

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

DATE OF ORDER : 21.12.1998.

O.A.NO. 284/1998.

Banne Singh N. Kasana S/o Shri Nathu Singh, Aged about 50 years, R/o E-19, Railway Colony, Didwana. Official Address : Section Engineer (Permanent Way), Didwana, N.R. Jodhpur Division.

.....APPLICANT.

versus

1. Union of India through the General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Jodhpur.
3. The Divisional Personnel Officer, Northern Railway, Jodhpur.

.....RESPONDENTS.

.....
Mr. Kamal Dave For the Applicant.
Mr. S.S. Vyas For the Respondents
.....

CORAM :

HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

.....

O R D E R

(Per Hon'ble Mr. A.K. Misra)

The applicant has filed the present O.A. with the prayer that the impugned Transfer Order dated 7.11.1998 (Annex.A/1) be quashed and the applicant be allowed to discharge his duties as Section Engineer

2
Dhan

(Permanent Way), Didwana, The applicant has also prayed for staying the operation of impugned order.

2. After hearing the learned counsel for the applicant Dasti notice of the O.A. was ordered to be issued. The operation of the Transfer Order was not stayed.

3. The applicant has challenged the Transfer Order on the following grounds :-

- a) Applicant's transfer is a mala fide transfer ;
- b) The transfer has been made to victimise the applicant and cause obstruction in discharging his duties as an office bearer of the Local Staff Union;'
- c) Transfer of the applicant is a mid-term transfer and has been wrongly done and
- d) The Transfer is against the Policy circulated by the Railways in respect of persons holding sensitive postings.

4. The respondents have filed their detailed reply in which it has been stated that transfer is not a mala fide transfer, it has been made in exigency of service as there were number of complaints against the applicant. The transfer is also not a mid term transfer as the Headquarter of the applicant has not been changed, only the answerability of the applicant to the another office located at Jodhpur has been attributed by the order which appears to be a transfer order. The applicant has not been able to show that the transfer is in colourable exercise of power and to

Manu

victimise the applicant, therefore, the O.A. deserves to be dismissed.

5. We have heard the learned counsel for the parties and gone through the casefile.

6. It was argued by the learned counsel for the applicant that the applicant who was working as Section Engineer (Permanent Way) earlier called as Permanent Way Inspector, at Didwana, was transferred because he raised the voice of the Association relating to the grievances of OBC members of the Association as office bearer of the OBC association Degana. The applicant's transfer is violative of the direction of the Railway Board as no office bearer of a Union can be transferred. On the other hand, the learned counsel for the respondents has argued that there were many complaints against the applicant and, therefore, it was thought fit to put the applicant under the control of another officer and consequently the transfer order was passed without changing the station of the applicant. Therefore, the transfer is not liable to be interfered with. During the course of arguments, the learned counsel for the applicant has also submitted the various complaints received by the administration against the applicant which we have seen and considered.

7. In our opinion, any staff member who is elected office bearer of some Union, Sub Union or Branch Union, is not immuned from transfer if there are exigencies of service and his transfer is necessary for better administration. In the instant case, there were complaints against the applicant earlier also

30/11

and at the present station also. Every complaint is not required to be inquired into by way of issuing a chargesheet. Likewise, every complaint is not required to be passed on to the applicant for his comments. In every department and more specially in the Railways, there is a separate Wing for dealing such complaints. Such complaints can be looked into by the concerned department without the knowledge of such person against whom the complaints were received. As is well known that endeavour of every controlling officer is to run his office in a smooth way, therefore, such persons, against whom there are frequent complaints, are considered ^{for promotion} /on administrative grounds. It is always not necessary to initiate inquiry against such person before transferring him from that post. Complaints may be of the nature for which the concerned person may not be chargesheeted immediately. Therefore, such transfers can always be considered on administrative grounds and not liable to be interfered with. The Officer who has to take work from his subordinate, is the best judge in respect of a particular employee for retaining him in his charge or for recommending his transfer from his charge. In the instant case, there are sufficient administrative reasons to transfer the applicant from a particular place and post. Election of an employee to a particular post of the Union does not grant him immunity from being transferred from one place to another or from one post to another, if he is otherwise not fit to be retained at a particular place or post. For such transfer, neither any reasoned detailed order is required to be passed nor a pre-decisional hearing in respect of the complaint is




20/11/20

required to be given before such transfer. Therefore, if the transfer order does not speak of any such public interest even then the same shall have to be taken to be in the public interest. Mere absence of word 'public interest' will not make the order of transfer ifso facto against the rules or against the public interest.


8. In this case, the applicant has not highlighted the grievances of OBC staff members to show that he raised the voice in respect of such pending demands of the OBC. A person cannot be allowed to take shelter of such plea that he raised the demands of OBC staff members simply because he himself is a member of OBC. These days it has become very common to allege that a particular employee is being victimised because he is raising the voice of staff members as a Union post holder or as a Member of OBC or other such organisations. To establish mala fide against a particular officer the applicant or such person shall have to make out a strong factual case. It is very easy to allege mala fides but very difficult to substantiate. Therefore, the mere allegation of mala fide is of no help to the applicant for getting the transfer order quashed nor such allegations can be considered by the Tribunal for quashing the transfer order unless they are convincing and substantiated by supporting evidence.

9. The learned counsel for the applicant has said that the transfer of the applicant is in violation of letter of GM (P) dated 14.8.1998 and earlier Railway Boards letter PS No. 10094 wherein it has been stressed that persons manning sensitive postings

should not be transferred earlier than four years and in view of this, the transfer of the applicant is bad in law. We have considered this aspect. Transfer in violation of administrative instructions is not liable to be interfered with. In the instant case while transferring the applicant breach of statutory rules etc. have not been shown. Moreover, minimum period of a particular person on a sensitive post has not been described. Therefore, the limit of retention on a particular post for four years cannot be taken to be a minimum period, it can only be taken as outer limit beyond which no person should be kept on such posting. Even if the minimum period has been prescribed for a particular posting then also in administrative exigency a person can be transferred before expiry of the term. In view of this, the transfer of the applicant is not questionable on this point that he is being transferred earlier than four years.



10. There is nothing on record to show that the applicant has been transferred to victimise him. If for past conduct the applicant was suspended and his Headquarter was shifted during suspension that does not mean that he is an eyesore of the administration for such transfer. Every Government servant has to conduct himself in a manner befitting to his post and as per conduct rules. If someone does not do so then naturally appropriate departmental action is required to be taken against such person. If the applicant was suspended for some of his activities against the conduct rules then certainly this action cannot be termed as illegal. Suspension of a particular person is required to be reconsidered after expiry of certain period and, therefore, if his suspension is revoked



then this cann't be allowed to be a ground for arguing that his suspension was mala fide. There is no prohibition against shifting of Headquarter of a suspended employee, therefore, applicant's earlier shifting to a particular station during suspension cannot be allowed to be cited as an instance of victimisation. Consequently, in the chain of events, the present transfer cannot be treated as a transfer to victimise the applicant. In our opinion, the applicant has not been able to make out a case of transfer to victimise the applicant or transfer in colourable exercise of power.

11. As has been said by Hon'ble the Supreme Court, the transfer of a particular Government employee can only be interfered with, if it is a mala fide transfer order or in colourable exercise of power. In the instant case, no such facts are available on record, therefore, the impugned transfer order is not liable to be interfered with.

12. The learned counsel for the applicant has argued that it is a mid term transfer but in our opinion this ground is not available to the applicant because his Headquarter has not been shifted from Didwana to Jodhpur. The applicant has been shown as having been posted on a post at Jodhpur the Headquarter of which has still been retained at Didwana. In other words. the answerability of the applicant has been placed at the disposal of someone else in respect of his duties. The learned counsel for the applicant in this respect has argued that the applicant is liable to be shifted to any other place including Jodhpur under the garb of the present transfer order. But in our opinion, this


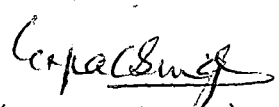
3/2

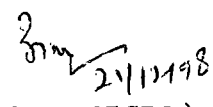
.8.

apprehension is ill-founded. If the administration wanted to shift the applicant even during the educational session there was no bar with the administration in doing so. If after the educational session the applicant is shifted to some other station then he cannot claim immunity from his transfer on the ground of mid term transfer. In our opinion, this ground is not presently available to the applicant for seeking redressal against the impugned order.

11. In our opinion, the applicant has not been able to establish his transfer as a mala fide transfer or transfer to victimise him. Therefore, the Original Application has no merits and deserves to be dismissed.

12. The Original Application is, therefore, dismissed with no orders as to cost.



(GOPAL SINGH)
Admv. Member


(A.K. MISRA)
Judl. Member

.....

MEHTA

Part II and III destroyed
in my presence on 7.4.2006
under the supervision of
section officer () as per
order dated 28/2/2006

Section officer (Records)

Recd
Copy

on 28/12/98

Recd
of
23/12/98.