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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 380 of 1992

Awadesh Bahadur Singh Applicant

Versus

1. Union of India through G.M. Northern Railway
Baroda House, New Delhi.
2. Divisional Railway Manager, Lucknow
3. General Manager, Vigilance, Baroda house,
Northern Railway New Delhi.
4. Senior Divisional Personnel Officer,
Lucknow (N.Rly.) Respondents

Hon'ble Mr. S.N. Prasad, Member(J)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer mainly for quashing the transfer orders dated 26.6.1991 and 10.6.1992 passed by the respondent no. 4.

2. In nut shell, the facts of this ^{Case} inter-alia are that the applicant was appointed in Railway Department on 24.10.1962 and since then he continued to work on various posts from time to time and at present, the applicant is working at Pratapgarh on the post of Fitter Grade-II and by order dated 26.6.1991, the applicant was transferred to District Allahabad at Phulpur (vide Annexure-1); but the applicant was not relieved from the aforesaid post and continued to work on the aforesaid post @@@@@@@@@@ and on 10.6.1992 a reminder/relieving letter was issued by the respondent no. 3 from Lucknow indicating therein that all those persons who have been transferred from Pratapgarh may be

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relieved at once (vide Annexure-2). It has further been stated that the transfer of the applicant was made on the basis of some vigilance report ~~which was~~ conducted against him, but the applicant was never informed about the said vigilance report and an ex-parte report was conducted by the vigilance and thereafter the transfer of the applicant was recommended on the basis of said vigilance report; and the transfer order dated 26.6.1991 (Annexure-1) shows at the bottom that a copy of that order was forwarded to the General Manager, Vigilance, Northern Railway, which is itself indicative of the fact that the applicant has been transferred on the recommendation of the vigilance. It has further been stated that the impugned transfer orders are bad in law ^{are} in view of the fact that the same ^{are} based on ex-parte vigilance ^{report} by way of punishment without affording any opportunity to the applicant and as such the impugned transfer orders are mala fide and illegal, and be quashed.

3. In the counter-reply filed by the respondents it has been, inter-alia, contended that it was brought to the notice of the Railway Board that certain Railway Employees at Pratapgarh Railway Station were indulging in money lending business and have been harassing/torturing needy persons who had fallen in their clutches, and accordingly an enquiry was made in which the applicant was also held responsible for the same and accordingly ^{of the Rly. Board;} as per advice ^{of the Rly. Board;} the General Manager, Northern Railway vide his confidential letter dated 4.10.1990 (Annexure C.-1 to the counter-reply) directed the

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Divisional Railway, Manager, Northern Railway to transfer all those employees including the applicant, and it has further been contended that the applicant including other employees were transferred on Administrative ground ~~on~~ public interest and not as a measure of punishment and as such the impugned orders do not call for any interference by this tribunal and the transfer orders are perfectly legal and valid and have been passed by the competent Authority, and in these circumstances the application of the applicant is liable to be dismissed.

4. Rejoinder- affidavit has been filed by the applicant wherein it has been contended, inter alia, that the applicant never indulged in any money lending business and enquiry made by the vigilance is without any material and witness ^{and} should not be relied upon, but the applicant has been transferred under the garb of simple transfer order ~~xxxx~~ though, in fact the impugned transfer orders are based on vigilance report by way of punishment.

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

my attention to

5. While drawing the view points as set out in the application and rejoinder-affidavit of the applicant the learned counsel for the applicant has stressed that no doubt transfer is an incident of service and it is open to the employer to transfer his employees holding transferable ~~posts~~ ^{one} from 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

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that if the employees 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 simpliciter 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, 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 order be quashed and in support of his arguments has placed reliance on the ruling reported in (1992) I UPLBEC 223) "Pradeep Goyal (Petitioner) Vs. Regional Manager, Region IInd, State Bank of India, Zonal Office, Meerut and other (Respondents) wherein it has been enunciated " Service-Transfer-Order for-Not to be passed as a measure of Punishment-In the instant case, petitioner, a bank employee was transferred on ground of his suspected involvement in fraudulent transactions- Thus, order of transfer Quashed."

6. The learned counsel for the respondents while drawing my attention to the view-points as set out in counter-reply, has argued that the impugned transfer order dated 26.6.1991 was not communicated to the applicant and the applicant was not relieved in

pursuance of the above order dated 26.6.91 (Annexure-1), but the transfer was deferred due to administrative reasons; and has further argued that transfer is an incident of service and since the applicant has completed his tenure of stay at Pratapgarh, he was transferred, and has further argued that the impugned transfer order dated 10.6.92 is not in any way based on any enquiry by the vigilance but is simpliciter transfer order and as such there is no illegality in the impugned transfer orders and thus this being so, the application of the applicant should be dismissed and in support of his arguments, he has placed reliance on the ruling reported in (1989) 3, S.C.C. Union of India and others (Applicants) Vs. H.N. Kirtania (Respondent-t) at page 445, wherein it 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.

7. I have perused the above rulings.


8. This is noteworthy that the perusal of impugned transfer order dated 26.6.91 (Annexure-1) 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/DCS." Thus, this being so, and from the perusal of the counter reply of the respondents read together with the letter of the G.M. Vig N.Rly. letter no.

Vig/CT/1344/RB/90 dated 4.10.90 (which is annexure-1 to the counter reply) go to make it abundantly clear that there was certain complaint of misconduct against the employees including the applicant and the exparte report of vigilance ^{~ found ~} the applicant being indulged in money lending business.

9. This fact should not also be lost sight of that scrutiny of records reveal 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} it is fully established that the above impugned orders were passed by the respondents no. 3 by way of punishment, though purported to be and contended by the respondents to be simpliciter transfer orders.

10. Having considered all the facts and circumstances of the case and keeping in view the principles of law as enunciated in the above rulings, I find that the impugned transfer orders being based on the exparte report of vigilance and having been passed by way of punishment can not be allowed to be ^{~ sustained ~} ~~sanctioned~~ and deserve to be quashed as far as the applicant is concerned.

11. In the result, the impugned orders of the transfer dated 26.6.91 and 10.6.92 (Annexure-1&2), ^{~ as far as the applicant is concerned, are} ~~are~~ hereby quashed. The application of the applicant is allowed as above without any order as to costs.


Member (J) 18.9.92

Lucknow Dated 18.9.92

(RKA)