

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Dated Allahabad: This 18 day of August 1999.

Present:- Sri Rafiquddin, J.M.

Original Application No. 835 of 1999.

T.A. Khan son of Munauwar Husain Khan,
resident of 42/N Singhatpura, Post Kurra Ghat,
Gorakhpur.

. . Applicant.

(Through Sri S.K. Om, Adv.)

Versus

1. Union of India through Chariman,
Railway Board, Rail Bawan,
New Delhi.
2. Chief Personnel Officer, N.E. Railway,
Gorakhpur.
3. Divisional Railway Manager, N.E.
Railway, Ashok Marg, Lucknow.
4. Senior Divisional Commercial Manager,
N.E. Railway, Ashok Marg, Lucknow.

. . . Respondents.

Through Sri A.K. Gaur, Adv.

Order (Reserved)

(By Hon'ble Mr. Rafiquddin, Member (J.)

The applicant has filed the present O.A.
for quashing his transfer order dated 21st July
1999 from the post of Chief Reservation Supervisor,
North Eastern Railway Basti to South Eastern
Railway Calcutta on the same post. He has pending

final decision of the D.A., ² ~~has~~ prayed for staying ~~asked~~ the operation of the impugned order and for a direction to the respondents not to interfere in his peaceful working as Chief Reservation Supervisor N.E. Railway Basti.

2. In brief the facts of the case are that the applicant is working as Chief Reservation Supervisor North Eastern Railway Basti. It appears that while he was on medical leave from 06th April 1998 to 15th April 1998. He was served suspension order on 13th April 1998. Later on, a chargesheet was submitted against him by the Vigilance Department of the respondents in which it was alleged that the applicant was involved in a mal practice of generating wrong P.N.R. tickets on other E.C.R.C's. I.D. by misutilizing his official capacity at Basti with an intention to cheat the Railways. Besides, it is also alleged that the applicant defrauded the Railways for wrongful and personal gain by way of obtaining refund of tickets.

3. It is alleged that on 6th May 1999 the Director Vigilance sent a ^{letter} to General Manager (Vigilance) N.E. Railway Gorakhpur directing him to transfer the applicant to South Eastern Railway after revoking his suspension order. In pursuance of the aforesaid letter the applicant has been transferred.

4. The transfer order has been challenged on behalf of the applicant on the ground that it has been passed without any application of mind and merely on the directions of the Director of Vigilance. It is also alleged that the decision to

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transfer the applicant has been taken by Director of Vigilance who has no jurisdiction to give any direction about his transfer hence the impugned order is without jurisdiction. The impugned order is punitive in nature and has been passed merely to punish him on the basis of false chargesheet submitted against him.

5. Since the Disciplinary proceedings have been started against the applicant, hence in case of his transfer to Calcutta it ~~would~~ cause him hardship and inconvenience to come from Calcutta because he will have to come to participate in the proceedings from Calcutta. It is further claimed that the education of his children would also suffer because they are getting education at Gorakhpur. Besides, the applicant has no knowledge of Bengali and Oriya languages which are generally spoken in south eastern railway region, he will have to face great inconvenience in dealing with the public.

6. However, the main ground for assailing the impugned order is, the applicant being a Class III ^{he} employee/can not be transferred from one Railway to another and as such the impugned order is illegal and arbitrary.

7. On behalf of the respondents, the transfer order has been justified ^{because} under the provisions of Para 226 of the Indian Railways Establishment Code Vol. I ~~in which~~ it is stated that a Railway Servant even if he belongs to Group 'C' can be transferred from one Railway to another Railway Establishment including a project in or out of India. It is further contended that the impugned order has been passed in administrative exigencies

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because the applicant is involved in a serious major fraud case of refund of railway tickets. It is further stated that the impugned transfer order of the applicant has been duly approved by the Railway Board.

8. I have heard the arguments of the learned counsel for the applicant and the Respondents and perused the whole record of the case.

9. It will be pertinent to mention at the very outset that the legality of a transfer order can be challenged before a Court only when there is any violation of statutory rules and if the transfer order suffers from malafides. In the present case admittedly the applicant has not pleaded any malafides on the part of respondents. As regards the personal inconvenience viz. the education of children and lack of knowledge of the local languages by the applicant, ~~XXXXXXXXXXXX~~ in my opinion, these are not relevant considerations for holding a transfer order illegal. The applicant may put up these grievances before the Railway Administration and it is the Administration who can look into the matter. This Tribunal is not sitting as ^{appellate} ~~XXXX~~ authority to look into justification of the transfer order because the transfer order is an administrative exigency and incident of service.

10. However, much emphasis has been given on behalf of the applicant on two points firstly the applicant being a Class III servant can not be transferred to other Railway Zone in which he was initially appointed and secondly the impugned order has been passed without application of

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mindly only at the instance of Director Vigilance. The learned counsel has urged before me that these are sufficient grounds to hold the impugned order illegal and its operation should be stayed.

11. The learned counsel has drawn my attention towards the clause 9 of the Offer of appointment of the applicant dated 27.7.83 Annexure No.1 in which he was asked to be prepared to accept the offer of appointment at any station on the N.E. Railway and he was asked to indicate in his acceptance that he would abide by this condition. According to the learned counsel for the applicant this is ^{the terms on} one of the contract between the applicant and the respondents hence the respondents are bound not to transfer the applicant outside the N.E. Railway because the applicant had accepted this condition only. I do not find any force in this contention because this offer of appointment can not be said to be a contract because the applicant is a Government of India employee and his service conditions are governed by Railway Service Rules and Regulations. In this connection on behalf of the respondents reliance has been rightly placed on para 226 of the Indian Railway Establishment Code Vol. I ^{which} is as under:-

" Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have not claim as of right for transfer to another railway or another establishment. In the exigencies of service however, it shall be open to the president to transfer the railway servant to any other department or railway or railway establishment including a project

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in or out of India. In regard to Group C and group D railway servants, the power of the president under this rule in respect of transfer, Within India, may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."

It has nowhere been stated on behalf of the applicant that the provision of this Code are not applicable on the service condition of the applicant.

It is evident from the aforesaid provisions that Class III Railway Servants can^{also} be transferred to any Railway Establishment even outside India.

Thus there is no violation of any provision of statutory service rules if the applicant has been transferred from North Eastern Railway to South Eastern Railway.

12. It has been further urged that the impugned order has been passed at the instance of Director General of Vigilance N.E. Railway and as such it has not been passed after proper application of mind by the concerned Railway authority namely Divisional Railway Manager(Personnel)Lucknow. On this point it has been pointed out that the Director Vigilance (T)II Railway Board vide his letter dated 6th May 1999 (Annexure IV) addressed to the General Manager Vigilance N.E. Railway Gorakhpur while forwarding draft chargesheet for major penalty against the applicant, had also recommended that the applicant should be transferred to South Eastern Railway on administrative ground after revocation of his suspension. It has been contended that the impugned order has been passed in compliance of the^{aforesaid} order of the Director Vigilance.

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It would however be noted that it has been clearly mentioned in this letter that it was duly approved by the Board's M.S. and M.T. Thus it can not be said that the order has been passed merely on the recommendation of Director of Vigilance.

13. The undisputed fact of this case is that the applicant has been facing departmental proceedings for committing alleged fraud and cheating in respect of railway money. Under these circumstances if the applicant has been transferred, prima facie transfer order can not be said to be on invalid grounds. The learned counsel for the respondents has stated during the course of arguments that the entire enquiry proceedings will also be transferred to South Eastern Railway hence the question of the applicant ~~for~~ coming from Calcutta to Basti does not arise for this purpose.

14. It has also been pointed out on behalf of the respondents that the applicant has already been spared and his name has been struck off the roll of N.E. Railway. He has filed copies of the roll and spare order in support of its case.

15. Considering the facts and circumstances of the case, I am of the opinion that it is not a fit case for staying the operation of the impugned order during the pendency of the case and the O.A. for staying his transfer is accordingly dismissed.

There shall be no order as to costs.

Dated August 18 1999.

Rafiqul Hasan
Member (J.) 18.8.99

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