

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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O.A. No. 952/92

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~~Ex No.~~

DATE OF DECISION 16.9.95

C.L. Verma

Petitioner

Mr. S.K. Jain

Advocate for the Petitioner (s)

Versus

Union of India & Another

Respondent

Mr. Manish Bhandari.

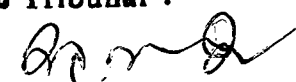
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.. Rattan Prakash, Member (Judicial)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(RATTAN PRAKASH)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R .

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OA No.952/1992

: Date of order: 16.0.95

C.L.Verma S/o Lal Ram, b/c (Verma) Jatav
R/o Firojabad (UP) Now a days at G-120
Kamla Nagar, Agra posted as Head Clerk
under Area Officer (W.Rly) Agra.

.. Petitioner

Versus

1. Union of India through General Manager
(W.Rly) Church Gate, Bombay-20.
2. Sr. Divisional Mechanical Engineer (W.Rly)
Kota Division, Kota.

.. Respondents.

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|---------------------|---|-----------------------------|
| Mr. S.K.Jain | - | Counsel for the applicant |
| Mr. Manish Bhandari | - | Counsel for the respondents |

CORAM:

HON'BLE MR. RATTAN PRAFASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE MR. RATTAN PRAFASH, MEMBER (JUDICIAL))

The applicant Shri C.L.Verma has filed this application under Section 19 of the Administrative Tribunal's Act, 1985 to seek a direction against the respondents that the impugned order dated 19.10.1992 transferring the applicant from Agra Fort to Kota be quashed and that he be allowed to continue on the same post at Agra with a further direction to the respondents not to transfer him in contravention of the Circular dated 14.1.1975 issued by the Railway Board.

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2. The facts of this case are that the applicant ^{by caste} is Jatav and a member of the Schedule Caste community is residing at Agra where he has his house. It is the case of the applicant that he was promoted as Head Clerk in the year 1985 with the respondent department and that his transfer from Agra Fort to Kota is in violation of the circular issued by the Railway Board on 14.1.1975. It is the grievance of the applicant that in utter disregard and flagrant violation of the Railway Board's letter dated 14.1.1975 his transfer from Agra to Kota is null and void and has been issued by the respondents without any application of mind. He has therefore claimed the aforesaid reliefs.

3. The respondents have contested this application by filing a written reply to which the applicant has also filed a rejoinder. It is the stand of the respondents that the transfer order of the applicant has been issued in the exigencies of administration and that there has been no violation of the aforesaid circular dated 14.1.1975 issued by the Railway Board. It has also been averred that the applicant has been posted at Agra for almost two decades i.e. 20 years and the transfer of the employee being one of the service conditions, the employee who joins Government Service is bound to be transferred from one place to another. It has been also averred that the applicant's case is not a case of frequent transfer and as such the aforesaid circular of the Railway Board is inapplicable and since the applicant

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has been transferred after a lapse of about 20 years, there is no justification for the Tribunal to interfere in the present case. It has therefore been submitted that this application deserves rejection.

4. We have heard the learned counsel for the applicant Shri S.K.Jain at great length and have also gone through the pleas raised on behalf of the respondents besides examining the record in great detail.

5. The law on the aspect of transfer of the Government servant is now settled by Hon'ble the Supreme Court as has been held in the case of N.K. Singh Vs. Union of India, 1994(28)ATC 246, wherein it has been laid down that:

"Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

It is therefore in this perspective that it has to be examined whether the case of the applicant's

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transfer falls within the category of cases where judicial review of administrative orders can be gone into?

6. The argument of the learned counsel for the applicant has been two fold. Firstly, that the impugned order Annexure A-1 transferring the applicant from Agra to Kota has not been issued in the exigencies of administration. Secondly, that it is in violation of the mandate laid down in the circular dated 14.1.1975 issued by the Railway Board. The basis for the first argument of the learned counsel for the applicant has originated on the basis of the reply given by the respondents in their counter to the effect that there has been also some recommendations from the Chief Vigilance Officer which showed that some matter against the applicant was there and that the transfer has been made in the interest of the administration. It has been urged by the learned counsel that in fact his transfer is an out-come of some extraneous consideration for which no opportunity has been afforded to the applicant to place his case. In support of his argument, the learned counsel for the applicant has mainly cited the case of Jaggish Chander Vs. State of Haryana, 1990(6) SLR 127; Rajeev Saxena Vs. Collector of Central Excise, 1989(6) SLR 352; C.C.Ayyappan V. Telecom District Manager Trichur and others, 1990(7)SLR 327 and a judgment of

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the Varla High Court in Dr. P. Damodaran Vs. State of Varla and others, 1982 (1) SLR page 563. On the basis of these authorities, it has been argued by the learned counsel that the applicant having been not provided with any opportunity to meet an extraneous consideration which is said to be based on the recommendations of Chief Vigilance Officer of the respondent, the impugned order has become vitiated and this Tribunal can interfere by quashing it. It may be stated that the facts as are evident in the instant case are wholly distinguishable. The applicant has remained posted at Agra for about 20 years. It is not the case of the applicant that he has been transferred from one place to another or that he has been frequently transferred from one place to another. The applicant has also not alleged any malafide in his application against any of the respondents. His plain and simple case is that his transfer from Agra to Kota vide impugned order dated 19.10.1992 is in violation of the circular/letter of the Railway Board dated 14.1.1975. It may also be mentioned that in every case in order to succeed in his claim the applicant has to stand on his own legs and he cannot take any advantage of the stand taken by the respondents as in the present case. On a perusal of impugned order Annexure A-1 it is abundantly clear that his order of transfer from Agra Fort to Kota is on the same post, pay and pay scale and also in the exigencies of administration and that too against a vacant post. It is not a case where the

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applicant has been transferred to accommodate any other employee at Agra to the detriment of the interest of the applicant. Merely a reference by the respondents in their reply that there is also some recommendations from the Chief Vigilance Officer which showed that some matter against the applicant has been there, does not amount to give a ground to the applicant to insist that a proper enquiry should have been held or that he should have been afforded full opportunity to defend himself. The respondents have not made any specific allegation of mis-conduct or any other factor which cast an aspersion on the service ^{above} career of the applicant. The averment taken by the respondents in their reply is in very vague manner which cannot be construed to mean that some material irregularity or mis-conduct has been under enquiry against the applicant. For all the aforesaid reasons, the authorities cited by the learned counsel for the ^{where the facts are distinguishable} applicant and referred to above are of no assistance and looking to the nature and context of the impugned order (Annexure A-1), the applicant is not entitled to insist for affording any opportunity to meet the stand taken by the respondents in their reply in a casual way.

7. Coming now to the second leg of the argument of the learned counsel for the applicant that his order of transfer is in violation of the Railway Board's circular/letter dated 14.1.1975, it is necessary to reproduce the exact portion which has

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been incorporated by the applicant in para 4 of the application. The relevant portion of the aforesaid letter reads:

"2. It has been represented that the Scheduled Castes and Scheduled Tribes are being transferred from one place to another quite frequently. The Board therefore have decided that the employees belonging to the Scheduled Castes and Scheduled Tribes should be transferred VERY RARELY AND FOR VERY STRONG REASONS ONLY".

On the basis of this clause in the aforesaid circular/letter it has been vehemently argued by the learned counsel for the applicant that the applicant being a member of the Schedule Caste community, there is a general bar of transferring candidates belonging to Schedule caste and Schedule tribe community from one place to another and that if they have to be transferred they could be transferred "Very rarely and for very strong reasons only". In support of this argument, the learned counsel has placed reliance upon a decision of the single bench of this Tribunal in OA No.532/92 decided on 18.9.1992 B.S.Verma Vs. Union of India and others and a division bench decision of this Tribunal in OA No.956/92 decided on 3.8.1993 of the same applicant i.e. Shri B.S.Verma and others. On the basis of these decisions of this Tribunal, it has been vehemently urged by the learned counsel that the applicant's case is fully covered by the principle laid down in the aforesaid two decisions by this Tribunal and accordingly the impugned order Annexure A-1 should be quashed.

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8. I have carefully gone through the above referred two decisions of this bench in the case of B.S.Verma who has been applicant in both the decisions made on 18.9.1992 and 3.8.1993 and referred to above. A perusal of the facts of B.S.Verma's case (supra) exhibits that when he was earlier transferred from Jaipur to Bombay he filed OA No.532/92 which was decided on 18.2.1992. In that OA a direction was given that the respondents should give a posting to the applicant, if necessary, taking into consideration the guidelines/directions issued by the Railway Board in their letter dated 14.1.1975. When he was transferred again to Ajmer vide order of the respondents therein on 23.10.92 he filed the OA No.956/92 which was decided by a division bench of this tribunal vide its order dated 3.8.1993. Finding on facts that in the transfer order of the applicant therein (Shri B.S.Verma) very strong reasons and rare grounds for the transfer were not given, impugned order of transfer was set-aside. Shri B.S.Verma, the applicant therein, in fact was posted at Bombay and on his own request was transferred in 1985 and when he was transferred to Bombay on 14.8.1992 he challenged it in the earlier OA No.532/92 decided on 18.9.1992. When he was again transferred on 23.10.1992 as Assistant Commercial Superintendent Ajmer he filed the subsequent CA i.e. 956/92 which was decided by division bench of the Tribunal on 3.8.1993. It is thus clear that Shri B.S.Verma's case and in the aforesaid two decisions/relied upon by the applicant was a case of the category where a member

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of the Schedule Caste has been frequently put to transfer from one place to another. It is thus in the facts and circumstances of the case of Shri B.S. Verma that the division bench of this Tribunal had rightly held that the circular/letter dated 14.1.1975 issued by the Railway Board has been violated because the impugned order of transfers therein did not disclose very strong reasons of his transfer from one place to another and this is why in his case he was given the advantage of not transferring frequently from one place to another. However, in the instant case the facts are altogether different and distinguishable. Here the applicant has remained posted at Agra for about a period of 20 years; he has not shown that he was ever transferred earlier also from Agra to any other place; has failed to substantiate that he falls within the category of ^{such} a member of Schedule Caste Community "put to frequent transfers".

9. The cases relied upon by the learned counsel for the applicant and referred to above of Jagdish Chander (of Punjab & Haryana High Court); Rajeev Saxena (of Jabalpur Bench of the Tribunal) and of C.C.Ayyappan (of Ernakulam bench of the Tribunal) are of the category where there were complaints of mis-conduct, mis-behaviour and accordingly it was held therein that without holding enquiry into the alleged mis-behaviour/mis-conduct, the petitioners therein could not have been transferred. The case of Dr. P.Damodaran (of Kerala High Court) was found to be a case of mala fide exercise of powers by the respondents and hence the transfer of the petitioner

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therein was held bad. All the aforesaid decisions are thus distinguishable from the facts available in the instant case of the applicant Shri C.L.Verma. Accordingly, the applicant cannot take any advantage of them and of decisions of this bench referred to earlier and given on 18.9.1992 and 3.8.1993 in the aforementioned OAs No.532/92 and 956/92 filed by Shri B.S.verma against Union of India and others.

10. In view of the above discussion, it is amply made out that the impugned order of transfer Annexure A-1 dated 19.10.1992 is not an outcome of any malafides or infraction of any professed norm or principle, nor of any statutory provision. In the applicant's case, the principle of law laid down by Hon'ble the Supreme Court in the case of N.K.Singh (supra) and reproduced above applies with full force. The order of transfer of the applicant dated 19.10.1992 (Annexure A-1) being in the exigencies of the administration, does not affect the career prospects of the applicant, nor causes any other detriment to him and thus cannot be held to be violative of any principles of natural justice even.

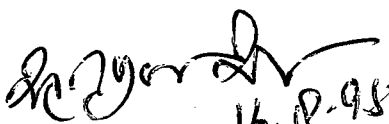
11. For all the aforesaid reasons, I am of the considered opinion that there is no infirmity or illegality in the order dated 19.10.1992 (Annexure A-1) transferring the applicant from Agra to Kota, issued by the respondent No.2 Senior Divisional Mechanical Engineer, Kota Division, Kota. The OA therefore being

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without any merit is hereby rejected. The interim order issued against the respondents vide order dated 29.10.1992 and continued till further orders vide order dated 28.6.1993 stands vacated.

In the facts and circumstances of this case both the parties are to bear their costs.


(RATTAN PRAKASH) 16.8.95.
MEMBER (J)