

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR

Date of decision: 19.11.2003

OA No.189/2001

Man Mohan Arora s/o Shri R.K.Arora, r/o 15-D, Radha Nagar, Mathura, working as Head Clerk, Senior Electrical Foreman (Power), Idgah, Agra, Western Railway, Kota Division, Kota.

.. Applicant

VERSUS

1. Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. Senior Divisional Electrical Engineer (P), Western Railway, Kota Division, Kota.

.. Respondents

Mr. S.K.Jain - counsel for the applicant.

Mr. Tej Prakash Sharma - counsel for the respondents

CORAM:

Hon'ble Mr. J.K.Kaushik, Member (Judicial)

Hon'ble Mr. A.K.Bhandari, Member (Administrative)

ORDER (ORAL)

Shri Man Mohan Arora has filed this OA assailing the chargesheet dated 11.9.2000 (Ann.A2) and order dated 9.4.2001 (Ann.A1) amongst other reliefs.

2. The factual profile of this case falls in a narrow compass i.e. the applicant while working on the post of Head Clerk was ordered to be transferred from Agra Fort to Shyamgarh in Kota Division vide order dated 16.11.98. The applicant challenged the same before this Bench of the Tribunal vide OA No. 129/99 and with the strength of the interim order granted in his favour, he was continued at Agra Fort. Subsequently, an order came to

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be passed on 26.5.99 by which the applicant was directed to work on the post of Head Clerk in the Office of Junior Engineer (Electric) at Idgah. The said OA was decided taking into consideration the subsequent development in the case in the presence of both the learned counsel and the OA was dismissed as having become infructuous.

2.1 The further case of the applicant is that he was issued with a chargesheet (SF-11) i.e. the chargesheet for major penalty under Railway Servants (Discipline and Appeal) Rules, 1968 alleging that the applicant has misguided this Tribunal by projecting that the order dated 26.5.99 was a transfer order. The statement of defence was submitted by the applicant to the chargesheet stating that the matter was within the purview of this Bench of the Tribunal and it could not have been the subject matter of the disciplinary proceedings. Thereafter, the disciplinary authority after considering the defence, imposed the penalty of reduction by 3 stages without future effect in the pay scale of Rs. 5000-8000. The OA has been filed on diverse grounds intermixed with the facts.

3. The respondents have contested the case and have filed an exhaustive reply taking priliminary objection that the order dated 9.4.2001 has been passed in accordance with the provisions of law and also that the applicant has not availed of the statutory remedy provided in the Railway Servants (Discipline and Appeal) Rules, 1968. The defence as set out in the reply by the respondents is that the applicant was taken back on duty at Agra Fort and subsequently vide order dated 26.5.99 he was instructed to work with SEF(P) Idgah which was a local arrangement and cannot be treated as transfer, inasmuch as

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SEF (P) was not the competent authority to issue any transfer order in respect of the staff working under him. The applicant misguided this Hon'ble Tribunal by stating that the order dated 26.5.99 was a transfer order and tried to get a decision in his favour and the respondents have found this act as in violation of the Conduct Rules and on the basis of the facts of the case, the punishment has been imposed on the applicant. There has been repetition of the factual aspects in subsequent paras. Therefore, the OA may be dismissed with costs.

4. A short rejoinder has been filed by the applicant controverting the defence of the respondents set out in the reply.

5. A reply to the rejoinder has also been filed on behalf of the respondents.

6. We have heard the elaborate arguments advanced on behalf of both the parties and have earnestly considered the submissions, pleadings and the record of this case.

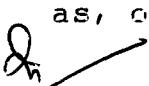
6.1 The learned counsel for the applicant has submitted that as far as the preliminary objection is concerned, the applicant approached this Tribunal in extra-ordinary circumstances, inasmuch as, the chargesheet itself was without jurisdiction since the applicant did not commit any misconduct at all, inasmuch as when the proceedings take place in a court of law, it is only the particular court at whose instance any cognisance can be taken. Otherwise also, the Hon'ble Tribunal has entertained and have granted the interim order and Section 21 of the Administrative Tribunal does not provide any



absolute bar as the word 'ordinarily' has been used. The applicant has in fact approached this Tribunal in extraordinary circumstances.

6.2 As regards the merits of the case, he has reiterated the facts mentioned in the OA and has submitted that the applicant has not at all misguided this Bench of the Tribunal and the so called order of transfer is not a vague and he only produced that letter. Not only this, it is also submitted that on the strength of this order, the applicant is being continued at Idgah and if at all the respondents felt any unusuality it was open to them to take recourse to the remedy available to them. They could have approached this Tribunal by way of a review or by way of other remedies available, but the respondents have not thought it expedient to object this and after a lapse of about 9 months of the order of this Tribunal, resorted to taking of a disciplianry action against him. One side the respondents have adopted the so called transfer order and have acted themselves and there is nothing on record to show that any action has been taken against the person who directed the applicant to work at Idgah.

6.3 On the contrary, the learned counsel for the respondents has reiterated the defence set out in their reply and has strenuously opposed the contention raised on behalf of the applicant. It has been submitted that the earlier case of the applicant was fully heard and when the case was going to be dismissed, the order dated 26.5.99 was produced before the Court and at that spurt of the moment it was not possible to verify the sanctity of the order except to request the court to appropriately pass the order and the Hon'ble Tribunal was midguided, inasmuch as, on the strength of that order the case was declared as

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infructuous. Therefore, the act of the applicant is an act unbecoming of a Government servant and the applicant has violated the Conduct Rules and he was issued with a chargesheet and given reasonable opportunity to defend his case. He has also submitted that the applicant has not availed of the alternative remedy and, therefore, the OA is not maintainable as far as the provision of appeal is concerned. The applicant has not filed an appeal and has directly approached the Hon'ble Tribunal. He has submitted that if the defence has been taken into consideration and the competent authority has passed the order and imposed the penalty, it cannot be faulted with.

7. We have considered the rival contentions submitted on behalf of both the parties.

7.1 As far as the general facts of the case are concerned, there is no quarrel that the order dated 26.5.99 has been acted upon even till today. The applicant is working at Idgah. It is also not disputed that no action has been taken against the person so called incompetent, who issued the order. From the perusal of the very judgment of this Bench of the Tribunal also, we see that at nowhere the applicant has treated the said order as transfer order and it is the tribunal who took the order as a transfer order and subsequent acquiesce of the respondents implies the fact that they themselves treated it as a transfer order. If that be so, how the said action can be brought within the four corners of the Conduct Rules. It is very strange that one side the respondents are acting on the order passed by their subordinate staff and on the other side they themselves are treating it as a misconduct. In this view of the matter, we do not find

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that the applicant has at all committed any misconduct.

7.2 As regard the submissions regarding availing of alternative remedy, we subscribe with the views of the learned counsel for the applicant and are satisfied that it was an extra-ordinary case which has been rightly entertained.

7.3 The very important submission which has been raised by the learned counsel for the applicant is whether such action, after all, can be construed as misconduct which has occurred when the case was sub-judice and the matter was related to a particular cause. Since we have come to the conclusion that the applicant has not committed any misconduct, we will keep this issue open and will examine in some appropriate case.

8. In the premises, the inescapable conclusion is that the OA has ample substance and merits acceptance. The same is allowed and the impugned orders dated 9.4.2001 (Ann.A1) and 11.9.2000 (Ann.A2) stand quashed. The applicant shall be entitled to all consequential benefits as if none of the impugned order was ever in existence. In the facts and circumstances of the case, both the parties are left to bear their own costs.


(A.K. BHADURI)

Member (A)


(J.K. KAUSHIK)

Member (J)