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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.189/Jodhpur/2012.

Date of decision: 23.11.2012

CORAM :

HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.

Bhanwar Lal Purohit S/o Shri Mohan Lal Purohit aged about 47 years, resident of Purohit Sadan, Industrial Area, Rani Bazar, Bikaner, District Bikaner, Official Address Working as RS-II at Railway Station Nokha, under DRM North Western Railway, Jodhpur.

Applicant

[By Mr. S.P.Singh, Advocate]

Versus

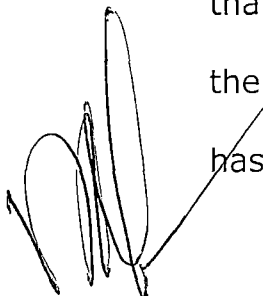
1. Union of India through the General Manager, Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jodhpur.
3. Senior Divisional Personnel Officer, North Western Railway, Jodhpur.

Respondents

[By Mr. K.K.Vyas, Advocate]

ORDER

The applicant, Bhanwar Lal Purohit, is working as RS-II at Railway Station Nokha, under the Divisional Railway Manager, North Western Railway, Jodhpur. The case of the applicant, briefly stated, is that he has been transferred vide Memo No. 041E/EIG/Samayavdhi/Stha/ Inquiry & Reservation/ Part-II / Jodhpur / 2012 / 56 dated 29.02.2012 from Railway Station Nokha to Railway Station Jodhpur having served there for only two months. The applicant had been previously transferred from Railway Station Balotra to Nokha on 21.12.2011. The applicant contends that he has rendered 22 years of service with full zeal and enthusiasm. In the year 2007, he was posted to Railway Station Nokha from where, he has been transferred to Bhinmal in the mid of the academic session on



21.02.2007. The applicant was further transferred from Bhinmal to Jodhpur vide order dated 6.4.2009 and posted at Mahamandir vide Annex.A/4. The applicant was again transferred from Jodhpur to Balotra on vide order dated 1.2.2011 (Annex.A/5) prior to completion of three years while the employees who had stayed for a longer period still continued to be posted at Jodhpur. The applicant has alleged hostile discrimination on the part of the respondents on the ground that many employees who ought to have been transferred have been retained at the same station. The applicant submitted an application through the North Western Railway Employees Union on 18.04.2012 wherein, it has been mentioned that the family has been put to considerable hardship on account of this transfer. The applicant further asserts that it is a mid-term transfer which should have been normally made in the month of April and such transfers without sufficient reasons has to be interfered with by courts/Tribunals. The applicant has also relied upon the case decided by Bombay High Court in **Seshrao Nagorao Umap vs. State of Maharashtra** reported in (1985) II LLJ 73, wherein, it has been held by the Hon,ble Court as under :-

"Frequent transfers without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reason."

2. The learned counsel for the respondents has forcefully resisted the OA. He argued that the applicant has been able to obtain an interim stay order on 14th May, 2012, by making false arguments. Out of the five transfers that have been alleged, two were made at his own request and one transfer was made on administrative ground. The applicant was

transferred at his own request from Bhinmal to Jodhpur and he was posted at Manamandir on 6.4.2009 and he may not nurse any grievance on this count. The respondents further contended in their reply that the applicant was due for promotion to the post of HERC Grade Rs. 5000-8000 but, due to DAR and operation of an order of penalty, his case was not considered for promotion in time. On completion of the period under effect of the penalty under the D&AR, his case was considered and he was promoted to the post of HERC and posted at Balotra vide letter dated 01.02.2011. It has been further contended on behalf of the respondents that completion of tenure is not necessary in such cases and the persons working on sensitive posts like ECRC are required to be transferred regularly.

3. Coming to the issue of his transfer order vide Annex.A/1 dated 29.02.2012 from Nokha to Jodhpur, it has been done on administrative grounds. The applicant was chargesheeted vide SF-11 vide order dated 20/27.01.2012 for lack of devotion to duty and acting in a manner unbecoming of a Railway servant and, therefore, a penalty of reduction by one stage for one year without future effect debarring him from handling cash vide NIP dated 30.03.2012 was imposed upon him. As such, it had become necessary to transfer the applicant to Nokha being a small Railway station having only one post for handling cash. The learned counsel for the respondents has further accused the applicant of concealing the facts and misrepresentation while obtaining an interim order from this Tribunal.

4. Having heard the learned counsel for the parties and after having gone through the respective pleadings, the only issue that has to be considered

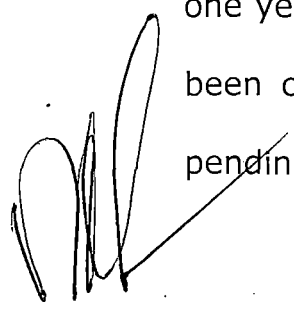
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is that whether the transfer of the applicant from Nokha to Jodhpur vide the impugned order dated 29.02.2012 is justified or not. It is well established that transfers can take place even before completion of the tenure on administrative grounds and in public interest as well. From Annex.R/1 dated 20/27.01.2012 Memorandum, it appears that the applicant was chargesheeted for gross misconduct and behaviour unbecoming of a Railway employee. For the sake of convenience, relevant portion of the Chargesheet SF-11 dated 20/27.1.2012 is reproduced below :

"He was found responsible for acceptance of two requisition slips no. 1 & 2 from Sh. Chuna Ram S/o Shri Hema Ram, suspected tout for Tatkal tickets generated in continuously on PNR no. 255-8533837, 212-9453820 and ticket stock serial no. 51191904 & 51191905 suspected tout was apprehended and handed over to RPF/BME for further action as per Rly. act.

By the above act of Sh. Bhanwar Lal Purohit ERS/BLT exhibited lack of devotion to duty and acted in a manner unbecoming of Railway Servant, thereby contravened the provision of Rule 3.1 (ii), (iii) of Railway service Conduct Rule-1966."

5. The applicant was given an opportunity to make his representation. The punishment was awarded after having gone through the departmental proceedings under Rule 6 of the Railway Servants (Discipline & Appeal), Rules, 1968 by the respondent-department. The order of punishment has been produced at Annex.R/2 from which it appears that applicant's pay has been reduced from the stage of Rs. 12450 + 4200 to Rs. 9300-34800 + 4200 for a period of one year and the order has been duly served upon him. The same has been challenged by the applicant by means of another OA which is pending consideration before this Tribunal.



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6. The charges apparently are serious for an employee working in Railways and particularly dealing with cash. One cannot afford to lose sight off the fact that the Railway is a commercial organization which provides quality public services and keeping in mind such object, the misconduct committed by its employees, are not to be tolerated. In any case, there is a overwhelming concern with the issues of integrity and probity in public and public services which provides the dominant discourse at the national scene. It is not for this Tribunal to go into the finer points of evidence or to act as a super departmental authority. Its task on the other hand is well cut out: the duty of the Tribunal is to determine that whether the action of the respondent organization is marred by malafide or there has been infringement of some statutory provision or some hostile discrimination has been practiced against the applicant. Once the applicant has been found guilty and punishment has been awarded the Railway authorities have rightly taken the step of removing the applicant from handling the cash. I do not find much merit in the contention of the applicant that it does not perpetuate a part of the penalty provided under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968, which is reproduced below :-

"6. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:

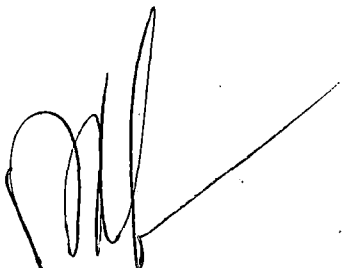
Minor Penalties :

(i) Censure :

(ii) Withholding of his promotion for a specified period;

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

***(iii) (a) Withholding of the privilege Passes or Privilege Ticket Orders or both;**



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***** (iii) (b) Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.***

(iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay.

Major Penalties

(v) *** [Save as otherwise provided for in clause (iii-b) reduction to the lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration."

7. From the above discussions, it appears that indeed debarring from holding cash is not a part of the penalty imposed upon the applicant. However, whether an employee should handle cash or not is the part of placement which is purely within the discretion of the Railway authorities. No authority would like, I am sure, that an employee who has been charged with such financial misdemeanor should continue to handle cash. It is no right of an employee to demand that he should be always allowed to handle cash and were he to do so it would give rise to suspicion. Removal from handling cash is, therefore, it is not a part of the punishment but it is simply assignment of duty as a necessary corollary to punishment. It also needs to be reiterated here that the role assigned to the

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Tribunals/Courts in case of interfering with the transfers is indeed very limited. The respondents have referred the case of **Kamlesh Trivedi Vs. Indian Council of Agricultural Research & Anr.** reported in 1989 (1) SLJ 641, wherein, the Full Bench of the Tribunal has held in para 18 as under :-

"18. In view of the above discussion, we hold that any order of transfer must (1) be in public interest and in the exigency of service on administrative grounds. (2) It must not be in colourable or mala fide exercise of power. (3) It should not be arbitrary. (4) It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording intendment of the instructions embodying the transfer policy. (5) The transfer itself must be ordered by a competent authority in bonafide exercise of the power. (6) It should not be a "fixed" transfer or for settling scores. (7) However, merely because transfer is ordered on complaints or after an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. (8) The principle that 'justice should not only be done but appear to be done' is not contravened if transfer is made without any further inquiry after a penalty is imposed in a proper disciplinary."

8. In consideration of the above facts I find that none of the conditions laid down in the above mentioned judgment have been transgressed. Further, Hon'ble the Apex Court in the case of **Union of India Vs. S.L. Abbas** Vs. reported in 1994 SCC (L&S) 230, held as under :-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

9. From the above it is apparent that the Tribunals/Courts are not superior departmental authorities but have indeed a limited role. On the basis of this touch-stone, I find that the OA fails to prove any ground which may establish any departure from the yard-sticks

provided in the aforementioned judgments or mala fide or the hostile discrimination. On the other hand, the conduct of the respondents in making this transfer has been in keeping with the administrative principles and public interest. The OA, hence, fails and is accordingly dismissed. The parties are left to bear their own cost.



[B.K. Sinha]

Administrative Member

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