

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.278/99

Date of order: 8/10/99

Praveen Chaturvedi, S/o Shri D.N.Chaturvedi, R/o
219/1, Ganpati Nagar, Jaipur.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Senior Dy.General Manager & Chief Vigilance Officer, Western Railway, Churchgate, Mumbai.
3. Divisional Railway Manager, Western Railway, Jaipur.
4. Sr.Divisional Commercial Manager, Western Rly, Jaipur.

...Respondents.

Mr.R.N.Mathur - Counsel for applicant.

Mr.P.P.Mathur

Mr.Manish Bhandari - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application the applicant makes a prayer to quash the impugned order of transfer dated 28.5.99.

2. Facts of the case in brief as stated by the applicant are that on 8.12.98, a trap was conducted by the Vigilance Deptt against one Tarun Gaur and FIR was lodged by both the sides but name of the applicant does not find place in the FIR. It is stated that a preliminary enquiry was conducted and the applicant was suspended vide order dated 11.12.98. The said suspension order was challenged before this Tribunal in O.A No. 173/99, Praveen Chaturvedi Vs. UOI & Ors, and this Tribunal vide its order dated 22.4.99 directed the respondents to review the order of suspension. Thereafter, the suspension was revoked vide order dated 28.5.99 but on the same day the applicant was transferred and has been relieved to report CCM/CCG Mumbai for further orders. It is stated that the impugned order is DAR action but no charge sheet has been issued to the applicant so far. It is also stated that the impugned order was passed only to punish/victimise the applicant at the instances of Vigilance Department. It is also stated that as per the Railway Board's circular, transfer should not be ordered at the instances of Vigilance Department/ Special Police Establishment whereas the applicant has unblemished record and no departmental enquiry/criminal case is pending against him. Therefore, the transfer of the applicant is illegal and is liable to be quashed. Therefore, this O.A is filed for seeking the relief as mentioned above.

3. This Tribunal vide its order dated 15.6.99, directed the respondents not to issue any fresh order transferring the applicant outside the Division till the next date and this order was extended to this date.

4. Reply was filed. It is stated that the applicant was transferred as per directions of the General Manager and vide the impugned order the applicant has been directed to report CCM/CCG, Mumbai and the applicant was relieved. It is also stated that the applicant having all India transfer liability, therefore, direction to the applicant to report for duty to CCM/CCG Mumbai, is not punitive in nature. It is further stated that the applicant was suspended because he was involved in the incident took place on 8.12.98 but later on his suspension was revoked and vide the impugned order directions were given to the applicant to report the CCM/CCG Mumbai for further action but the applicant did not report for duty so far. Therefore, the applicant has no case.

5. Heard the learned counsel for the parties and also perused the whole record.

6. On the perusal of the pleadings it appears that no malafides could be established by the applicant against the respondents. There is no specific averment in the O.A regarding the malafides.

7. In Gujarat Electricity Board Vs. Atma Ram Sugomal Poshani, AIR 1989 SC 1433, it was held that "An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency."

8. In Union of India Vs. H.N.Kirtania, AIR 1989 SC 1774, it was held that "Transfer of a public servant made on administrative ground or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide."

9. In E.P.Royappa Vs. State of Tamil Nadu, AIR 1974 SC 555, it was held that "We must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved and the very seriousness of such allegations demands proof of a higher order of credibility..."

10. This proposition was reiterated in Shivajirao Nilangerkar Patil Vs. Dr.Mahesh Madhav Gosavi, AIR 1987 SC294, held that

"It was somewhat unfortunate that allegations of malafides which could have no foundation in fact were made and several cases which had come up before this Court and other Courts and it had been found that these were made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of which might at least stick."

11. In *M. Shankamarayana Vs. State of Karnataka*, AIR 1993 SC 763 it was held that "It may be permissible in an appropriate case to draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise or conjecture."

12. On the basis of the above legal propositions, it is abundantly clear that the applicant failed to establish the act of malafide against the respondents.

13. The learned counsel for the applicant has argued that because of the incident of 8.12.98, the respondents' Vigilance Department has malafidely acted against the applicant and on the action of the Vigilance Department, the applicant was transferred to Mumbai and if he joins, a DAR action will be initiated against him. In support of his contention, he has referred to the following judgments.

(i) SLR 1998(3)CAT 69

(ii) JT 1999(1)SC 396

(iii) SLJ 1998(1) SC 162

(iv) SLR 1998(2) 418

14. I gave thoughtful consideration to the contentions of the learned counsel for the applicant and also perused thoroughly the legal citations as referred by the learned counsel for the applicant. Since no malafide was established directly or indirectly against the applicant, therefore, these legal citations do not help the applicant in any way.

15. The applicant also failed to establish that the impugned order of transfer is ~~in~~ in violation of any statutory rules. Even if it is taken for the arguments sake that certain executive instructions/guidelines are not followed in issuing the impugned order of transfer, these executive instructions/guidelines are not enforceable in view of the judgments of the Apex Court in *UOI Vs. S.L. Abbas*, 1994 SCC (L&S) 230. In this case, Hon'ble the Supreme Court held that guidelines issued by the Govt. do not confer upon employee legally enforceable right. In *Abani Kant Rai Vs. State of Orissa* (1996) 32 ATC 10, it was held by the Hon'ble Supreme Court that it is the settled law that a transfer which is an incident of service is not to be

interfered with by the Courts unless it is shown to be clearly arbitrary or in violation of statutory norms or infraction of principles governing the principle of transfer.


16. The impugned transfer order does not appear to be punitive to the applicant at all. Merely that a DAR action will be initiated against the applicant after joining at Mumbai does not mean that the impugned order of transfer is punitive. An employee can be transferred to facilitate the DAR action and the same would be in the exigencies of service/in administrative interest.

17. It is also a settled principle that a transfer can be resorted to remove the officials suspected of creating indiscipline and such transfer on such basis cannot be said to be punitive in nature. As it has been held by Cuttak Bench (Full Bench) of the Central Administrative Tribunal in O.A Nos. 672/95 to 674/95. In L.B. Shahdad Puri Vs. UOI, 1999(2) ATJ 582 CAT Mumbai Bench, it has been held that where administration receives some complaint against an officer and on account of that complaint it is in public interest to transfer such official such an order of transfer cannot be punitive. In Arun Damodar Veer Vs. State of Maharashtra, 1999(4) SLR 126, it was held that transfer on account of complaint against the petitioner is not punitive. It is further held that same is in the interest of efficient administration and in the personal interest of the petitioner as well as in the public good. The transfer effected on the basis of the complaint will be beneficial for the petitioner because he could have an opportunity to work at a new place and by away from the place where the complaints were being filed against him. The competent authorities, therefore, cannot be faulted within effecting the transfer of the petitioner.

18. In GSH Reddy Vs. A.P. State Transport Corporation, Hyderabad 1999(2) SLR 427 (A.P DB) it was held that transfer based on vigilance report is not punitive in nature.

19. In view of the above, I do not find any basis to quash the impugned order of transfer. Therefore, this O.A is liable to be dismissed.

20. I, therefore, dismiss this O.A and the ad interim order issued on 15.6.99 stands vacated. No order as to costs.


(S.K. Agarwal) 8/11/09
Member (J).