

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA-408 of 1996

(Date of decision 3.2. 1997)

Kumar Chandra Mani Prasad Sinha,
S/o Shri Shyam Narain Prasad,
Quarter No.176D, Rajendra Nagar,
Town & District Patna.

..... Applicant

By Advocate: Mr. R.N.Mukhopadhaya.

Versus

1. The Union of India
Through the General Manager,
Eastern Railway, Fairlie Place,
Calcutta.
2. The Chief Security Commissioner,
Railway Protection Force, New Koyala Ghat,
3rd Floor, 14, Strand Road, Calcutta-1.
3. The Divisional Security Commissioner,
Railway Protection Force,
Eastern Railway, Danapur,
20, Khagaul, District, Patna.

..... Respondents

By Advocate Mr. Gautam Bose.

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This O.A. has been filed under Section 19
of the Administrative Tribunals Act, 1985 with the
prayer that the impugned order of transfer dated 10th
July, 1996 (Annexure-1) and the sparing order

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dated 11th July, 1996 (Annexure-2) be set aside.

2. The applicant has alleged that he was initially appointed on Class-IV post on 26th September, 1973 and was posted in the office of the Divisional Electrical Engineer, Mugalsarai. He was subsequently promoted to the post of Clerk Gr.II on 3.12.1975 and was transferred and posted in the office of the Assistant Security Officer, Eastern Railway, Danapur. Later on, he was promoted as Clerk Gr.I at Danapur and subsequently in March, 1991, was promoted as Head Clerk while at the same place. The applicant has further asserted that the Railways have issued different notifications/guidelines laying down criteria for transfer of different Railway employees including clerks/Head Clerks. According to these guidelines, Class III/IV employees should not ordinarily be transferred from one place/division to another place/division and only in very special circumstances they can be transferred. According to these circulars/guidelines, an employee against whom D.A. proceeding is pending should not be transferred from one place to another. It is further alleged that on 10.7.1996 Respondent No.3, Divisional Security Commissioner, Danapur issued transfer order (Annexure-1) transferring the applicant from Danapur to the office of Senior Security Commissioner, Eastern Railway, Asansol on administrative ground. He also issued suspending order on 11.7.1996 (Annexure-2). It is asserted that the transfer order in question was issued by an authority which was not competent to transfer the applicant from Danapur. It has further been asserted that the transfer order was in violation of the circulars/guidelines issued by the Railways. The applicant has further asserted that the order in question was mala fide and was also punitive in nature.

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3. The applicant has alleged that on 1.2.1996, a letter was issued by Divisional Security Commissioner, Danapur addressed to Chief Security Commissioner, Calcutta (Annexure-4). It was alleged by the authorities concerned that the applicant had leaked the contents of the letter to one M.N. Prasad, Inspector, unauthorisedly. A show cause notice was issued to the applicant and others and ultimately it was held that the applicant was at fault in this matter. It is asserted that the letter in question was sent to the Despatch Section and thereafter it was forwarded to the Chief Security Commissioner. According to the applicant, he was not to be blamed for the alleged leakage of this letter but there were other persons who had dealt with it and it could have been leaked by anyone of them. It is asserted that it was due to these reasons that the transfer order was passed and he was posted to a distant place by way of punishment. It is also alleged that actually in October, 1996, he has been served with chargesheet in that matter. It is on these grounds that the transfer order has been assailed.

4. On behalf of the respondents it has been alleged that the transfer order was in fact passed by Respondent No.2, Chief Security Commissioner and was intimated to the applicant by Respondent No.3, Divisional Security Commissioner. It is alleged that the respondent No.3 was the controlling authority and had full jurisdiction to transfer the applicant from Danapur to Asansol. The respondents have denied that the transfer order was mala fide or was punitive in nature. It has been asserted that the applicant remained posted at Danapur for more than 19 years and he was transferred from that place by the competent authority on administrative grounds. It has also been mentioned on behalf of the respondents that the letter in question was

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leaked by the applicant before docket number had been put on it by the Despatch Section as it would be apparent from the xerox copy of the same filed by the applicant before the Calcutta High Court with his petition.

5. The parties have exchanged written statements and rejoinders and have also filed copies of some documents in support of their contents.

6. I have heard the learned counsel for the parties and have examined the material on record. The first question raised on behalf of the applicant is that the transfer order in question (Annexure-1) was passed by an authority who was not competent to pass the same. It is in this case not disputed that the applicant was working as Head Clerk in the office of the Divisional Security Commissioner, Railway Protection Force, Eastern Railway, Danapur. It cannot also be disputed that the Chief Security Officer, RPF, Eastern Railway, Calcutta is the controlling Officer in respect of persons working with the Railway Protection Force, Eastern Railway. It is true that the applicant is a civil employee working with the RPF. His controlling authority will obviously be the Chief Security Commissioner. Obviously a controlling authority will have power to transfer an employee working under him. The transfer order (Annexure-1) shows that it was issued by the Divisional Security Commissioner in pursuance of the letter dated 3.7.1996 by the Chief Security Commissioner. Thus, it will appear that the Chief Security Commissioner had ordered the transfer of the applicant from Danapur to Asansol.

7. The learned counsel for the applicant has argued that even though the Chief Security Commissioner may have control over the applicant, he will not have power to transfer the applicant. The learned counsel has referred to ^{the} observation in the case S.V. Co-Operative Bank v. K. Panduranga - AIR

1972 Supreme Court 1248 in support of his contention. I am, however, of the view that this decision cannot be of any help to the learned counsel for the applicant in this matter. It was nowhere observed in that judgment that the controlling authority, who was Registrar, Co-operative Societies in that case, will have no power to transfer the employee under his control. The dispute in that case was as to whether the controlling authority could exercise judicial powers also. The word 'control' is synonymous with superintendence, management or authority to direct, restrict or regulate. The controlling authority may, in my view, order the transfer of employee under his control. The learned counsel for the applicant has not shown any statutory provision which could show that the Respondent No.2 had no power to transfer the employees who were working under him. Thus, ground raised on behalf of the applicant cannot be accepted.

8. The second ground raised by the learned counsel for the applicant is that in view of various circulars/guidelines issued by the Railways, the applicant could not have been transferred from Danapur. Annexure-13 series are said to be copies of these circulars/guidelines. It is contended by the learned counsel for the applicant that these circulars/guidelines have statutory force. He has made a reference to the decision in OA-2573 of 1989, reported at page 287 of the Full Bench Judgment of the Central Administrative Tribunal, 1989-91 - Wazir Chand v. Union of India & Others. Even assuming that these circulars/Guidelines may have a binding force, the same cannot be taken ^{to mean} that there was a bar against transfer of the applicant from Danapur to Asansol. The circular Annexure-13 related to routine transfers by which employees were transferred every three years. It was decided that

there should not be transfer of the staff as a matter of course every three years. The transfer of the applicant who has been at one place for more than 19 years cannot be termed as a routine transfer. Annexure-13/I does not also prohibit transfer of Class III or Class IV employees who have remained at one place for long periods. It also relates to routine transfers. Certain guidelines were issued in respect of such transfers. This circular does not prohibit even mid term transfer but only mentions that such transfers should be resorted to only in special circumstances.

9. The learned counsel for the applicant has then argued that he could have not been transferred in July, 1996 as departmental inquiry was contemplated against him. In the present case no departmental inquiry was pending against the applicant when the transfer order was issued. It was according to the applicant himself three months later that a chargesheet was served on him. The relevant circular by the Railway Board does not bar the transfer of the Railway employee against whom departmental inquiry was pending or was contemplated, though it provides that normally such transfers should not be made. If the authority concerned finds that for administrative reasons ^{the} employee should be transferred, his decision should not be lightly interfered with.

10. When or where an employee is to be transferred is a matter to be decided by the competent authority. It is not disputed that applicant is working in a cadre of transferable post. The transfer of such a person is an ordinary incidence of service and no Government servant can claim to remain at a particular post unless his appointment itself is to a specified non transferable post. A similar view was taken by the Hon'ble Supreme Court in the case of

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B.Varadha Rao vs. State of Karnataka, AIR 1986 SC 1955,

11. In the case of H.N.Kritaria vs. Union of India (1989) 11 ATC, 269, the Supreme Court held that the order of transfer ^W can be interfered with only on two grounds viz; mala fide ^{and} patent illegality or violation of statutory rules.

12. In the case S.L.Abbas vs. Union of India, (1993) 25 ATC 844, the Hon'ble Supreme Court held: "An order of transfer is an incident of Government service. Unless the order is mala fide or is made in violation of any statutory provision, the Court cannot interfere with it. Not following instructions/guidelines is not sufficient to quash as being mala fide".

13. In the case Mrs. Shilpi Bose and others vs. State of Bihar AIR 1991 Supreme Court 532, it was observed: "In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected ~~party~~ party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest."

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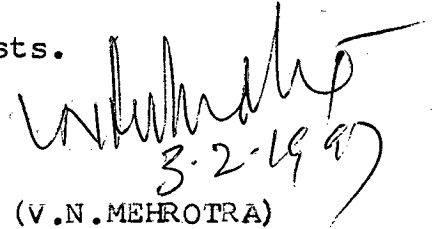
14. In the case State of Madhya Pradesh and another vs. S.S.Kourav and others, AIR 1995 Supreme Court 1056 it was observed that the Courts or Tribunals are ^{not} appellate forums to decide transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts and Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation.

15. Keeping in view the law laid down by the Hon'ble Supreme Court, this Tribunal cannot act as if it was an appellate authority. It cannot be said that the transfer order has been passed in violation of any statutory provision or that it has been passed by a person who had no jurisdiction or authority to pass the impugned order.

16. The learned counsel for the applicant has then asserted that in view of the facts disclosed in the OA, as well as the rejoinder, transfer order was mala fide. This assertion has been denied on behalf of the respondents. It is true that the applicant was asked to show cause regarding the leakage of the contents of a letter addressed by Respondent No.3 to Respondent No.2. It is also true that the matter was inquired and it was observed that the applicant was to be blamed for the leakage. However, merely from this it cannot be inferred that the transfer was punitive or mala fide. If the authority concerned found that it was in administrative interest that the applicant should be transferred from a place where he had been working for more than 19 years, that decision cannot be interfered with by this Tribunal. The authority concerned was the best person to consider this matter.

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17. On a consideration of the arguments advanced by the learned counsel and the facts of the case, I am of the view that the applicant has not been able to make out any case for granting any of the reliefs claimed by him. The OA in the circumstances, is dismissed. There shall be no order as to costs.


3-2-1997

(V.N.MEHROTRA)
VICE-CHAIRMAN