

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

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O.A.No. 609 of 1992.

Malay Kumar Singh

Applicant

versus

Union of India through
General Manager, Northern
Railway, Baroda House, New Delhi. Respondents.
and four others.

Hon. Mr. S.N. Prasad, Member Judicial.

The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985 for quashing the transfer orders dated 26.6.91 (Annexure No. 1) and dated 10.6.92 (Annexure No. 2).

2. Succinctly, the facts of this case, inter alia, are that the applicant was appointed on 24.9.73 and since then he continued to work at various places as and when he was transferred by the respondents, and he obeyed the transfer orders and no complaint of any kind was ever received by the authorities concerned against the applicant. The applicant at present is working as Train Lighting Fitter, Northern Railway, Pratapgarh and while working as such, the applicant was transferred by impugned transfer order dated 26.6.91 (Annexure No. 1) to District Varanasi, although the said order was never effected and till today the applicant has been working as such and has received



salary for the month of October, 1992. On 10.6.92, the remainder was issued by the respondent No. 4, by means of which the applicant as well as some other persons were ordered to be relieved who were transferred by means of above order dated 26.6.91 (vide Annexure -2). The applicant has further stated that the transfer of the applicant was made on the basis of some vigilance report conducted against the applicant but the applicant was never informed about the said vigilance report and on the basis of the report conducted by the vigilance, the transfer of the applicant was recommended which resulted in passing of impugned transfer order by respondent No. 4, as would be obvious from the perusal of the impugned transfer order dated 26.6.91 (Annexure-1) as at the bottom thereof copy of that order is found to have been forwarded to the General Manager (Vigilance) Northern Railway, which itself indicates the fact that the applicant has been transferred on the recommendation of the vigilance and as such the impugned transfer orders are illegal having been ^{based} on the report of vigilance and the impugned transfer orders are colourable exercise of power and have been passed by way of punishment without affording any opportunity to the applicant and as such the impugned transfer orders being malafide and illegal be quashed.



3. The respondents have contended in the counter reply that the impugned transfer orders have been passed on administrative grounds and not by way of punishment and the impugned transfer orders do not cast any stigma on the applicant. It has further been contended that the applicant has already completed his tenure at Pratapgarh and there is no illegality in transferring him, and it has further been contended that merely a reference of vigilance department in the transfer order is not sufficient proof that the impugned transfer order was passed on the recommendations of Vigilance and as such the application of the applicant is liable to be dismissed.

4. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

5. The learned counsel for the applicant while advertizing to the contents of application and the papers annexed thereto and while reiterating the view points as set out in the application has argued that no doubt transfer is an incident of service and it is open to the employer to transfer his employees holding transferable posts from one place to another, but transfer can not be resorted to by way of punishment on the ground of some alleged misconduct; and has further argued that if the employee is guilty of some misconduct it is open to the employer to take action against him in accordance with law; but the transfer is not a remedy and can not be used as a substitute for

punishment; and has further argued while drawing my attention to the annexure-1 and 2 that the impugned transfer orders though purported to be simplicitor transfer orders, but in fact they are by way of punishment being based on the report of the Vigilance about which the applicant has no knowledge at all; and has further argued that if the applicant is found indulging in any money lending business, or any illegal acts~ then in that case suitable action can be taken against him under the Disciplinary and Appeal Rules and not by transfer, by way of punishment and as such the application of the applicant should be allowed and impugned orders be quashed and in support of his arguments has placed reliance on the ruling reported in (1992) I U.P.L.B.E.C. 223) "Predeep Goyal(Petitioner vs. Regional Manager, Region IIInd, State Bank of India, Zonal Office, Meerut and others(Respondents.) wherein it has been enunciated "Service-Transfer-Order for-Not to be passed as a measure of punishment- In the instant case, thepetitioner, a bank employee was transferred on ground of his suspected involvement in fraudulent transactions-Thus, order of transfer quashed."

5. The learned counsel for the respondents, while drawing my attention to the contentions and view points as set out inthe counter reply has argued that the impugned transfer order dated 26.6.91 was not communicated to the applicant and the applicant was not relieved in pursuance of the above order, as the applicant himself was making delay in complying with

the above transfer order and as such the above transfer order due to administrative reasons was deferred and has placed reliance on the ~~following~~ ^{and there is no illegality in the impugned orders} rulings reported in (1989) 3, S.C.C. Union of India and others (Appellants) vs. H.N. Kirtania (Respondents) at page 445 whereinit has been enunciated that the transfer is an incident of service and the employer can transfer his employee holding transferable post from one place to another, as transfer is not a punishment.

6. I have perused the above rulings.

7. This is important to point out that the perusal of the impugned transfer order dated 26.6.91 shows that it makes clear mention and copy of this transfer order is also found to have been sent to G.M. (Vig.) N. Railway, H.Q. Office Baroda House, New Delhi in reference to his letter No. vig/CT/1344/RB/90 dated 4.10.90 and 14.2.91 and it is also significant to point out in this context that the perusal of the impugned order dated 10.6.92 (Annexure-2) makes clear mention on the left hand margin at the top 'Confidential Vig/11/d/90 /DOS'. Thus, this being so, and from the perusal of counter reply of the respondents read together with the letter of G.M. Vig. N. Rky. letter no. vig./CT/1344/RB/90 dated 4.10.90 (as referred to in Annexure -1 to the O.A.) go to make it abundantly clear that there was certain complaint of misconduct against the employees including the applicant and the ex parte

report of vigilance found the applicant being indulged in some illegal act.

8. This fact should not also be lost sight of that scrutiny of records reveals that no disciplinary proceedings proceeded against the applicant. Thus, this being so, and from the scrutiny of the entire evidence and material on record, it is fully established that the above impugned orders were passed by the respondent no. 4 by way of punishment, though purported to be and contended by the respondents to be simplicitor transfer orders.

9. Thus, from the foregoing discussion and after considering all the facts and circumstances of the case and having regard to the principles of law as enunciated in the ^{above} rulings, I find that the above impugned transfer orders being based on the exparte report of vigilance and having been passed by way of punishment, cannot be allowed to be sustained and as such they are liable to be quashed as far as the applicant is concerned.

10. Consequently, the impugned transfer orders dated 26.6.91 and 10.6.92 (Annexures 1 and 2) ^{hereby} as far as the applicant is concerned, are quashed.

10. The application of the applicant is allowed as ~~above~~ above with no order as to costs.

Shakeel/-

Lucknow: Dated: 30.11.92.

Member Judicial. 30.11.92