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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 223 of 1986
T.A. No.

DATE OF DECISION 18.11.'86

SHRI R.N. MALHOTRA Petitioner

SHRI Y.S. MANKAD Advocate for the Petitioner(s)

Versus

UNION OF INDIA - GEN. MGR., W. RLY. Respondent

SHRI R.P. BHATT Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. BIRBAL NATH ... Administrative Member

The Hon'ble Mr. P.M. JOSHI ... Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

Per: Hon'ble Shri Birbal Nath, Administrative Member

JUDGMENT

The applicant, Shri Rajkumar Narsingdas Malhotra, was transferred from Chitrod railway station in Kutch to Bena in Kota Division vide order no. E/E/839 dated 13.1.'86. Per his application under section 19 of the Administrative Tribunals Act, filed on 17.1.'86, the applicant has prayed for quashing the impugned order of transfer assailing it as illegal and malafide and in violation of the policy laid down with regard to transfers of the Railway employees. It has also been averred that as a consequence of this transfer, the seniority of the applicant would be seriously depressed to his disadvantage and that this would further aggravate his promotion which stands denied to him because of a Major Penalty Vigilance case, in which he has been falsely implicated, and as a result of which four of his juniors already stand promoted in the grade Rs. 700-900, whereas he is stagnating in the grade Rs. 425-700.

2. At the initial stage, the applicant had asked for an interim stay against the impugned transfer order. The operation of the transfer was stayed per order of 4.2.'86, which was subsequently vacated by the Tribunal on 18.3.'86, with the following observations:

"The grievance of Mr. Mankad is that the applicant may be prejudicially affected if he is transferred to Kota Division. According to him, seniority which now he holds in Ajmer Division may be disturbed if there are other P.W.I. in Kota Division who are still more senior in service. Another grievance of Mr. Mankad is that it would be difficult for him to attend vigilance case that is pending at Chitrod, if he is transferred to Bena which is at a distance of over 1000 kms. In addition, he also contends that there are two criminal cases pending in the Court of Magistrate at Bhachau. Prima facie there is some substance in these contentions. However, Mr. Bhatt for the respondents made statements before me as follows:

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1. The applicant would not be asked to attend the vigilance inquiry at Bachau and that said inquiry would be held at Bena.
2. The applicant is due for promotion in Ajmer Division. However, he is not promoted on account of above-mentioned vigilance case and that applicant would be promoted as soon as said vigilance case is over and that applicant's transfer to Kota Division would not affect the said promotion."

In consequence of the vacation of the stay order, the applicant has since joined his post at Bena in Kota Division.

3. At the Bar, the learned counsel for the applicant mounted a three-fold attack against the impugned transfer order on the following grounds:

1. The transfer was in violation of the policy laid by the Railway Board.
2. It was made malafide.
3. It would result in loss of seniority to the applicant.

He vigorously contended that in terms of the Railway Board's letter no. E(D&A)65RG6-6 dated 25.3.'67 (Annexure 'C'), the applicant should not have been transferred as he was facing disciplinary proceedings, though on false grounds. The relevant part of the Railway letter reads as follows:

"...non-gazetted staff whose conduct in under investigation for charges meriting dismissal/removal from service, including those under suspension, should not be transferred from one Railway Administration to another till after the finalisation of the departmental or criminal proceedings against them. The Board have considered the matter further and have not decided that non-gazetted staff against whom disciplinary case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway/Division till after the finalisation of the departmental or criminal proceedings, irrespective of whether the charges merit imposition of a major or minor penalty."

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The learned counsel argued that there was nothing abnormal in the conduct of the applicant to warrant such an abnormal transfer.

He also drew our attention to the Western Railway's order of

6.2.'85 (Annexure 'B') with regards to decentralisation of posts and with placing of P.W.Is under the control of divisions with effect from 1.4.'85. So far as malafide is concerned, the learned counsel for the applicant dwelt on the averments made in ground 'C' of the application to the effect that the applicant was facing criminal case under section 128 of Indian Railway Act at the instigation of a rival Sindhi P.W.I. and that this complaint was the handiwork of a Sindhi Station Master at Bhachau. It was also vigorously contended that the seniority of the applicant has been eroded. On the other hand, the learned counsel for the respondents contended that the transfer of the applicant had not been made in violation of the Railway Board policy on the subject. The afore-said policy letter of the Railway Board provides that in certain circumstances transfers can be effected even when disciplinary proceedings are pending against the effected railway employee. He argued that it is the established law that a transfer is an incident of service and no employee has a right to a post in a particular place. He denied the allegation of malafides ^{argued} and that the railway had no intention of depriving the applicant of his seniority. He reiterated the statement made by him when he had got the stay against transfer vacated in March, that is, the applicant would be promoted as soon as the vigilance case was over and that the applicant's transfer in Kota Division would not be allowed to effect such a promotion.

4. We have given careful thought to the rival contentions put forth at the Bar and the records brought on the file including the averments made in the application as well as in the affidavit filed in reply. It is admitted on both hands that there is a vigilance inquiry pending against the applicant. Normally he should not have been transferred during the pendency of this inquiry in view of the Railway Board's policy laid in the letter of March 1967 (Annexure 'C'). However, in view of the averment made by the respondents in the affidavit in reply that the transfer has been made

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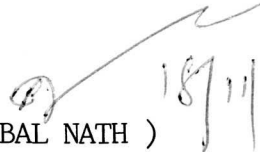
in the interest of the administration and exigencies of services and the established law that Courts would not normally interfere with the transfer, which is an administrative matter, unless it is proved that the transfer order emanates from malafides or in violation of the transfer policy/directives laid by the department itself, we find that the challenge to the transfer order on the ground of violation of transfer policy is not sustainable. The applicant has ~~also~~ ^{neither} made out a case of malafide on the part of the General Manager, W. Rly., with whose approval the transfer has been issued, nor against any other railway officer. Nothing has been brought on record to show that the transfer has been ordered as a result of colourable exercise of power. The Railway Board's circular which prohibits transfer of employees whose conduct is under inquiry contains a saving clause which enables the railways to order transfers even in cases where the departmental proceedings are pending. Thus the two-fold challenge to the impugned order on grounds of malafide and violation of transfer policy fails. Similarly the contention that the transfer has resulted in the loss of seniority to the applicant has not been proved. Rather it emerges from enclosure 'B' filed with the application, that is, circular no. E/E/834/5 dated 6.2.'85, from General Manager, W. Rly., that with effect from 1.4.'85 for further promotions to scale Rs. 700-900, the seniority of the applicant would be combined on whole railway basis. It is thus clear that the place of work has become immaterial so far as seniority for purposes of future promotion to the aforesaid scale is concerned. Thus we find the contentions raised by the applicant and his prayer for quashing the transfer order as not legally tenable.

5. However, we do find that the applicant has been subjected to great hardship by transfer to a place nearly 1000 kms. away from the place where the inquiry is pending. Administrative acts ^{may be} ~~which~~ though legal are yet to be guided by fair play and justice. Equity, therefore, requires that the railway administration

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should re-consider, within three months of this order, the posting of the applicant to a place nearer to the place of the inquiry, if not actually the place where the inquiry is being conducted and secondly, to ensure that the transfer order does not result in loss of seniority of the applicant because such loss would amount to punishment and punitive transfers are bad in law and impermissible. The application is accordingly disposed off with the above directions. There will be no order as to costs.


(BIRBAL NATH)
Administrative Member


(P.M. JOSHI)
Judicial Member