

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.148 of 2003.

Allahabad, this the 29th day of May, 2006.

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. A.K. Singh, Member (A)

Hari Shankar Tripathi,
Son of Harsu Prasad Tripathi,
Resident of D-25/21,
Ganga Mohal Bengali Tola,
Dashashwa Megh,
Varanasi - 221001.

...Applicant.

(By Advocate : Sri Vishnu Gupta)

Versus

1. Union of India, through General Manager,
East Central Railway, Hazipur, Bihar
2. Addl. Divisional Railway Manager,
East Central Railway, Mughal Sarai.
3. Sr. Divisional Commercial Manager,
East Central Railway, Mughal Sarai.

...Respondents.

(By Advocate : Shri S.K. Anwar

O R D E R

By Hon'ble Mr. A.K. Singh, A.M. :-

OA bearing No.148 of 2003 has been filed by the applicant Hari Shankar Tripathi (of the address given in the OA) against order dated 24.7.2002 passed by Divisional Commercial Manager, Mughal Sarai by which the applicant has been removed from service as well as order dated 5.12.2002 passed by Additional Divisional Manager, East Central Railway, Mughal Sarai rejecting the appeal of the applicant vide order in appeal dated 14.8.2002.

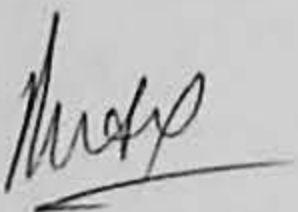
2. Brief facts of the case are that the applicant was appointed to the post of Ticket Collector on a substantive basis on 12.5.1963 and was later on promoted as Chief

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Inspector, Tickets Mughal Sarai in the year 1993. He was suspended by an order dated 18.11.1993. He approached the Tribunal by preferring an OA No.1515 of 1998 before it and on the direction of Tribunal he was served with a charge sheet on 11.2.1995 bearing Com/Tkt Ckg/1172 Jn/MCS/1993 and his suspension was also revoked by the Competent Authority before the issue of charge sheet in question. The applicant submitted his written defence reply against the charges levelled and respondents did not take any action against him presumably for the reason that the charges levelled were not established.

3. Respondents, however, issued another show cause notice upon the applicant directing him to explain why he remained absent from duty from 14.4.1994 to 11.2.1995. The applicant submitted his reply to the notice and no action was taken against him. He was however directed "to give his attendance" in the office of Divisional Commercial Manager, Eastern Railway, vide their letter dated 24.11.1995. Subsequently, the Divisional Commercial Manager, respondent No.3 cancelled the charge sheet dated 7.4.1994 issued to the applicant vide his order dated 28.8.1997.

4. The applicant, however, received another charge sheet on 23.2.2000 by Registered Post to which he submitted his reply vide his letter dated 28.2.2000 and 21.9.2000. As no Enquiry Officer was appointed till then, he made representation to the authorities to allot regular duties to him and to pay half wages to him from 8.11.1993 to March, 1994 and full wages from 1.4.1994 and onwards with annual increment etc. but the authorities did not respond to his requests.



5. In response to applicant's request for allotment of duty, respondent No.3 posted him to Gaya Division, on transfer from Mughal Sarai on stationary duty for supervising the work of T.C. Squad.

6. Subsequently, the applicant was served with another charge sheet No.Com/Tkt Checker/Absent/MGS/2001 dated 28.9.2001 calling him to explain why did not join his duties at Gaya in pursuance of the transfer order dated 14.3.1997. The applicant submitted his reply to the same and denied the charges. An Enquiry Officer was appointed, who, after completion of proceedings, submitted his enquiry report dated 21.5.2002 to respondents. On receipt of the enquiry report, respondent No.3 i.e. Senior Divisional Commercial Manager, Mughal Sarai passed an order removing the applicant from service vide his order in original dated 24.7.2002. The applicant filed an appeal against the said order vide his representation dated 19.8.2002 but the same was rejected vide order-in-appeal dated 5.12.2002. Being aggrieved by the same, the applicant has filed the OA in question on the following grounds :-

- (1) The order of disciplinary authority is based on surmises and conjectures and consequently, is illegal.
- (2) Transfer order dated 13.3.1997 was illegal and malafide, without jurisdiction and hence void.
- (3) No show cause notice was issued to the applicant before awarding the major punishment of removal from service.
- (4) No witnesses were examined by the department before the enquiry officer. Even the veracity of the documents relied

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upon were also not subjected to examination and test and hence the enquiry report is illegal and void.

7. On the basis of the above, the applicant has sought the following relief as per OA in question:-

- (i) **To set aside and quash order dated 5.12.2002 passed by respondent No.2 and order dated 24.7.2001 passed by respondent No.3**
- (ii) **To direct the respondents in consequence thereof to reinstate him in service till the date of his superannuation i.e. till 31.7.2002 and in consequence thereof, to pay entire arrears of salary, and other consequential benefits.**

8. Respondents, on the other hand have opposed the OA on the following grounds:-

- (i) That even in case of the first charge sheet issued to the applicant, an Enquiry Officer was appointed and the applicant appeared before the Inquiry Officer and took part in the proceedings. The Enquiry Officer, submitted his report, on conclusion of the same but as there were some defects in the Memorandum of charges, the same was withdrawn with the approval of the Disciplinary Authority and a fresh charge sheet was issued. Hence, the question of taking any action against the applicant on the basis of the initial charge sheet issued to him does not arise.
- (ii) During the period of suspension, the applicant remained on unauthorised absence from 13.4.1994 to 14.4.1994. As such the order relating to revocation of his suspension had to be sent at his home address which was received by him on 11.2.1995.
- (iii) Applicant was transferred to Gaya as C.I.T. vide order dated 13.3.1997. The order in question was received by him on 14.3.1997. He did not join his duties at his place of posting and had been absenting himself unauthorizedly. Hence, another charge sheet for major penalty for disobedience of the order, in question, was issued to him.

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- (iv) Since the applicant had been absent from duty unauthorizedly for a long time, there is no question of making any payment to him.
- (v) The applicant was given full opportunity to defend his case by the Inquiry Officer after the issue of charge sheet for major penalty to the applicant.

9. The applicant appeared before the Inquiry Officer and participated in the proceeding. The Inquiry Officer, after conclusion of the inquiry proceedings submitted his report, which was only sent to applicant for comments. The Disciplinary Authority, on receipt of his defence note, and on consideration of the full facts and circumstances of the case ordered removal of the applicant from service. The appeal of the applicant against the decision of the Disciplinary Authority was also considered by the Appellate Authority i.e. Respondent No.2, who applied his unbiased mind to the facts of the case and passed a speaking order rejecting the appeal of the applicant.

10. Hence, Respondents submit that the Disciplinary Proceedings have been conducted against the applicant in full compliance of the Principles of natural justice and the orders of respondent No.2 & 3 do not suffer from any infirmity.

11. On the basis of the above, respondents pray for dismissal of the OA in question as devoid of any merit.

12. The applicant and respondents were heard on 27.3.2006 through their respective counsels. In their oral submissions before us, they have only reiterated the arguments submitted by them, as above.

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13. We have given our thoughtful consideration to the submissions made on behalf of the applicant and as well as respondents, and have also perused the records of the case. We find that the main arguments advanced by the applicant, in support of their case is that the enquiry proceedings were not conducted in accordance with the prescribed procedure and the law laid down in this behalf. Their first argument is that no witnesses (which were) relied upon in framing the charges against him were either examined by the presenting officer or allowed to be cross-examined by him during the enquiry proceedings. Before we proceed to assess the relative merits of the arguments advanced by each side, we will like to record in brief the charges leveled against the applicant as per Memo No. काम/टिकट चेकिंग/अनुपस्थित/मुगल/2001 dated 28.9.2001. As the earlier chargesheet issued to applicant vide memo No.Com/Tkt-Ckg/1172 Dn/MG-S/93, Moghalsarai dated 28.8.97, "were closed and have no bearing on this case", as observed by the appellate authority in his order dated 5.12.2002, the same has to be kept out of consideration while making a judicial review of the disciplinary proceedings conducted in the case and the final orders passed, on conclusion of the proceedings by the Disciplinary as well as appellate authorities, as no adverse orders were passed against the applicant in respect thereof and the respondents were fully competent to close the case against the applicant, on receipt of his written defence reply and on being satisfied with the same.

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14. As per chargesheet, bearing No. काम/टिकट चेकिंग/अनुपस्थित/मुगल/2001 dated 28.9.2001, the following charges are leveled against the applicant which is as under:

"Article II मुख्य टिकट नि० प्रशासन पूर्व रेलवे, गया के पत्र सं० 13 टी० सी०/गया/2000 दिनांक 23.08.2000 के अनुसार श्री त्रिपाठी अपने स्थानांतरण आदेश को प्राप्त करने के बावजूद गया में अपने कार्य पर उपस्थित नहीं हुए और लगातार दिनांक 18.3.1997 से आज तक अनाधिकृत रूप से फरार चल रहे हैं।

श्री त्रिपाठी को कार्य पर उपस्थित होने के लिए दैनिक जागरण वाराणसी दिनांक 19.11.2000 के माध्यम से सूचित किया गया कि वे दिनांक 27.11.2000 तक कार्य पर उपस्थित हो अन्यथा उनके विरुद्ध विभागीय अनुशासनात्मक कार्यवाही किया जायेगा लेकिन वे अपने कार्य पर उपस्थित नहीं हुए।

श्री त्रिपाठी के उक्त आचरण उनके अवज्ञा एवम् लापरवाही पूर्ण कार्य का द्योतक है और यह दर्शाता है कि वे अपने कार्य के प्रति सजग नहीं हैं इस प्रकार का कार्य करके श्री त्रिपाठी ने कार्य के प्रति गम्भीर लापरवाही बरता।

"Article III श्री त्रिपाठी का उक्त कार्य रेल सेवा आचरण 1966 के नियम 3 के उप नियम (1) (2) (3) का स्पष्ट उल्लंघन है।

15. We find that the first main objection raised by the applicant against his order of removal dated 5.12.2002 and order-in-appeal dated 14.8.2002 is that the transfer order issued to him vide order dated 17.3.97 transferring him from Moghalsarai to Gaya was illegal and malafide and without jurisdiction and hence void. This argument of the applicant pales into insignificance on two accounts. In the first place, if the transfer order in question, as alleged by the applicant, was malafide, he should have filed a regular O.A. before this Tribunal, after exhausting the departmental remedies available to him. The transfer order is dated 14.3.97. There is no evidence on record to suggest that he had made any representation against the transfer order, in

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question, before the Competent Authorities. If he has not contested the order in question before the departmental authorities or filed any representation before them or against the same, he can not face the same before this Tribunal and that too, at this belated stage. The raising of this issue after a lapse of nearly six years is clearly barred by limitation under section 21 of the Administrative Tribunals Act, 1985. Section 21 of the A.T. Act reads as under:-

"21. Limitation - (1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of Sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires latter."

16. It is clear on record, that no appeal or review against the aforesaid transfer order has been filed by the applicant within a period of one year from the

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relevant date i.e 17.3.97 i.e. the date of issue of the transfer order in question. The applicant could have filed an O.A. before us latest by 17.3.1998 as per the limitation provided under section 21 of the aforesaid Act. Hence the transfer order, in question has achieved finality after the date. Hence the applicant cannot raise any objection against the same at this stage.

17. Moreover, it is a settled law that transfer is an incident of service. In the case of E. Royappa Vs. State of Tamilnadu (AIR (1974) SC 555), Apex Court has held as under:

"It is an accepted principle that in public service, transfer is an incident of service. It is also an implied condition of service. The Government is the best judge to decide how to distribute and utilize the services of its employees...."

In case of Mrs. Shilpi Bose and others Vs. State of Bihar and others (AIR (1991) SC 53). Hon'ble Supreme Court reaffirmed its earlier view and held "A Government servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to another. Transfer orders issued by the Competent Authority do not violate any of his legal rights". In another case of Union of India and others Vs. S.L. Abbas, AIR (1993) SC 2444, the Apex Court holding the same view, held that "who should be transferred where is a matter for the appropriate authority to decide. Unless the order is vitiated by malafides or is made in violation of statutory provisions, the court cannot interfere with it". The Apex Court has reiterated the

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same view in National Hydro Electric Power Corporation Ltd. Vs. Shri Bhagwan and another {Reported in AIR 2001 (91) FLR 259} and in State of Madhya Pradesh and others {Reported in JT 1995 (2) SC 498}.

18. No malafides can be attributed to respondents NO.2 and 3 in passing the transfer order in question. If they had harbored any malice or prejudice towards the applicant, they would not have closed the Memorandum of charges bearing No.Com/Tkt-Ckg/1172 Dn/MGS/93 Mughalsarai dated 28.8.1997 levelling more serious allegations against the applicant after receipt of a written defence reply from him. Facts on record clearly suggest that authorities have been magnanimous and compassionate towards the applicant. It is also not the case of the applicant that respondent had no authority to issue the transfer order in question. The applicant, in that case should have substantiated his by providing necessary evidences in support of the same. This has not been done and hence any allegations levelled by the applicant against the transfer order that the same was illegal and malafide does not hold water and is accordingly rejected.

19. As regards, the objection raised by the applicant that no show cause notice was issued to him before awarding the major punishment of removal, the respondents have clearly and convincingly rebutted the same as per Para 13 of their counter affidavit dated 23.8.2003, which reads as under :

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".....After giving proper opportunity to the applicant the Enquiry was conducted and the Enquiry Officer submitted his report to the Disciplinary Authority. A copy of the said report was sent to the applicant for his comment and opinion. He submitted his defence note and then the Disciplinary Authority passed order for removal from service. It was served to him by Registered Post which was received by him."

20. In view of the above, it clearly transpires that the Disciplinary Authority before passing the order of removal of the applicant from service, had sent a copy of the inquiry report submitted by the inquiry officer on conclusion of the proceeding to the applicant, for his comment and opinion.

21. The defence note of the applicant dated 4.7.2002, in response to the same, is on record and is enclosed as per Annexure-14. Hence, this objection too, cannot be sustained.

22. It is also seen that the Disciplinary Authority has fully applied his mind before passing the impugned order of removal of the applicant from service. The Disciplinary Authority has recorded cogent and convincing reasons in passing the aforesaid order. The said order reads as under:-

"I have carefully gone through the enquiry report and the documentary evidence adduced with the report. On going through the enquiry report, the undersigned feels that Shri H.S Tripathi has failed to carry out legitimate order of transfer, which was purely on administrative ground and has been absenting himself from duty since 18.3.1997. The grounds for his not joining clearly suggests his lack of interest in joining his duty. The contention of both the C.O and his defence Helper that before the finalization of the earlier senior penalty he should not have been transferred does not hold good as in no case he was being sent out of this Division/Railway both. To add to this, the C.O was advised by DRM/MGS

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vide letter NO.E/CIT/MGS/98 dated 13.1.1998 to carry out his transfer order prior to his case being turned down which he could have been granted at his place of joining contradicts his earlier statement that he should not have been transferred before finalization of earlier chargesheet.

The present SF-5 was issued to him for his absence since 18.3.1997 and is altogether separate from the earlier chargesheet and he has tried to link issues which were not at all concerned with the present case.

From the above, the undersigned is of the opinion that Shri Tripathi has failed to carry out legitimate order and has been absenting since 18.3.1997 whereby the administration has suffered as he kept engaged one post of Sr. Supervisor. Therefore, the C.O is found guilty of the charges alleged against him and is therefore removed from service".

Accordingly, you are hereby removed from service with immediate effect".

23. The order of the Appellate Authority rejecting the appeal of the applicant is equally speaking and records the broad reasons for rejection of the appeal is as under:

"I have gone through the full case. Sri H.S. Tripathi has tried to link previous SF.5 charge-sheets issued to him. These charge-sheets were closed and have no bearing on this case.

Sri Tripathi was transferred to Gaya. Appeal against transfer is no ground not to carry out the orders. Also request for transit leave was not turned down. It is clear that he did not carry out the transfer on flimsy grounds which is in violation of service rules.

In view of the above I find that he has been correctly held responsible and the punishment stands."

24. As regards the last argument advanced by the applicants, that no witness was examined from the department side and, therefore, even the documents relied upon were not proved and hence the inquiry report is illegal and void, and consequently the applicant's order of removal of service on that basis, is illegal and void, we find from the records, that



the applicant has never denied the charges levelled against him that he failed to carry out the legitimate and lawful order of transfer dated 14.3.1997 from Mughalsarai to Gaya issued by Competent Authority. Hence in our considered view, there was no need for holding a regular inquiry into the matter. Non-denial of a charge amounts to acceptance of the same. As per our ancient law of evidence silence in face of a specific allegation charge amounts to admission of the same.

"मौनम् स्वीकार लक्षणम्"

Raising extraneous issues here and there relating to a previous chargesheet etc. which has no relevance to the main issue and this main issue does not alter the position. The main charge against the applicant that he has received his transfer order on 14.3.97 but he did not join at the place of transfer i.e. Gaya, has gone unrebutted and uncontested on record and hence is clearly established on record".

25. In face of clear non-denial of the aforesaid charge, by the applicant, the same is to be held as proved. It is settled law, that a charge which remains uncontested is held as proved.

26. Moreover, minor technicalities raised here and there by the applicant only tend to impede the course of justice and hence have to be ignored. In State Bank of Patiala and others Vs. S.K. Sharma [Reported in JT 1996 (3) SC 722] the apex court has enunciated the

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following principles, which will also apply to the facts of the present case as well.

"Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that he technicalities and irregularities, which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise".

{Para 10.10}

Hence, the extraneous objections raised by the applicant also do not stand the test of judicial scrutiny. Last of all, we also find that the punishment of removal imposed on the applicants, for deliberate disobedience of a lawful order of transfer issued by a Competent Authority, is also neither excessive nor grossly or shockingly disproportionate to the gravity of charge, held as proved.

27. In the case of Pearlite Liners (P) Ltd. Versus Manorama Sirsi [Reported in 2004 SCC (L&S)453]. Apex Court held as under:

".....Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. The plaintiff has neither pleaded nor has there been any efforts on her part to show that the impugned transfer order was in violation of any term of her employment. In the absence of a term prohibiting transfer of the employee, prima facie, the transfer order cannot be called into question.

Further, it is to be considered that if the plaintiff does not comply with the transfer order, it may ultimately lead to termination of service. Therefore, a declaration that the transfer order is illegal and void, infact amounts to imposing the plaintiff on the defendant inspite of the fact that the plaintiff allegedly does not obey order of her superiors in the management of the defendant company. Such a relief cannot be granted.

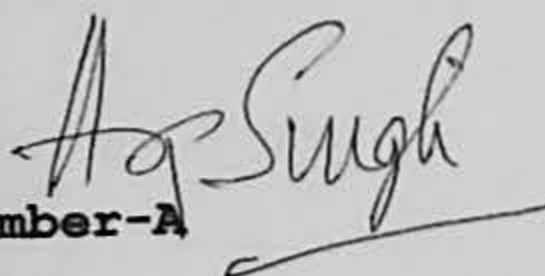
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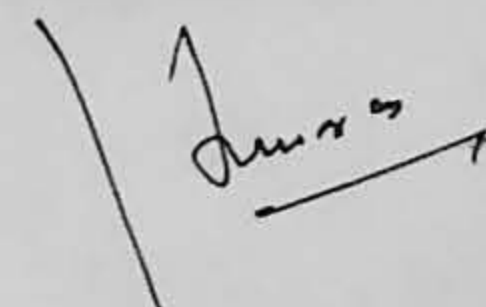
The plaintiff has not complied with the transfer order as she never reported for work at the place where she was transferred. As a matter of fact, she also stopped attending the office from where she was transferred.

Non compliance with the transfer order by the plaintiff amounts to refusal to obey the orders passed by superiors for which employee can reasonably be expected to take appropriate action against the employee concerned".

28. Facts of the present case are exactly similar to the one quoted above and hence the principles enunciated in the above judgment will squarely apply to the facts of the present case as will.

29. On the basis of the above, we have come to the conclusion that O.A., in question is devoid of any merit and hence deserves to be dismissed. We dismiss the O.A. accordingly.


Member-A


Vice Chairman.

Manish/-