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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 300 OF 1995

Cuttack, this the 15th day of April, 1996

Mr. M. L. Gupta

....

Applicant

Vrs.

Union of India & others

....

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Charan Singh
(N. SAHU)
MEMBER (ADMINISTRATIVE)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 300 OF 1995
Cuttack, this the 15th day of April, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

....

Mr.M.L.Gupta,
aged about 45 years,
son of late Sudershan Gupta,
At-Railway Colony Qr.No.B-14/1,
P.O-Rourkela, Dist.Sundergarh-769013 Applicant

By the Advocates - M/s P.Palit,S.Palit,
A.K.Padhi & B.K.Rout

-versus-

1. Union of India, represented through the Secretary, Railway Board, Railway Bhawan, New Delhi.
2. General Manager, S.E.Railway, Garden Reach, Calcutta-43, West Bengal.
3. Chief Commercial Manager, SE Railway, 14 Strand Road, CCM Building, Calcutta, West Bengal.
4. Divisional Railway Manager, S.E.Railway, At/P.O-Chakradharpur, Dist.Singhbhum, Bihar.
5. Senior Divisional Commercial Manager, S.E.Railway, At/P.O-Chakradharpur, Dist.Singhbhum, Bihar.
6. Mr.P.K.Swain, Chief Ticket Inspector Line, S.E.Railway, At/P.O-Rourkela, Dist.Sundargarh.
7. Mr.J.N.Chakrabarti, Senior Vigilance Inspector, S.E.Railway, Garden Reach, Calcutta-43, West Bengal

..... Respondents.

By the Advocates - M/s B.Pal &
O.N.Ghosh.

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O R D E R

N.SAHU, MEMBER(ADMINISTRATIVE) In this application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant prays before the Tribunal for quashing the order of transfer (Annexure-1). The applicant, a Ticket Collector was transferred to Rourkela on 9.3.1989. On 22.4.1991 there was a transfer to Sambalpur, but the same was cancelled. The applicant was an office bearer of the South Eastern Railway Men's Union. Annexure-1 is the impugned order transferring the applicant from Rourkela to Nagpur which is an inter-Divisional transfer. He was relieved from his post at Rourkela on 2.6.1995 and the stay order passed on 7.6.1995 could not become operative. He had proceeded to the new place of his posting in Nagpur Division.

2. In the counter affidavit it is stated that the transfer of the applicant was ordered on merits of the individual cases in the interests of administration. It is no doubt true that the applicant is accused of several instances of misconduct, but his transfer had no direct nexus with the pending D & A cases. The counter affidavit lists the number of pending D & A cases against the applicant. There are five major penalty chargesheets issued against him for alleged malpractices, on charge of loss of Excess Fare Ticket Book, for unauthorised construction of hutment in the Railway premises, for misconduct, and for fraudulently drawing Rs.769/- from Rourkela Booking Office on 24.12.1993 against

First Class Ticket No. 08332. It is also mentioned that the apprehensions of injustice in the enquiry in his D & A cases consequent on his transfer are stated to have no basis. The jurisdiction of disciplinary proceedings stands shifted to the appropriate authority in the new Division. Even if a case is conducted at Rourkela, all reasonable opportunity shall be provided to the applicant to defend his case as provided in D & A Rules.

3. At the time of hearing, the learned counsel for the applicant, Shri S. Palit drew my attention to Annexure-7, a circular letter of the office of the Chief Personnel Officer dated 7.10.1993 dealing with transfer of Group 'C' and Group 'D' railway employees. Shri Palit has drawn my attention to paragraph 5 of the said circular. This suggests that where transfers are ordered at the instance of the Vigilance Organisation/S.P.E. to facilitate proper enquiries, the employee who is proposed for a transfer shall be heard of his genuine grievances before final decision is taken to effect the transfer. Shri Palit states that no such opportunity was afforded to the applicant. His second point is that a transfer made as a punishment is bad in law and is liable to be struck down. He has drawn my attention to paragraph 7 of the circular referred to above, the relevant portion of which reads as follows:

"Ticket checking staff, detected indulging in malpractice should be sent on inter-divisional transfer, as a matter of policy."

Shri Palit emphasised the word "detected". He stated that

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there was no finding of guilt and there was no detection of malpractice. He cited the decisions reported in 1991(6) SLR 396 (Brijlal Bagoria v. State of Rajasthan) (Rajasthan High Court) and 1993 (5) SLR 220 (A.K.Chakraborty v. New Bank of India & ors.) (Calcutta High Court). Transfer should be purely for administrative exigencies and public interest. There should not be any other collateral purpose. The counsel for the Respondents, Shri P.C.Panda on behalf of Shri B.Pal states that the applicant was at Rourkela from 1989 to 1995. He cited AIR 1993 SC 1605 (Union of India and another v. N.P.Thomas), AIR 1993 SC 2444 (Union of India v. S.L.Abbas) and AIR 1993 SC 1236 (Rajendra Roy v. Union of India) to justify the transfer.

4. Broadly stated the scope for judicial review with regard to a transfer is very limited. A transfer order can be impugned only if there is a violation of a statutory rule or is actuated with *mala fides*, or is against all recognised norms. As held by the Supreme Court in B.Varadha Rao v. State of Karnataka, AIR 1986 SC 1955, transfer is an incident of service. In Shilpi Bose v. State of Bihar [1992] SCC (L&S) 127 the Supreme Court held:

"...the courts should not interfere with the transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of *mala fide*. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer orders issued by the competent authority do not violate any of his legal rights."

The Full Bench of Central Administrative Tribunal by its order dated 27.4.1988 summarised the scope of judicial review in

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Kamlesh Trivedi v. Indian Council of Agricultural Research and another.

The Full Bench held that merely because the transfer is ordered on complaints or after an enquiry into the guilt of the employee, it cannot be said to be by way of punishment.

5. I have carefully considered the submissions of the applicant. There is absolutely no scope for interference in the transfer order. There are a number of disciplinary proceedings against the applicant. In fact, as early as 7.3.1986, the railway employees holding sensitive posts and who frequently come in contact with public and/or contractors/suppliers, are required to be transferred every four years. Instructions also exist, in terms of which Ticket Checking staff detected to be indulging in malpractices are required to be sent on inter-divisional transfer as a matter of policy. It is also categorically stated that such staff who have been transferred out of the Division on complaints of corruption and were later exonerated or awarded a penalty of censure may not be brought back to the parent Division, even if they so desire. In view of the settled position of law, there is absolutely no basis or justification for interference. The applicant had already been relieved and joined at Nagpur. There is nothing illegal in the transfer. In fact the disciplinary proceedings against the applicant are so many that in the administrative interest, it is found necessary to transfer him. His stay at Rourkela also exceeded the minimum period prescribed for this purpose. In certain circumstances, as a matter of administrative convenience, there was a suggestion for hearing the applicant before transfer. There is no mandatory rule in any departmental code in any Government

Department to give a showcause notice before transferring any employee. As transfer is an incident of service and as there is no vested right to stay at a particular place, such a showcause notice is not necessary at all. What the instructions contemplate is that in order to ensure that there is no harassment or victimisation and to facilitate proper enquiries, the Divisional Railway Managers may hear representations of genuine grievances made before the final decision is taken to effect the transfer. This does not apply to the applicant. He was transferred on inter-Divisional transfer because of specific allegations against him. The allegations have fructified into chargesheets. Regular proceedings are being conducted. Such chargesheets are five in number for major penalties. It is considered appropriate to transfer him to another Division. That is also a matter of policy. There is no infringement of any rule. There is no need to give a showcause notice before transferring the applicant.

6. In the result, there is no merit in the application. It is dismissed. No costs.

Narasimha Sahu
(N.SAHU)
MEMBER (ADMINISTRATIVE)