

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.182/98

Date of order: 22.10.1998

Om Prakash Jain, S/o Shri H.L.Jain, R/o Chand Pole Bazar, Jaipur.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway Churchgate, Mumbai.
2. F.A & C.A.O (S&C), Western Railway, Churchgate, Mumbai.
3. Deputy FA & CAO (S&C), Western Railway, Jaipur.
4. Smt.Gitika Pandey, SAO (S&C), Western Railway, Jaipur.

...Respondents.

Mr.S.K. Jain - Counsel for applicant.

Mr.Manish Bhandari - Counsel for respondents.

CORAM:

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.RATAN PRAKASH, JUDICIAL MEMBER.

Applicant herein Shri O.P.Jain has approached this Tribunal under Sec.19 of the Administrative Tribunals Act, 1985 to quash and set aside the impugned order of his transfer dated 7.5.98 alongwith the order to relieve him dated 11.5.98 (Annx.A1). He had further prayed for a direction to allow him to work continuously at Jaipur on the post in the office of the respondents.

2. Facts leading to this application and as averred by the applicant in brief are that when he was posted at Pratapnagar in the year 1996 on the post of Stock Verifier, he made a request to the Railway Administration to transfer him to a nearby place to Delhi on account of the accute illness of his son, Rajeev Jain. He accordingly was transferred at his request from Pratapnagar to Jaipur, vide order dated 19.5.97 and joined his duties in Jaipur office on 23.5.1997 and that since then he was working at the Jaipur office.

2

3. It is the grievance of the applicant that after he refused to escort the goods of respondent No.4, Smt.Gitika Pandey, in the first week of March 98; respondent No.4 was enraged. Thereafter, the applicant was chargesheeted (Annx.A2) for a false incident of 11.3.98 alleging that the wife and daughter of the applicant had a quarrel with a lady Peon, Purnima Mukherjee in the office and used unparliamentary language, oblivious of the basic decorum and dignity. The applicant denied the whole incident vide his representation dated 2.4.98 and urged that the subordinate staff at the behest of respondent No.4 has made a complaint on 11.3.98 (Annx.A3). According to the applicant, respondent No.4 went to Mumbai and pressurised respondent No.2, FA & CAO (S&C), Western Railway, Mumbai, to transfer the applicant immediately. As a result of this pursuation, respondent No.2 has transferred the applicant from Jaipur to Pratapnagar. The applicant has, therefore, challenged his transfer order on the basis of malafide on the part of respondent No.4 as also the order of transfer being devoid of administrative requirements/exigencies claiming the aforesaid relief.

4. The respondents have opposed this application by a written counter to which the applicant has also filed a rejoinder followed by an additional affidavit by the respondents. While denying that the applicant has been transferred because of the malafide on the part of respondent No.4, the respondents have averred that the transfer of the applicant has been consequent to a decision taken by respondent No.2 to surrender the post of Stock Verifier at Jaipur. This decision has been taken after cadre review as also reduction of work in the Construction Unit at Jaipur and consequent to it, the competent authority has passed the impugned order of transfer of the applicant. The respondents have further stated

*Sh*

19

that because of the surrender of post no other person has been posted at Jaipur. The respondents have denied that the case of the applicant is of frequent transfer as alleged by him. It is denied that respondent No.2, who is Head of the Accounts & Finance Wing; had acted at the instance of respondent No.4, Sr.Accounts Officer (S&C), Western Railway, Jaipur; who is a subordinate authority to respondent No.2. It has been denied that on the date of transfer order any enquiry was pending against the applicant as the order of punishment had already been passed on 6.5.98 itself. Therefore, the respondents have urged that this application be dismissed.

5. I heard the learned counsel for the parties at length and have examined the record in great detail besides pursuing the record made available by the respondents, as per the directions given.

6. It is settled position of law that an order of transfer of a Govt. servant can be challenged only on two grounds. Firstly that the order is in violation of any statutory rules or provisions governing the department and secondly it is tainted with malafides. In this case, therefore, it has to be ascertained whether the impugned order of the applicant dated 7.5.98 is vitiated and liable to be quashed on any of these grounds.

7. It has been vehemently argued by the learned counsel for the applicant that the stand of the respondents to surrender the post held by the applicant at Jaipur; is an afterthought. That it is only on account of the malafide on the part of respondent No.4 and that too <sup>to</sup> vent out her anger, that he has been transferred. To achieve this end even a false complaint of an incident on 11.3.98 has also been raised against him. On the point of surrender of post, it has been argued by the learned counsel for the applicant that creation

2

and surrender of post can be done by General Manager of the Railways and unless a decision is taken to this effect by a competent authority no post can be surrendered. Another argument in this regard is that; had the impugned order been issued on the basis of surrender of post, there would have been a reference about it in the impugned order of transfer. The impugned order; it is argued, also does not disclose if the applicant is being transferred in the administrative exigencies. It has, therefore, been urged that the impugned order of transfer and the order relieving him from the office at Jaipur are bad in law and should be quashed.

8. As against it, the learned counsel for the respondents has argued that though <sup>in the order</sup> there is no mention of the reason to transfer the applicant from Jaipur to Pratapnagar; yet the applicant has been transferred only on account of surrender of post in Jaipur office. In support of his argument, the learned counsel for the respondents has made available the record of the Head Office of the respondent Railways. A perusal of the record of the office of respondent No.2 indicates that the post of Stock Verifier at Jaipur has been surrendered after taking due deliberations and decisions because of the completion of Gauge Conversion Projects and Reduction of Work-load in Jaipur Unit. This decision has been taken at the level of the Head of the Accounts & Finance Wing of the respondent department i.e. respondent No.2, on 4.5.98 who is the competent authority and it cannot be inferred that it has been done only at the instance of respondent No.4 who is only a Sr.Accounts Officer in the respondents' organisation. Further, merely because the impugned order of transfer of the applicant dated 7.5.98 is in the proximity of the decision dated 4.5.98 to surrender the post of Stock Verifier at Jaipur, it does not mean that it is because of the malafide on the part of respondent No.4 that



91

respondent No.2 has taken a decision to surrender the post of Stock Verifier in the Jaipur Office.

9. The argument of the learned counsel for the applicant raised on the basis of malafides of respondent No.4 on account of the incident dated 11.3.98 also does not appear to carry any weight. If at all there has been an incident dated 11.3.98, the applicant appears to have been duly proceeded with in a departmental proceeding and thereafter an order imposing penalty has also been issued on 6.5.98. It cannot be argued that because the order imposing penalty was not delivered to the applicant before his order of transfer or before he approached this Tribunal to seek redress against the impugned order of transfer, the orders in question are not sustainable. It does not make any difference on the status of the applicant who has been ordered to be transferred from Jaipur to Pratapnagar vide order dated 7.5.98, followed by the relieving order dated 11.5.98 (Annx.A1). The reason is, transferring a Govt servant from one place to another is one aspect of the administration of the organisation and to proceed with in any departmental proceeding is a separate and independent matter which can be pursued independently according to the administrative exigencies. In the instant case, the applicant has been transferred not on the basis of the decision taken in the disciplinary proceedings because of the incident of 11.3.98 or on account of any malafide on the part of respondent No.4; but on the basis of a conscious decision taken at the level of respondent No.2, the FA&CAO(S&C) Western Railway, Mumbai which is the competent authority to surrender the post of Stock Verifier at Jaipur. It is for creation of posts that the General Manager of the Railway is the only competent authority and not for the surrender of a post.

10. The argument of the learned counsel for the applicant

*So*

that since the impugned order does not disclose anything about the surrender of post; the justification given by the respondents in their reply would not enure any benefit to the respondents; which is nothing but an effort to fill the lacuna in the impugned order of the applicant's transfer. For this argument, the learned counsel for the applicant has relied upon the decision of Hon'ble the Supreme Court in the case of Commissioner of Police Vs. Gordwandas, AIR 1952 SC 16 also been reiterated in Channappa Vs. Secretary, Govt of Karnataka, AIR 1993 Karnataka 236. It is suffice to mention in this regard that Hon'ble the Supreme Court made the following observations:

"Public orders, publicly made, in exercise of a statutory authority cannot be considered in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in the mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

in the context and in regard to Govt orders which are publicly made. In the instant case, the order of transfer of the applicant dated 7.5.98 cannot be categoraised as a public order which has been publicly made. It is an administrative order issued by a competent authority affecting only one individual employee and in administrative exigency. Further in the instant case, the order of transfer of the applicant appears to have been made only at the behest of respondent No.2 and not of respondent No.4. In view of this, the applicant cannot take any advantage of the above decision of Hon'ble the Supreme Court (supra).

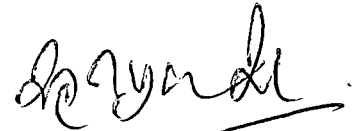
11. Even if, for arguments sake, it is taken that respondent No.4 was not disposed of favourably towards the applicant, it cannot be inferred that the order of transfer dated 7.5.98 has been issued because of malafide on the part of respondent No.4 when as observed earlier, respondent No.4 is a

*[Signature]*

93

Junior Officer who is also not a competent authority to transfer the applicant. It cannot be said that the order of transfer which is followed by the order dated 11.5.98 to relieve the applicant is actuated by any malice and thus can be quashed on this ground.

12. For all the aforesaid reasons, it cannot be said that the order of transfer of the applicant dated 7.5.98 which is followed by the order of relieving dated 11.5.98 is violative of any statutory rule or provision or said to be issued on the basis of malafides on the part of any of the respondents. There being thus no merit in this O.A, the application is dismissed with no order as to costs.



(Ratan Prakash)

Member(Judicial).