2. It is stated that she came to Varanashi from Gorakhpur vide transfer order dated 09.05.88 on request after losing her seniority - as she wanted to be in Varanashi where her husband is a lecturer in a local college, namely, Jagat P.G. College Varanashi.

3. It is alleged that ever since, she as a woman employee took charge of Store of Central Store, she faced non-cooperation and opposition from the Ward Keeper and his subordinates. R. H. Jadav and Nasiruddin Khalashi who are working in the same office. She reported certain untoward and harrassing activities by these people. They placed large number of chair in her ~~in the~~ room ^{than} could be accommodated creating congestion. They had been permitting outsider in the room, and they had been sexually harrassing her, The authorities paid no heed to ~~it~~ these

4. On 30.09.99, when her husband sister's son came to visit her and had taken a chair, Nasiruddin Khalashi roughed him. Even the ward keeper came forward to order that the chair should be vacant by force. In the ensuing scuffle she was also not spared. Even it was told that she was having illegal relation with the son of her husband' sister. She submitted a complaint on 01.10.99 to the respondent on the incident. When on 02.10.99 she was further harassed, threatened with acid to be thrown on her face by other employe~~es~~, she made a police complaint.

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abruptly ^{to} ~~alongwith~~ ~~she~~

5. On 04.10.99 she was ~~alongwith~~ placed under.

suspension by Divisional Store Controller Varanashi.

To this she submitted a representation to Store Controller Northern Eastern Railway Gorakhpur. On 20.10.99 she prayed

for revoking ~~of~~ suspension. On 20.10.99 the applicant ~~suspected~~ ^{submitted}

~~she~~ mentioned another representation about her sexual harassment.

On 01.11.99 an enquiry under Railway Service Conduct Rule

1966 was initiated. She and Jaiveer Singh Ward Keeper both were asked to appear before the enquiry officer. Her

suspension was revoked on 03.11.99. She was transferred

~~to~~ ^{to} Donda on 03.11.99, and relieved on 04.11.99 whereas,

the enquiry was to be held on 05.11.99. She submitted

~~for~~ representation against the transfer order on 06.11.99,

which has not yet been disposed of.

6. Her children are in the midst of academic session and the transfer would adversely disturb ~~their~~ ^{their} educational prospects.

7. The applicants counsel has impugned the

transfer order as punitive ~~and~~ pending disciplinary

case which is under way. It is malafide and made in

order to stall action against those who had sexually

harrased her in the office. It is also submitted that

~~as she came~~ it is against the rules of transfer ~~from Gorakhpur~~

~~as she came then~~ on request after surrounding her seniority ~~and~~

~~so~~ ^{so} Husband and wife are eligible to be kept in one station. =

That rule is also violated in the transfer. So ~~on~~ ⁶⁻⁶⁻⁹⁹ on account

of malafide and violation of rules the order dt. 3-11-99 is

liable to be quashed.

S. J.

Heard both the parties.

8. The learned counsel for the applicant has cited catena of judgement in ~~support~~ ^{support} of her case

(i) (1991) 15 ATC C.A.T. Bangalore in N.K. Suparna Vs. U.O.I. and others.

(ii) (1996) (1) L.B.E.S.R.-104 - All He is- Smt. Deepa Varshistha Vs State of U.P. and others.

(iii) (1997) (2) L.B.E.S.R-536 (SC)- Arvind Dattataraya Dhande Vs The state of Maharashtra and others.

(iv) (1999) SC 759 Apparel Export Promotion Council Vs A.K. Chopra

(v) (1987) 4 A.T.C. 521 C.A.T. Allahabad Hiralal Dhar Dubey Vs Jokhu Singh and others

(vi) (1991) 1 U.P.L. B.E.C. 217- S.C.- State of West Bengal and others Vs Amrita Lal Singh Roy

(vii) (1996) 2 L.B.E.S.R. 306 (All Navi Ahmad Khan Vs State of U.P. and others

9. Of the above citation, in Anil Kumar D Sharma Vs. Union of India in stead of taking any disciplinary action ~~against~~ ^{against} the enquiry findings, the applicant was simply transferred. Held transfer can not be adopted as a substitute for disciplinary action In the instant case too enquiry was held against the applicant and it was found that she harboured her near relative Manoj Srivastava to come to her ~~office~~ ^{often} ^{Guest} office ~~after~~ and make brawl ^{with the office employer} in this case Nasiruddin who was allegedly roughed up by said Majon Kumar Hence action was recommended against her, The ^{Respondent} learned Counsel confirmed in open court that no action was proposed or initiated against applicant on the basis of the said report.

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10. It is also pertinent to observe that following the incident on 30.09.99, she as well as Nasiruddin were transferred, Nasiruddin was found innocent in the incident and she was recommended for disciplinary action by a 3-men inquiry Committee but the suspension order of both the applicant and her ~~applicant~~ assailant were revoked on 03.11.99. and on the same day she was transferred to Gonda and she was received on 04.11.99, when the enquiry was to be held on 05.11.99. As till today no action has been initiated against her, the transfer has after revocation ^{of suspension} in my view, is malafide and punitive in nature, when nothing survives ^{way} ~~material~~ by of any actionable ~~nature~~ as in the report to pursue, the transfer has ~~amounted~~ ^{amounted} to be an administrative vindictiveness.

11. The applicant has come to Varanasi on request after surrendering her seniority to join her husband, who is a lecturer in a local college, her case for transfer ~~and~~ ^{out} of the same station warranted to be considered with better circumspection. If she was mischievous and ~~had been~~ ^{than bowering} undesirable relatives inside the ~~same~~ office like Store, she could have been defused from doing that by a local shift than ~~transfert~~ ^{of} station.

12. Her allegation on sexual harrassment in work place seems to have ~~to be~~ ^{been} looked into by ~~youth~~ ^{Youn} uppidon committee for a lady such complaint can not be discarded as ~~merely~~ ^{merely as} a tactic ~~as~~ which the authorities seemingly have done.

13. On the one hand the suspension order was revoked, it is not understandable where did the authorities at the same time found time to apply on her transfer unless it was prejudged. In the process even today her representations have not been disposed of

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14. The counsel for the respondent has contested the D.A. ^{on} and the ground of administrative exigency. However, in Deepa Vashisth Vs state of U.P. case above, it was held that "husband and wife posted of the same station should not be transferred" Shri P. Mathur pointed out that this rule was not upheld in union of India Vs N.P. Thomas case ^{Q 2} Dinesh Pawar Vs U.O.I. Case. In Hira Lal Dhar Dubey Vs Jokhu Singh and others, it was held that a transfer cannot be used as a punitive handle to ~~report~~ ^{harm} _{S 2} a family. In this case the applicant is transferred in the mid session disturbing the educational interest of her children and also separating wife from husband, which is also against the policy of transfer. Though it is not a sealed matter, the question has assumed very much importance in the present contest. Administrative exigency has to be exercised in ~~in~~ ^{proper} the frame work of policy and definitely in an atmosphere of impartiality and ~~absence~~ ^{free from} _{S 2} malafide.

15. The citation of the learned counsel that the transfer can be challenged only on the ground of malafide and violation of transfer rules, do not protect the present transfer order. The case has been made to justify the transfer as ^{out} ~~and~~ of administrative exigency which ~~ceased~~ to be there when the transfer order was issued despite revocation of the suspension order on the same day. This is a clear case of non application of mind, when it was not even thought proper to take disciplinary action - In the situation a suspicion ⁱⁿ ~~hangs~~ the air on the complaint of sexual harassment at ~~work~~ place. (2 Apparel Export Promotion Council Vs. A.K. Chopra Case (SC) is quite up to the context.

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16. In view of above, the O.A. is allowed on merits.

The impugned transfer of the applicant to Gonda vide order dated 03.11.99 is quashed with consequential reliefs like regularisation of her leave, payment of arrear salary as per leave rules. She may be posted in any other local office in Varanasi with her station and salary in tact.

No costs.

S. D.
A.M.

/h.k./