

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, 29th day of September, 2005

ORIGINAL APPLICATION NO. 372/2005
with
MISC. APPLICATION NO. 303/2005

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

Shri Vinod Kumar Bhatnagar son of Late Shri Ram Kishan Ji Bhatnagar, aged about 54 years, working as MCF (Signal Maintainer), North Western Railway at Dorai Station in Ajmer Division. Residing at 71-C, Gali No. 3, in front of Post Office, Ajmer.

.....Applicant

By Advocate : Mr. Nand Kishore.

versus

- 1 Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
- 2 Divisional Railway Manager, North Western Railway, Ajmer.

....Respondents

By Advocate : Mr. S.S. Hassan,

ORDER (ORAL)

The applicants have filed this OA thereby praying for the following reliefs:-

"(i) The respondents may be directed by issue of appropriate writ/direction for calling the entire record, concerning to the case and after examination, the order dated 8.7.2005 Annexure A/1 may be declared arbitrary bad in law and may be set-aside & quashed.

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(ii) The applicant may be permitted to work as MCF (Signal Maintainer) where he is working.

(iii) Any other directions and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant."

2 The brief facts of the case are that the applicant while working as M.C.F. (Signal Maintainer) at Dorai Station in Ajmer Division was transferred to Chitrasani Station vide impugned order dated 08.07.2005 (Annexure A/1). Feeling aggrieved by this order, the applicant filed this OA before this Tribunal. When the matter was taken up for hearing, this Tribunal granted ex-parte stay. Ex-parte stay was granted by the Tribunal on the basis of submission made by the learned counsel for the applicant that the applicant was working as MCF Signal Maintainer in the scale of Rs.5000-8000 whereas he has been transferred to Chitrasani Station against a post of SM grade I which was held by one Shri Santosh Pradhan and the said post is in the lower scale of Rs.4500-7000. Though the order says that the transfer is in the interest of administration but the applicant alleges that it is with malafide intentions as the applicant has been transferred to a lower post.

3 Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have stated that the transfer of the applicant was on the same post, pay and pay scale i.e. MCF in scale Rs.5000-8000 against the post of SM Grade and when he joins his duty at Chitrasani on transfer, his

status of MCF in the scale 5000-8000 would not be lowered because he will not work as SM Grade I but will work on the post of MCF in the scale of Rs.5000-8000 with status, nature and responsibility of the duties at Chitrasani. At this stage, it will be useful to quote Para No. 4(ix) of the reply affidavit, which is in the following terms:-

"That the contents of Para No. 4(ix) of the OA are not admitted. It is submitted that the transfer of the applicant from Dorai Station to Chitrasani Station has been made on administrative ground on the basis of a confidential enquiry conducted in reference to a news published in the newspaper. His transfer is on the same post, pa and pay scale i.e. MCF in scale 5000-8000 against the post of SM Grade and when he joins his duty at Chitrasani on transfer, his status of MCF in the scale of Rs.5000-8000 would not be lowered because he will not work as SM Gr. I but will work on the post of MCF in the scale of Rs.5000-8000 with status, nature and responsibility of the duties at Chitrasani. The following employees are MCF in the scale of Rs.5000-8000 but working as MCF against SM Grade I"-

Sl. No.	Name	Designation	Place of working
1	Shri Daya Shankar	MCF	Nasirabad
2	Shri Laxman Lal	MCF	Kamalighat
3	Shri Ghanshyam Sharma	MCF	Nasirabad
4	Shri Noparam Meena	MCF	Nana

As per the cadre position (Annexure A/5), there is no cadre post of MCF at Nasirabad, Kamalighat and Nana, however, the above named employees are working as MCF in the scale of Rs.5000-8000 against SM Gr. I but other employees are also already working as MCF against the post of SM Gr. I. In this regard, a copy of the order dated 12.7.2004 is enclosed herewith and marked as Annexure R/2 to show that the aforesaid employees are working as MCF against the post of SM Gr. I.

4 The respondents have further stated that the transfer of the applicant and another person from Dorai Station to

Chitrasani Station has been effected on the basis of news published in the newspaper dated 14.3.2005. On the publication of the news in the Newspaper dated 14.3.2005 (Annexure A/2), a confidential inquiry was conducted through the chief Security Commissioner, RPF, Jaipur and the Chief Security Commissioner vide his letter dated 23.6.2005 observed that Shri Heera Singh, ESM, Dorai Station and the applicant MCF, Signal wing of Dora Station and other staff including some staff of Railway Protection Force posted at Dorai viz. One Head Constable Munshi and Constable Badri Prasad be transferred elsewhere as there is every apprehension of their involvement in the pilferage of booked consignments. A copy of the letter dated 23.6.2005 written by the Chief Security Commissioner has been placed on record as Annexure R/1. Thus according to the respondents, on the basis of letter dated 23.06.2005, the Sr. DSTE, Ajmer has recommended the transfer of the applicant and one Shri Heera Singh from Dorai Station.

5 The applicant has filed the rejoinder thereby reiterating the submissions made in the OA. It is also submitted that respondents have no power to disturb the cadre but in fact it is a colourable exercise of power.

6 I have heard the learned counsel for the parties and have gone through the material placed on record.

7 The learned counsel for the applicant has vehemently argued that the transfer order has been issued under the

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pressure of the Investigation Department without application of mind and also that there is no post in the scale of Rs.5000-8000 at Chitrasani Station whereas there are 8 posts at Ajmer Division and one at Dorai Station in the scale of Rs.5000-8000 in which the applicant is working. Under these circumstances, the respondents could not have ordered the transfer of the applicant against the post in the scale of Rs.4500-7000, which is a lower post in view of the law laid down in the case of B.B. Biswas vs. Union of India 2003(3) ATJ 36 and Dr. Binoy Krishna Mandal vs. Union of India & Others 2003(1)CAT 25.

8 I have given due consideration to the submission made by the learned counsel for the applicant. I am of the view that the applicant has not made out any case for the interference of the Tribunal in view of the law laid down by the Apex Court in the case of Union of India & Others vs. Janardhan Debanath & Another 2004 SCC (L&S) 631. That was a case where the respondent employees of the Postal services Department were transferred from Agartala Division to Meghalaya Division by an order dated 10.09.2002. After unsuccessfully approaching CAT against that order, they approached the High Court. The Union of India, appellant therein, supported the impugned order on the grounds of public interest and exigencies of administration. It was further stated that the respondents had misbehaved with a Sr. lady officer with a view to force her to withdraw the charge-sheet against a particular employee. Giving details

of the incident, the appellant stated that with a view to enforce discipline the respondents were transferred. However, the High Court held that transfer was impermissible in terms of Rule 37 of the Posts and Telegraphs Manual Vol. IV and was in violation of FR 15. That it was a measure of penalty and the seniority and the promotional prospects were likely to be affected. Therefore, the department filed the appeal, before the Apex Court.

- - It was contended on behalf of the appellant before the Apex Court that there was no violation of Rule 37 or FR 15. That the transfer was not punitive but was a measure of enforcing discipline, in public interest and in the exigencies of administration, and there was no scope for the High court to entertain the writ petitions and grant relief.

Per contra the respondents submitted that the transfer order had mentioned that the employees transferred were undesirable as they had misbehaved. That before effecting the transfer there should have been an enquiry to reach a finding on the said allegation. Supporting the High Court's order, the respondents further contended that there could be no transfer from one circle to another.

Allowing the appeals, the Hon'ble Supreme court held that transfer of the respondents on account of allegation of misbehaviour with lady Sr. Officer were serious in nature and the conduct attributed was certainly unbecoming of a Government Servant. For effecting transfer, the question of holding an inquiry to find out whether there

was mis-behaviour of unbecoming is not necessary and the High Court was not right in interfering with the order to transfer. It was further held that the transfers unless they involve any serious impact or visits the persons concerned with any penal consequences are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration. The Apex Court has further held that the transfer of the employee to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other.

9 Viewing the present case with the ratio laid down by the Apex Court in the case of Janardhan Debanath (supra) and as already stated above, the applicant has not made out any case for interference of this Tribunal. Admittedly it is a case of pilferage of booked consignment at Dorai Station as reported in the Newspaper. Pursuant to the said report, confidential inquiry was conducted by the Officer Protection Force. The respondents have placed copy of such letter dated 23.06.2005 on record as Annexure R/1. In this

report, names of five persons find mention including the applicant. This report further mention that staff working at Dorai Station were involved in the pilferage of booked consignment and, therefore, the action/steps should be taken to transfer them. Out of five persons, two belongs to RPF for which necessary order was required to be passed by Railway Protection Force. Out of the remaining three employees, one is Gateman Shri Yusuf and other two are the applicant and Heera Singh. Both of them have been transferred. The role of the Gateman Yusuf was very limited. Thus from the material placed on record, it cannot be said that the transfer of the applicant has not been effected in the public interest/administrative grounds. The contention raised by the applicant ^{is a} that confidential report should not be the basis for transferring him. ^{and} In case there was theft or pilferage of booked consignment, in that eventuality, inquiry could have been effected. I do not agree with this submission advanced by the lerned counsel for the applicant. Further in view of the law laid down in the case of Janardhan Debanath (supra), it is the satisfaction of the authority concerned based on contemporary reports to effect transfer and utmost lattitude should be given to the department concerned in that behalf as laid down by the Apex Court in the aforesaid decision. The fact remains that news regarding theft of oil from the tank wagons awaiting dispatch or stabled at Dorai Station was reported in the Newspaper. Acting on this report, inquiry was held and based on such inquiry, transfer was effected, it cannot be said that transfer of

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persons mentioned in the confidential report was not in public interest. Under such circumstances, retention of the persons named in the report would have been detrimental to public interest.

10 As regards the second contention raised by the applicant that applicant has been transferred to a post which is lower in post than the post presently held by the applicant, it may be stated that no doubt the pay of the applicant is being drawn against the post of SM Grade I, which is a post lower in pay scale but as can be seen from the very impugned transfer order, it is clear that the applicant has been transferred in public interest in the same post, pay and same pay scale. This fact is also clear from the reply affidavit. The respondents have categorically stated in Para 4(ix) which has been reproduced in the earlier para of order that the transfer of the applicant is in the same post, pay and pay scale i.e. MCF in scale Rs.5000-8000 against the post of SM Grade and when he joins his duty at Chitrasani on transfer, his status of MCF in the scale of Rs.5000-8000 would not be lowered because he will not work as SM Grade I but will work on the post of MCF in the scale of Rs.5000-8000 with status, nature and responsibility of the duties at Chitrasani. The respondents have also quoted the name of four persons, who are working as MCF in the pay scale of Rs.5000-8000 against SM Grade I. Thus so long as there is no loss of seniority/promotional avenues, the person can be transferred in public interest and it is for the employer

to determine the administrative exigency and the solution thereof and it is not possible for the Tribunal to give direction in this case in one way or the other as laid down by the Apex Court in the case of Janardhan Debanath (Supra). Thus reliance placed by the applicant on the decision in the case of B.B. Biswas (Supra) and also in the case of Dr. Binoy Krishna Mandal (supra) that he has been transferred to post lower in status than the post presently held is not attracted in the facts and circumstances of the present case.

11 In view of the what has been stated above, I am of the view that the applicant has not made out any case for the interference of the Tribunal and accordingly, the OA is dismissed with no order as to costs. The interim stay granted on 11.08.2005 shall stand vacated.

12 In view of the order passed in the OA, there is no need to pass any order in MA No. 303/2005 for vacation of stay order dated 11.82005 and the same is also disposed of accordingly.


(M.L. CHAUHAN)
MEMBER (J)

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