

29.07.2009

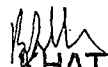
OA No. 61/2009 with MA 64/2009

Mr. Nand Kishore, Counsel for applicant.

Mr. Anupam Agarwal, Counsel for respondents.

On the request of the learned counsel for the parties, let the matter be listed for hearing on 06.08.2009.

IR to continue till the next date.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

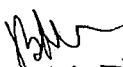
6.8.2009


OA No. 61/2009 with MA 64/2009

Mr. Nand Kishore, Counsel for applicant
Mr. Anupam Agarwal, Counsel for respondents

Heard the learned counsel
for the parties.

For the reasons dictated separately,
the OA is disposed of.


(B.L. KHATRI)
Admr. Member


(M.L. CHAUHAN)
Judd. Member

R1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 6th day of August, 2009

OA No.61/2009

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Kishan Lal Meena
s/o Shri Kanhaiya Lal Meena,
working as Head Clerk under
Mechanical Branch, Divisional Manager Office,
North Western Railway, Ajmer ,
r/o 1533, 'C' Railway Colony No.1,
Circular Road,
Ajmer.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur
2. Divisional Railway Manager, North Western Railway, Ajmer.
3. Shri Akhilesh Kumar Meena, Sr. Divisional Mechanical Engineer, North Western Railway, Ajmer.

.. Respondents

(By Advocate: Shri Anupam Agarwal)



ORDER (ORAL)

The applicant has challenged the order dated 19.1.2009 (Ann.A/1) whereby he was transferred from Ajmer to Abu Road. The transfer order is challenged on the ground that the said order has been passed in violation of the guidelines dated 26.2.2000 as mentioned in para 4(c)(ii) of Ann.A/2 and on the ground of malafide that the applicant has approached this Tribunal by filing OA No.381/2008 and this Tribunal vide order dated 23.9.2008 has granted ex-parte stay thereby restraining the respondents to proceed further in the matter besides other grounds.

2. Notice of this application was given to the respondents. The respondents have stated that transfer of the applicant has been made in administrative exigency, as such, it does not require any interference. The respondents in the reply have justified their action on the ground that the applicant has been transferred in administrative interest. It has been stated that the applicant was indulged in unwarranted activities for which a detailed note was forwarded by the highest divisional authority to the headquarter and it is after due approval and careful consideration of entire aspect by the headquarter the applicant has been transferred. The respondents have also denied the allegation of mala fide.

3. When the matter was listed for admission on 13.2.2009, this Tribunal granted ex-parte stay placing reliance upon the Railway Board circular dated 8.2.2001 (Ann.A/2) and also instructions issued by the Railway Board whereby it was stated that SC and ST

employees should be transferred very rarely and for very strong reason and also relying upon the order of the Principal Bench dated 25.3.1986. However, subsequently the matter was referred to the Division Bench by the learned Single Bench vide order dated 9th April, 2009.

4. The matter was heard on different dates and ultimately the respondents were directed to apprise this Tribunal about the material which formed basis for the transfer of the applicant and as to how the applicant was indulging in unwarranted activities. The respondents have filed written argument. In the written arguments, it has been stated that the applicant is working at Ajmer since December, 1993 i.e. for the last 15 years. It is further stated that the applicant was convicted in criminal case u/s 145 of Railway Act and 325 IPC for his misbehaviour and mishandling with GRP constable by the Court of ADJ (Railways) Ajmer. However, he has been exonerated by appellate court. It is further stated that on 2.4.2008 the applicant preferred an application alleging misbehaviour by respondent No.3 and accordingly the matter was discussed with the Divisional Railway Manager who directed that enquiry should be conducted by ADRM and report be submitted. As such applicant was called for the enquiry. He however did not cooperate with the enquiry officer rather threatened him with dire consequences and walked out without signing his statements. It is further stated that on enquiry the applicant was found absent from working place as well. Accordingly, a note was put up by ADRM Ajmer on 20.6.2008 for indiscipline and misbehaviour with the officer

as well as causing hindrance. It is further stated that in the note it was requested that the matter may be referred to headquarter for objectionable activities of the applicant and recommended his transfer to other division/railway in the interest of administration and the said note was sent to the headquarter on 20.8.2008. It is further stated that the headquarter vide letter dated 30.9.2008 in reference to letter dated 20.8.2008 to respondent No.2 directed that the employee may be transferred within division to another department, if required. Accordingly the impugned Ann.A/1 was issued. The respondents have also relied upon the judgments to the effect that transfer is an administrative matter and the guidelines does not confer upon a Govt. servant a legally enforceable right. Further, an employee whether belongs to the general category or to the reserve category enjoys no right in the matter of transfer and that a member of SC/ST enjoys no special privilege in the matter of transfer. It is further stated that administrative order need not be reasoned and it is sufficient if it is supported by reasons on the file/notesheet.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. It is now well settled and often reiterated by the Hon'ble Apex Court that no Government servant or employee of a public undertaking has any legal right to be posted for ever at any particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident but a condition of service, necessary

too in public interest and efficiency in the public administration. Unless an order is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

7. From the material placed on record, it is evident that the applicant was transferred for misbehaviour with the officers as well as for causing hindrance in Government service. The Apex Court had held that the ~~the~~ transfer of a person on account of inefficiency or misbehaviour is not barred unless adversely affecting the service conditions, status, service prospects or leading to penal consequences. At this stage, it will be useful to quote the decision of the Apex Court in the case of Union of India and Ors. vs. Janardhan Debanath and Anr., 2004 SCC (L&S) 631, which is almost applicable in the facts and circumstances of this case. That was a case where respondents before the Apex Court were transferred from Agartala Division to Meghalaya Division. The matter was challenged before the Central Administrative Tribunal and the OA was dismissed. Subsequently, the respondents approached the High Court. The case of the Union of India in support of the impugned order was that it was passed in public interest and exigency of administration and respondents have misbehaved with senior lady officer with a view to force her to withdraw the charge sheet

against a particular employee. Giving details of the incident, it was stated that with a view to enforce discipline and to avoid recurrence of such unfortunate incident, respondents were transferred. The case of the respondents before the High Court was that transfer was impermissible in terms of Rule 37 of the Posts and Telegraph Manual and was in violation of FR-15. It was further contended that it was as a measure of penalty and the seniority and promotional prospects are likely to be effected. The contention of the respondents was accepted and the High Court set-aside the judgment of the Central Administrative Tribunal as well as the transfer order. The matter went to the Apex Court. The Apex Court, inter alia held as under:-

".....The High Court while exercising jurisdiction under Article 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary to in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan, 2002 SCC (L&S) 21."

The Hon'ble Apex Court further held that provisions of FR-15 has to be read with FR-14-B and where the transfer is otherwise than for inefficiency or misbehaviour or on written request made by the transferred employee. FR-15 ensures protection of pay. It was further observed that the High Court has completely misconstrued the rule as if there could not be any transfer in terms of FR-15 on account of inefficiency or misbehaviour.

8. At this stage, it may be stated that the learned counsel for the applicant has also advanced arguments by raising similar plea that under Rule 227 of the Indian Railway Establishment Code, the applicant could not have been transferred as he is being transferred on account of misbehaviour. It may be stated that Rule 227 of the Indian Railway Establishment Code is almost paramateria to FR-15. Since the Apex Court has interpreted FR-15 and held that the said rule relates to protection of pay and has nothing to do with the transfer of a person, similar construction has to be given to Rule 227 of the Indian Railway Establishment Code also. The Apex Court further observed that where the allegations made against the respondents were of senior nature and the conduct attributed is certainly unbecoming and whether there was any misbehaviour is a question which has to be gone into in the departmental proceedings. For the purpose of effecting transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence

complained of and if the requirement as submitted by the learned counsel for the respondents for holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated.

9. If the matter is seen in the light of the judgment rendered by the Apex Court in the case of Janardhan Debanath (supra) we are of the view that on the basis of material placed on record as noticed above, it cannot be said that it was not permissible for the respondents to transfer the applicant when the appropriate authority on the basis of contemporary report has ordered transfer of the applicant within division as against transferring him to other division/railway as recommended by the ADRM, Ajmer vide its note dated 20.6.2008. At this stage, we wish to notice that in this case, the respondents have not only transferred the applicant on the same allegation but the applicant was issued a chargesheet dated 1.8.2009 (Ann.A/16) where the allegations are same which formed basis for transferring the applicant vide impugned order. At this stage, we wish to reproduce the instructions in the Railway Board circular dated 13th April, 1967 pertaining to non-gazetted railway staff whose conduct is under investigation, and thus reads:-

"Reference Board's letter No. E(D&A)62 RG6-15, dated 29.3.1962 wherein it was laid down that non-gazetted staff whose conduct is under investigation for charges meriting dismissal/removal from service, including those under suspension, should not be transferred from one Railway administration to another, till after finalization of the departmental or criminal proceedings against them. The Board have considered the matter further and have now

ll

decided that non-gazetted staff against whom a disciplinary case is pending or is about to start should not normally be transferred from one Railway/Division to another Railway/division till after finalization of the departmental or criminal proceedings, irrespective of whether the charges merit imposition of a major penalty."

10. From the facts as noticed above, the proposal for transfer of the applicant for the same allegation for which chargesheet has been issued was initiated vide note dated 20.6.2008 put up by the ADRM, Ajmer whereas the chargesheet was issued on 1.8.2008. It appears that the headquarter office was not aware about the fact that for the similar allegation a chargesheet has been served upon the applicant while conveying approval vide letter dated 30.9.2008 regarding transfer of the applicant within division. In view the peculiar facts and circumstances of this case and taking into consideration the Railway Board instructions dated 13th April, 1967, as reproduced above, the proposal of the ADRM, Ajmer has been accepted without examining the matter in the light of the aforesaid instructions. Accordingly without going into merit of the case, we are of the view that it is a case which requires to be remitted to the appropriate authority to reconsider the matter in the light of the instructions dated 13th April, 1967 and pass appropriate order.

11. The learned counsel for the respondents while placing reliance upon the decision of the Tribunal in the case of Chaman Lal vs. Union of India and Ors., 1996 (1) ATJ 226, argued that transfer of an employee when he is being proceeded in the departmental proceedings cannot be called punitive. We have given due consideration to the submissions made by the learned counsel for

the respondents. What the bench had held in the aforesaid case is that no hard and fast rule can be laid down by the court that whenever an employee is being proceeded against in some departmental proceedings, he cannot be transferred from the place of his posting. The nature of misconduct and the proximity of the charges officer to the place of his posting from where the evidence is to be produced by the department, may be the factors which weight on the mind of the competent authority to conclude that the official should or should not be transferred to somewhere from the said station.

12. As noticed above, in the instant case, the competent authority appears to have not applied its mind to the aforesaid aspect as the fact of issuance of chargesheet ~~which~~ appears to have not been placed before the competent authority at headquarter office. Rather this authority supports the view which we are taking while remitting the case to the competent authority to examine the matter in the light of the principle laid down in the aforesaid judgment.

13. In view of what has been stated above, the matter is remitted back to respondent No.2 to refer the matter to the headquarter office to reconsider the matter of the applicant regarding his transfer again. Till the matter is not decided by the competent authority, the interim stay granted on 13.2.2009 and continued from time to time shall remain operative.

by

14. The OA stands disposed of accordingly with no order as to costs.

15. In view of the order passed in the OA, no order is required to be passed in MA No.64/2009, which stands disposed of accordingly.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

R/