

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 707/1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

UMESH RAJAK

VS.

UNION OF INDIA AND ORS.

For the applicant : Mr. G.C. Ghosh, counsel

For the respondents : Mr. P.K. Arora, counsel

Heard on : 1.6.99

Order on : 1.6.99

O R D E R

The applicant, Umesh Rajak, Office Superintendent(O.S.) under Divisional Commercial Manager, Eastern Railway, Malda Town, District - Malda has challenged the impugned order of transfer dated 2.6.1997 (Annexure 'K' to the app.) by which he was transferred to the post of O.S./Store under ACOS/MLDT on his same pay scale and capacity. According to the applicant, the said transfer order was issued by the respondents with a view to harass him on the grounds as stated in the application. It is alleged by the applicant that the respondents made some false allegation against him and lodged complain in the local police station regarding the incident happened on 13.12.96 when a large number of staff were protesting against the illegal nasty and unsocial behaviour of one, Ravinesh Kumar, Divisional Commercial Manager gathering Malda Town, Eastern Railway/in the office of the Divisional Railway Manager.

2. Ld. counsel Mr. G.C. Ghosh appearing on behalf of the applicant strenuously argued before me that the said impugned order of transfer (Annexure 'K' to the App.) dated 2.6.1997 has direct nexus with the proceeding initiated against the applicant by the department vide Office Memorandum dated 7.1.97 by

contd.. 2

Rajak, the applicant, on his own capacity. The role of the applicant in this matter is now under investigation. It is also stated by the respondents that the applicant was placed under suspension with effect from 27.12.96 to 28.2.97 due to the incident happened on 13.12.96 and he was issued a major penalty charge-sheet.

4. Ld. counsel Mr. Ghosh appearing for the applicant submits that the applicant has no experience regarding the department of store and thereby he cannot act efficiently as an Office Superintendent in Store. The ld. counsel for the applicant further submits that administrative training should be given to the staff who have no knowledge of store works and who are transferred to the said department. But in the instant case the applicant was transferred to the said department without imparting any training. So, the impugned order of transfer is liable to be set aside.

5. Ld. counsel Mr. P.K. Arora, appearing on behalf of the respondents, relies on a judgment reported in AIR, 1995, S.C.-1056 (State of M.P. vs. S.S. Kaurav) and submits that the application may be dismissed in view of the said judgment.

6. I have considered the submissions made by the ld. counsel for both the parties. On the face of the order of transfer dated 2.6.97, it is found that the applicant has been transferred to the <sup>equal and grade</sup> ~~same~~ post of Office Superintendent which he was previously holding. I find that the pay scale and status of the applicant is in no way affected by the said order of transfer. Moreover, he has been transferred in the same station and same building. So, I am of the view that the said order of transfer against the applicant was issued for administrative interest and the place of posting <sup>should</sup> ~~cannot~~ be decided by the <sup>Authority</sup> ~~applicant~~. It is now well settled in various decisions of the Hon'ble Apex Court that normally the order of transfer should not be interfered with by way of judicial review unless the order of transfer is malafide or colourable exercise of power. In other words, order of transfer can be set aside and quashed by the Tribunal.

if the order is found malafide, arbitrary and contrary to the rules. Regarding special training for the post of O.S./Store under ACOS/MLDT as claimed by the applicant, I am of the view that such training should be given by the department if required for performance of duty and if the department desires.

7. In view of the aforesaid circumstances, I find that the application is devoid of any merit and is liable to be dismissed. Accordingly the application is dismissed awarding no costs.

  
( D. PURKAYASTHA )  
MEMBER(J)

S.M.