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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No. : 103/97.

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Date of Decision

16-08-97

Nanda Ballabh Joshi,

Petitioner/s

Shri R. D. Deharia,

Advocate for
the Petitioner

Versus

Union Of India & Others,

Respondent/s

Shri Suresh Kumar.

Advocate for
the Respondent

Coram :

HON'BLE SHRI. M. R. KOLHATKAR, MEMBER (A).

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

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 103/97.

Dated this Proclaimed, the 26th day of August, 1997.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Nanda Ballabh Joshi,
Assistant Cook,
Central Railway.

R/o. C-9, Shiv Ashish
Co.Op. Housing Society,
Nalasopara (E),
Dist. Thane,
Pin - 401 209.

... Applicant

(By Advocate Shri R.D. Deharia)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Mumbai C.S.T.

2. The Chief Commercial
Manager (Head Quarters),
Central Railway,
Mumbai C.S.T.

3. The Divisional Railway,
Manager Divisional Office,
Central Railway,
Mumbai C.S.T.

... Respondents.

(By Advocate Suresh Kumar)

: O R D E R :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

The applicant was appointed as Assistant Cook, Group 'D' in Grade Rs. 800 - 1150/- with effect from 05.07.1989. His service appears to have been terminated but he was reinstated in service as per the award of Central Government Industrial Tribunal, Mumbai, vide order dated 15.10.1991. The applicant has also made representation regarding his grievance through his Union, vide the notice of Madhya Railway Karmachari Sangh dated 09.04.1996 at page 24. At the relevant time, the applicant was working in the Panchvati Express. He was asked to hand over charge vide page 28 on 10.08.1996 for further posting. He was served with a

charge-sheet on 31.10.1996. The charge against him being - "failed to maintained devotion to duty, carry out the order given by his supervisor and misbehaved with other staffs." The main allegation is that, while working as Assistant Cook in Panchwati Express Pantry Car on 10.08.1996, the applicant refused to prepare required number of vegetable cutlets, did not carry out the order given by Pantry Car Manager, prevented other staffs to prepare Vegetable Cutlets and misbehaved with the Pantry Car Manager and other staffs. He was suspended by the order dated 26.08.1996 pending enquiry but he was reinstated on 27.12.1996. The applicant states that he received the order of reinstatement only on 11.01.1997 but immediately thereafter, he was transferred by the order dated 14/16.01.1997, transferring him to Pune, in the same pay, grade and capacity. It is this order of transfer that the applicant is impugning.

2. The contention of the applicant is that the order of transfer is malafide and issued with oblique motive in as much as the respondents were annoyed because the applicant approached the Labour Commissioner (Central) for the redressal of the grievance about wrong assignment of his seniority and non-promotion to the grade of Rs. 950-1500/- and because the applicant approached the Central Government Industrial Tribunal for redressal of his grievance about non-grant of overtime allowance. The respondents are also having revengeful attitude because the applicant, having been illegally retrenched by the respondents, was directed to be reinstated by the Central Government Industrial Tribunal. Further, the applicant contends that the charges against him are false and the transfer of the applicant is punitive because the respondents are not proceeding with the enquiry and immediately on revocation of the suspension, he has been transferred.

3. The respondents have opposed the O.A. According to them, the applicant was taken off duty from Panchwati Express because of his misbehaviour, for which the department was required to proceed against him departmentally. The applicant has not challenged this order, relieving him from duty from the Panchwati Express. The applicant was being utilised in the Headquarters but without any specific duty and since he cannot be kept in Headquarters for a long time ^{without} any specific duty, the applicant was transferred.

4. The Counsel for the applicant has relied on the following Case Law - Charanjit Lal V/s. Union Of India & Others [ATR 1987 (1) CAT 393]. In that case, the order of transfer was set aside as being arbitrary and discriminatory because the transfer of the Petitioner, who ^{was made} was a low paid Group 'C' employee to Hyderabad, in order to accomodate another employee from Agra, without calling for volunteers and without correctly calculating the period of stay of the petitioner. In my view, the ratio of the above judgement does not apply to the facts of the present case.

5. The Counsel for the applicant next relies on Rajendra Chaubey V/s. Union Of India & Others [1995 (1) ATJ 460]. In that case, the Tribunal found that the order of transfer was issued not on account of administrative exigencies but on the main consideration of the alleged misconduct which was the subject matter of the disciplinary proceedings. The Tribunal found that there had been no element of bias and arbitrariness in the transfer of the applicant and there had been colourable exercise of power and hence the order of transfer was set aside.

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6. I am of the view that the ratio of the above judgement also does not apply to the facts of the present case. In that case, there was an admission of the respondents that the transfer order was issued keeping in view the misconduct of the applicant, for which the department had contemplated enquiry and disciplinary proceedings were initiated thereafter. In the present case, however, the main reason for transfer appears to be to utilise the services of the applicant properly, as he was without work at Bombay and his services cannot be utilised in the ^{Panchavati} train. The transfer order is not in substitution of disciplinary enquiry because the disciplinary enquiry was ordered earlier. The transfer, therefore, cannot be called punitive in nature. I am also not satisfied that the transfer is actuated by malafides. The applicant was reinstated in the year 1993, i.e. 3½ years prior to the transfer order and it has not been clearly brought out that any representation made by the applicant or his union activists has anything to do with his transfer. The transfer is clearly for administrative reasons, namely; to utilise the services of the applicant in a better manner.

7. I am, therefore, of the view that the O.A. has no merit and therefore, the same is dismissed with no order as to costs.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).