

(9)
Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

ALLAHABAD.

ORIGINAL APPLICATION NO. 758 OF 2006.

ALLAHABAD THIS THE 15 DAY OF Feb. 2007

HON'BLE MR. JUSTICE KHEM KARAN, V.C.

Sriniwas Dubey, Son of Sri Kailash Nath Dubey, R/o Village Sonaharia, Post Office Chochakpur, District Ghazipur.

.....Applicant

(By Advocate: Sri K.K. Mishra/Sri A. Trivedi)

Versus.

1. General Manager, N.E. Railways, Gorakhpur.
2. Chief Commercial Manager, N.E. Railway, Gorakhpur.
3. Divisional Commercial Manager-I, N.E. Railway, Varanasi.
4. Divisional Railway Manager (Personnel), N.E. Railway, Varanasi.

.....Respondents

(By Advocate: Sri Anil Kumar)

O R D E R

The applicant is challenging transfer orders dated 14.6.06 and 23.6.2006 (Annexures 1 and 2) by which he has been shifted from Varanasi Division of Northern Railway to Izzatnagar, Bareilly Division of the same Railways in the same capacity.

2. He joined in Varanasi Division as Claim Tracer in the year 1991 on transfer from some other place. There is no dispute that in the year 1998, he was deputed to work as Vigilance Inspector in Vigilance Organization of the Railways and after few years, was repatriated in December 2004. He says that later on in May 2005, he was transferred from Varanasi to Balia on the post of Commercial Superintendent. On 3.1.2006, Divisional Commercial Manager (I) Varanasi placed him under suspension in contemplation of some enquiry, which he challenged before this Tribunal at Allahabad by filing O.A No.564/06. A perusal of order dated 2.6.2006 passed by this Bench in that O.A. No.564/06 would reveal that the main ground for challenging the suspension order was CVC Circular No.2005/VII/CVC/1/8 dated 24.6.2005 (Annexure 3 is its copy). It provided that before taking any Disciplinary Action against an employee or before placing him under suspension against any such employee who was working in the Vigilance Cell or who worked in the past in that Unit within a period of three years, prior to consultation of CVC was necessary. It transpires from perusal of para 15 (A) of

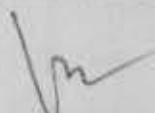
✓

(b)

reply dated 25.8.2006 that applicant was given chargesheet on 18.5.2006 but the same was cancelled vide order dated 26.7.2006, suspension order dated 3.1.2006 was also revoked vide order dated 21.6.2006. What the applicant alleges is that on the one hand, the suspension was revoked and on the other hand, applicant was transferred simultaneously from Varanasi Division to Izzatnagar Division? and so the order of transfer is actuated with malice and is punitive in nature. It is said that when the respondents thought that no success was possible in departmental matter, have punished him by shifting from Varanasi to Bareilly Division. It is also said that on joining at Bareilly, the applicant is likely to lose his seniority etc. Attempt has also been made to say that such transfer pending the departmental proceedings was not possible in view of Circular dated 25.3.67 issued by the Railway Board.

3. The respondents have tried to say that transfer orders dated 14.6.2006 and 23.6.2006 cannot be interfered with, merely on the ground that the same is in breach of any executive instructions such as instruction of Railway Board. They have also tried to say that transfer can also not be interfered with by the Courts or Tribunals on the ground that the same has been affected during the pendency of Departmental proceedings and in this connection, reference has been made to the decision of Mumbai Bench of this Tribunal in B.K. Katakar and others Vs. Union of India and Union of India and others Vs. Vilas Ramesh Chandra Tarhate & Ors 2003 (Volume 1) ATJ 454. They have, however, clearly averred in paras 8 and 11 of the reply that as a result of preliminary enquiry into the allegations against the applicant not only the suspension was revoked but the chargesheet was also cancelled. They want to say that cancellation of chargesheet had nothing to do with the order of transfer. Mrs. Shilpi Bose AIR 1991 SC page 532 page 4 has specifically been referred to in para 15 so as to say that transfers should not generally to be interfered with by the Courts or Tribunals.

4. I have heard the parties counsels quite at length and have perused the entire material on record. No doubt the settled legal position in such matters is that the Courts or Tribunals should be very-very slow in interfering with the transfer orders. In Mrs. Shilpi Bose (Supra) case, the Apex Court observed that transfer orders made in public interest or for administrative reason should not be interfered with unless the same were in violation of mandatory, statutory Rules or were actuated by malice. The Lordships went on to say that none of the Government servant had a vested right to remain posted at one place or the



other and even if transfer order was passed in violation of any executive instructions or orders, the Court should ordinarily not interfere and should direct the affected parties to approach the Higher Authorities in the Department. It was said that if the Courts would start interfering with the transfer orders, there would be a complete chaos in the administration, which would not be conducive to the public interest. In State of M.P. Vs. S.S. Kourav and others, 1995 (3) SCC-270 their Lordships went ahead to observe that Courts or Tribunals were not appellate forum to decide on transfer of officer on administrative grounds and the wheel of the administration should be allowed to run smoothly and the Courts and Tribunals are not expected to interdict the same. Similar views were expressed in Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444, State of Punjab & Ors. Vs. Joginder Singh Dhatt, AIR 1993 SC-2488.

5. Thus the legal position is that normally the Courts or Tribunals should not interfere with such transfers effected in public interest or in exigency of administration. If the transfer is actuated by malice or is in violation of any statutory Rule or provision or is punitive in nature, the Courts or Tribunals may interfere. In none of these cases, the Apex Court has ruled out interference of the Courts or Tribunals in case where transfer is punitive or malafide.

6. Learned counsel for the applicant has contended that in the facts and circumstances of the case, there is no difficulty in concluding that the transfer order of the applicant is punitive and malafide. He argues that since suspension was in the teeth of Circular dated 24.6.2005 issued by the Central Vigilance Commission and since the same was under challenge before this Tribunal in O.A. NO.564/06 so it was revoked and since transfer was in breach of Railway Boards' Circular dated 25.3.67 (Annexure 8) and was under challenge in this O.A. so the chargesheet was cancelled vide order dated 26.7.2006. He says that the Authorities were determined to punish the applicant in any way, when they were not successful in punishing him as nothing was found against him in the inquiry as admitted in the reply, they got rid of him by shifting him from that Division to another Division.

7. Sri A. Trivedi has submitted that revocation of suspension and transfer were almost simultaneous. The learned counsel has drawn attention of the Court towards Rajendra Chaubey Vs. Union of India and others (1995) 31 Administrative Tribunals Cases 237, where Division Bench of this Tribunal characterized such transfer as punitive. He is also relying on a single Member



(P)

decision dated 21.11.1997 rendered by this Bench in O.A. No.831 of 1997 Ram Shanker Tiwari Vs. Union of India and others, where the applicant was first suspended and after revoking the suspension, transfer was effected. After referring to Uma Shanker Vs. Union of India and others, 1990 (13) ATC page 532, Babu Singh Vs. U.O.I and Ors. 1990 (13) ATC 796, Rajendra Chaubey Vs. Union of India and others (1995) 31 Administrative Tribunals Cases 237, Pradeep Goyal Vs. Regional Manager, Region 2nd, State Bank of India Zonal Office Meerut & Ors, 1992 (1) UPLBEC, 223 (High Court, Allahabad) Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another 1988 (7) ATC 253, learned Member quashed the transfer orders.

8. Learned counsel for the respondents has submitted that transfer order will not be vitiated simply because the same was passed during the pendency of departmental proceedings or simply because it was passed after revocation of suspension. In this connection, he has referred to Janardan Debnath's case (*supra*). In the case before their Lordships, the employee had misbehaved with a lady officer. The argument was that unless an allegation of misbehaviour was proved by holding some enquiry, the transfer could not be effected. Their Lordships took the view, enquiry into the allegation was not necessary, before effecting the transfer of an employee. I do not think, Janardhan Debnath's case helps Sri Anil Kumar. Sri Anil Kumar has also tried to have support from a decision-dated 6.3.2002 in Union of India and others Vs. Vilas Ramesh Chand Tarhate and others. There also the person concerned was served with a chargesheet and thereafter was transferred. After referring to Smt. Shilpi Bose case and some other cases, the Tribunal took the view that the same could not be characterized as punitive or malafide. It was observed that if owing to the pendency of Disciplinary Authority, the Authority thought it fit to keep the employee away from the sense of occurrence, the same could not be termed as punitive.

9. I have considered the respective submissions in the light of law so cited and the facts and circumstances appearing in the case. The applicant worked in the Vigilance Organization of the Railway for quite some time, soon before his suspension dated 3.1.2006. The object behind the circular dated 24.6.2005 (Annexure 3) issued by the Central Vigilance Commission is to ensure that the officials of the Railway working in the Vigilance Cell, perform their job without fear or favour. The applicant was entitled to the protection of this Circular dated 24.6.2005. Ignoring it the authorities proceeded to first place him under



suspension and when he challenged that suspension on the ground that the same was not in consonance with Circular dated 24.6.2005 of Central Vigilance Commission, the suspension was revoked but he was transferred from Varanasi to Bareilly. When the applicant challenged the transfer on the ground inter-alia that the same was in breach of Circular dated 25.3.87 (Annexure 8) issued by the Railway Board, the respondents, obviously with a view to defend the transfer order cancelled the chargesheet in the end of July 2006. The respondents have themselves conceded in reply that on an enquiry nothing was found against the applicant. It has been stated that it is for this reasons, no chargesheet was again issued to him and the earlier chargesheet dated 18.5.2006 was cancelled. There appears to be sufficient force in the contention of the applicant that the Authorities were bent upon this way or that way to see that he was harassed, disturbed and penalized and so simultaneously with the revocation of suspension, he was shifted from one division to another. The transfer should be in the public interest or should be for administrative reason. The respondents have not been able to disclose in their reply as to what were good reason for shifting the applicant from Varanasi to Bareilly Division, if nothing was found against him in preliminary enquiry. It is not the case, where the respondents are levelling serious allegations against the applicant but it is the case where an employee, who worked in the Vigilance Cell of the Railways just within one or two years before, is being disturbed without any rhyme or reason. All this goes to show that the order of transfer is actuated by malice and is not in the public interest.

10. In the result, the O.A. is allowed. The impugned order of transfer are hereby quashed and applicant shall be allowed to work in Varanasi Division.

No costs.

Vice-Chairman

Manish/-

C. J. M. - C
15-2-07