

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.912/99

Dated: 10.2.2000

Manoj V.Kumare Applicant.

Mr.T.D.Ghaisas Advocate for
Applicant.

Versus

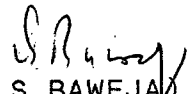
Union of India & Ors. Respondent(s)

Mr. S.C.Dhawan Advocate for
Respondent(s)

CORAM :

Hon'ble Shri D.S.Baweja, Member (A).

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library? ✗


(D.S.BAWEJA)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.912/99.

~~10th~~ this the 10th day of February 2000.

Coram: Hon'ble Shri D.S.Baweja, Member (A)

Manoj V.Kumare,
Sneh Sadan,
Near Govt. Certified School,
Kurla Camp, At and Post :
Ulhasnagar - 4.
(By Advocate Mr.T.D.Ghaisas)

...Applicant.

Vs.

1. The Divisional Commercial Manager (G),
Central Railway,
CSTM Annexe Building, Gr. Floor,
CST - Mumbai - 400 001.

2. The Divisional Railway Manager,
Central Railway, CSTM Annexe
Building, Gr. Floor,
CST - Mumbai - 400 001.
(By Advocate Mr.S.C.Dhawan)

...Respondents.

: ORDER :

(Per Shri D.S.Baweja, Member (A))

The applicant while working as Senior Booking Clerk at Ambernath, Central Railway has ^{been} issued a major penalty charge sheet dt. 7.4.1999 with the charge of over-charging the passengers. The disciplinary enquiry is still in progress. However, the applicant has been transferred as per the impugned order dt. 5.5.1999 from Ambernath to Nagpur Division. The applicant made a representation against the same dt. 19.8.1999, but did not get any reply. The present OA has been filed on 18.10.1999 challenging the impugned transfer order and seeking quashing of the same.

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2. The applicant has assailed the transfer order on the following grounds:

- (a) Mumbai Division and Nagpur Division are two distinctly separate seniority units. The transfer of the applicant from one seniority unit to another seniority unit in the administrative interest is not as per the extant rules under which such a transfer is not permissible.
- (b) In terms of Railway Board's letter dt. 25.3.1967, Non-Gazetted employee against whom the Disciplinary/Criminal Proceedings are pending is normally not to be transferred from one Railway/Division to another Railway/Division till the final decision of the Disciplinary/Criminal Proceedings. In view of this, the transfer of the applicant is in violation of the extant rules.
- (c) The transfer of the applicant from Ambernath to Nagpur will have an effect of jeopardising the defence of the applicant in the Disciplinary Proceedings as his defence assistant who is a retired Railway employee will not be able to assist the applicant if the enquiry is conducted at Nagpur.
- (d) In terms of Railway Board Orders dt. 25.7.1978, in case the transfer is ordered at the instance of the Vigilance Department, then the representation of an employee of genuine grievances if any against the transfer is to be considered before final orders are passed for transfer.

3. The respondents have opposed the OA through the written statement. It is submitted that there were complaints to the Vigilance Department in regard to over-charging the passengers at Ambernath. The Vigilance Department accordingly arranged a dacoity check and in this the applicant was found over-charging the passengers. The Vigilance Department advised the controlling department to issue a charge sheet to the applicant as well as to transfer the applicant out of Mumbai Division to enable carrying out a free and fair investigation without being hampered by the

presence of the applicant in the Mumbai Division. The concerned authority after careful consideration of the advise of the Vigilance Department has ordered the transfer of the applicant out of Mumbai Division to Nagpur Division in the same grade and rank without loss of any seniority in the interest of administration. The respondents further contend that the order of transfer is a transfer simplicitor without attaching any stigma. It is for the Competent Authority to decide where a particular employee is to be posted in the interest of administration. As regards the reliance on the Railway Board's letters dt. 25.3.1967 and 25.7.1978, the respondents contend that these are in the nature of guidelines and Competent Authority has to decide each case on facts and circumstances whether transfer is warranted in the interest of administration, even if the disciplinary proceedings are pending. The respondents have also taken the stand that transfer is an incidence of service and transfer made in the interest of administration is not open to interference in a judicial review until and unless the same is held as mala fide or in violation of statutory rules. The respondents have cited a number of judgments of the Hon'ble Supreme Court to support this contention.

4. The applicant has not filed any Rejoinder reply to the written statement.

5. I have heard the arguments of Mr.T.D.Ghaisas and Mr.S.C.Dhawan, the learned counsel for the applicant and respondents respectively.

6. As brought out by the respondents, the law with regard to judicial review in the matter of challenge of transfer has been well settled by the Apex Court through a catena of Judgments. The judicial interference has limited scope to the extent if it is held that the transfer order is hit by mala fide or has been issued in violation of statutory rules. Some of such judgments have been cited by the respondents as detailed below :

- (a) Union of India & Ors. Vs. H.N.Kirtania
(1989 3 SCC 445).
- (b) Shilpi Bose (Mrs.) & Ors. Vs. State of Bihar
& Ors. (1991 Suppl. (2) SCC 659).
- (c) Union of India Vs. S.L.Abbas
(1993) (3) JT 673)
- (d) Rajendra Roy Vs. Union of India & Ors.
(AIR 1993 SC 148)
- (e) State of Madhya Pradesh Vs. S.S.Kourav
(JT 1995 (Vol.II) SC 498)

It would be pertinent here to reproduce the views of their Lordships of the Hon'ble Supreme Court in the Judgment in the case of Shilpi Bose (Mrs.) in para 4 as under:

"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 should approach the higher authorities in the Department."

In view of the law laid down by the Hon'ble Supreme Court any challenge of the transfer order is to be seen within the parameters laid down. The applicant has cited three orders of the Tribunal in para 5.6 to support his contentions. In the matter of challenge of transfer order, the decision in one case does not normally become a precedent, as each order of transfer is to be subjected to judicial scrutiny on its own facts and circumstances within the parameters laid down by the Apex Court for judicial interference. Therefore, the cited orders by the applicant are not being reviewed individually to find out the application of ratio of what is held in each case to the present O.A.

8. In the present case, it is noted that no mala fides have been alleged by the applicant in assailing the transfer order. The applicant has taken a plea of violation of Railway Board's orders dt. 25.3.1967 and 27.5.1978. It is noted that the first letter dt. 25.3.1967 relates to the instructions laid down that if an employee is under disciplinary/criminal proceedings, he should not be transferred to any other railway/division till such time the disciplinary are concluded. The second letter dt. 27.5.1978 lays down that if the transfer of any employee is proposed at the instance of Vigilance Department, then the Competent Authority should consider the representation of the concerned employee for his grievances if any against the transfer before passing the final order. The applicant has not brought on record the copies of these letters. However, from the extracts brought out in para 5.3 and 5.5 of the OA, it is noted that these orders contain instructions which are by way of guidelines and are not the statutory rules. As rightly pointed out by the respondents,


these guidelines are to be kept in view, but if there are any overriding administrative considerations, the same cannot come in the way of transferring an employee. In view of this, the violation of the instructions laid down in the cited letters of the Railway Board even if accepted, cannot be a ground for interference with the impugned transfer order.

9. The next ground of attack is that the applicant has been transferred from one seniority unit to another seniority unit and the transfer is not in the public interest. The applicant has contended that transfer from one seniority unit to another seniority unit is normally called for only when there is curtailment closure of the cadre or unit and in such an event the juniormost employee has to be transferred out first. He further states that there is no such condition obtaining in the case of the applicant warranting transfer from Mumbai Division to Nagpur Division. It is the stand of the respondents, on the other hand, that transfer of the applicant was warranted in public interest and he has been transferred without loss of seniority in the same grade and rank. In view of the law laid down by the Hon'ble Supreme Court as referred to earlier, it is within the discretion of the competent authority to decide in the interest of administration as to where a particular employee has to be posted as transfer is an incidence of service. This does not, however, mean that the discretion can be applied without any just cause and reasons. There must be cogent administrative reasons for such an order of transfer. In the light of these observations, the only issue which needs to be examined is whether the reasons advanced by the respondents make out a case for transfer of the applicant from one seniority unit to another, as such a transfer

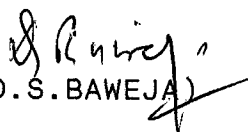
is not a normal feature. The respondents in para 5 have stated the administrative reasons which had prompted the transfer of the applicant out of Mumbai Division to Nagpur Division. The respondents have submitted that the applicant was found overcharging the passengers during a daco check which was conducted by the Vigilance Department on the basis of the source information that the booking clerks at Ambernath Station are overcharging the passengers. The applicant was found overcharging the passengers during the daco check and accordingly the Vigilance Department advised the concerned department not only to issue a charge sheet for the mis-conduct, but also transfer the applicant out of Mumbai Division. The reasons for transfer advanced are that the same was necessary to enable to carry out free and fair investigation without being hampered by the presence of the applicant in Mumbai Division. It is conceded that it is within the domain of the competent authority to decide whether continuing of an employee in a particular station against whom the disciplinary proceedings are in process likely to interfere with the enquiry and he requires to be transferred out to another post. It is noted that the daco check had been carried out on 9.2.1999 and the charge sheet had been issued on 7.4.1999, this shows that the investigation by the Vigilance Department was already over when the chargesheet was issued. It is not understood what further investigation are to be done except the inquiry on the disciplinary proceedings. If the apprehension was that the applicant was likely to interfere with the disciplinary proceedings, then the

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then objective could have been served by transfer of the applicant to another station in the same Mumbai Division itself. The transfer to another far away Division viz. Nagpur with different seniority unit would have been necessary only if the case is made out that the continuing of the applicant in the Mumbai Division would have hampered the disciplinary proceedings. However, no such submission has been made out except making a bald statement that Vigilance Department had advised so. In the light of these observations, I am of the considered opinion that the respondents have not demonstrated the adequate reasons which warranted the transfer of the applicant out of Mumbai Division to Nagpur Division. Even if the transfer has been made in the interest of administration without loss of seniority, it certainly reflects that the applicant has been transferred on account of misconduct. The respondents argument that the transfer is simplicitor and does not cause any stigma is not tenable as any transfer pending the enquiry can be interpreted only in this way. In this view of the matter, I have no hesitation to conclude that the present transfer order to Nagpur is not sustainable. However, in case the administration feels that the transfer of the applicant from Ambernath is necessary, he can be transferred to any other place in Mumbai Division itself.



10. In the result, the above OA is allowed quashing the impugned transfer order dt. 5.5.1999. This will, however, not preclude the respondents from transferring the applicant to another station on the Mumbai Division, if so desired in the interest of administration. No order as to costs.


(D.S. BAWEJA)
MEMBER(A)