

Central Administrative Tribunal
Jaipur Bench, Jaipur
O.A. No. 117/2018

Reserved on : 11.12.2018
Pronounced on : 28.01.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Gyanendra Kumar S/o Late Shri Om Prakash aged about 56 years, R/o-81, Amrit Kalash, Poonam Colony, Kota Junction, Kota (Raj.). Presently working as Chief Booking Supervisor, West Central Railway, Kota Division, Kota (Raj.) 324001.

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. The Union of India through General Manager, West Central Railway, Jabalpur (M.P.) 482001.
2. Chief Commercial Manager, West Central Railway, Jabalpur (M.P.) 482001.
3. Divisional Railway Manager, West Central Railway, Kota Division, Kota (Raj.) 324001.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per Suresh Kumar Monga, Member (J):

The pleaded case of the applicant herein is that the respondents have served upon him a charge-sheet on 05.12.2017 levelling allegation of misconduct during the period of demonetization. A preliminary enquiry was conducted before

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issuance of said charge-sheet and during the said preliminary enquiry, the respondents recorded the statements and collected various documents. Thereafter, the applicant has been transferred from Kota Division to Bhopal Division of West Central Railway on 22.02.2018. The said order has been passed on the recommendations of the Vigilance Department of Railway. It is the case of the applicant that there is no possibility of tampering with the evidence and continuation of the applicant at Kota will not adversely affect the inquiry proceedings. Therefore, he submitted a representation before the respondents for cancellation of his transfer order on which no decision has been taken by them. It is stated that he has been transferred from Kota Division to Bhopal Division ignoring the fact that the seniority of Chief Booking Supervisors is maintained at divisional level. It is further stated that one Shri Harikesh Meena has also been served with a charge-sheet containing similar charges but he has been allowed to continue in Kota Division itself. Aggrieved by the order dated 22.02.2018 (Annexure A/1), the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents by way of filing their joint reply have joined the defence and opposed the cause of the applicant. It has been averred that the transfer and posting being incidence of service cannot be challenged without there being any statutory violation

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or malice of anyone. The applicant has failed to disclose any such illegality. It has further been averred that the applicant was found to be involved in an illegal act of exchanging the demonetized old currency notes with new currency notes and, therefore, the vigilance department suggested his transfer and initiation of appropriate proceedings against him and accordingly the competent authority passed the orders. The applicant is working on a post involving monetary transactions which has mass contact and as per the policy directives issued by the Railway Board, his transfer order cannot be said to be illegal or unwarranted. Thus, transferring him out of Kota vide order dated 22.02.2018 is just and legal. In the matter of transfer, the applicant cannot allege discrimination while referring the matter of Shri Harikesh Meena. The respondents have further averred that the applicant has already been served with a charge memorandum dated 05.12.2017 and it is yet to be enquired into. They have further averred that transfer of applicant being purely on administrative grounds will not affect his seniority adversely in Bhopal Division. With all these assertions, the respondents have prayed for dismissal of the OA.

3. Heard learned counsels for the parties.

4. Shri Amit Mathur, learned counsel for the applicant submitted that the transfer of the applicant from Kota Division to Bhopal Division is by way of a punishment. He while referring a

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judgment rendered by the Hon'ble Supreme Court in the case of **Somesh Tiwary vs. Union of India & Others** (2009) 2 SCC 592, submitted that the order of transfer passed by way of punishment cannot be sustained. Learned counsel further argued that the applicant is working as Chief Booking Supervisor and his seniority is maintained at divisional level and because of the transfer order outside the division, his seniority will be affected adversely, which will also hamper his right of further promotion.

5. *Per contra*, Shri Anupam Agarwal, learned counsel for the respondents submitted that the applicant's transfer order from Kota Division to Bhopal Division has been passed purely on administrative grounds as he is found to be involved in an activity contrary to rules and regulations for which a major penalty charge-sheet has also been served upon him. Learned counsel further argued that the applicant's transfer order has been passed on the recommendations of the Vigilance Department and it will not affect his pay or seniority adversely.

7. Considered the rival contentions of learned counsels for the parties and perused the record.

8. Admittedly, the applicant has been transferred from Kota Division to Bhopal Division of West Central Railway on the recommendations of the Vigilance Department. The recommendation of Vigilance Department with regard to transfer

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of the applicant was based on the charges of serious misconduct as he was allegedly found to be involved in an illegal act of exchanging the demonetized old currency notes with new currency notes and the competent authority while agreeing with the said recommendation opined that the transfer order is required to be issued to meet the ends of justice. In this view of the matter, it appears to us that the order dated 22.02.2018 (Annexure A/1) transferring the applicant from Kota Division to Bhopal Division has been passed by the respondents as a matter of punishment, which cannot be sustained in view of the law laid down by the Hon'ble Supreme Court in the case of Somesh Tiwary (supra). The Hon'ble Supreme Court, in a very categorical term, has held that an order of transfer passed in lieu of punishment deserves to be set aside being wholly illegal.

Paragraph 16 of the said judgment reads thus:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incidence of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

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9. Apart from this, we find that the applicant is working as Chief Booking Supervisor and his seniority is maintained at divisional level only. The inter-divisional transfer, in any case, will adversely affect his seniority and consequently will also hamper his further avenues of promotion. In our considered view, such an arbitrary order transferring the applicant from Kota Division to Bhopal Division cannot be sustained on this ground as well.

10. The record of the case further reveals that the respondents served a charge memorandum upon the applicant on 05.12.2017. A period of more than a year has elapsed but uptill today not even a single witness has been examined in the inquiry proceedings. If the respondents were so keen and viewed the applicant's misconduct so seriously, then they ought to have completed the inquiry proceedings by now. The fact pointed out by Shri Amit Mathur, learned counsel for the applicant during the course of arguments that after issuance of the charge memorandum dated 05.12.2017 (Annexure A/2) the respondents have not examined even a single witness in the inquiry proceedings, has not been disputed.

11 For the reasons recorded hereinabove and considering the law laid down by the Hon'ble Supreme Court in the case of Somesh Tiwary (supra), the impugned order dated 22.02.2018 (Annexure A/1) is held to be illegal and arbitrary.

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12. Accordingly, the present Original Application is allowed. Order dated 22.02.2018 (Annexure A/1) is hereby quashed and set aside. However, looking towards the gravity of charges, we deem it appropriate to issue further directions to respondents to conclude the inquiry proceedings contemplated against the applicant pursuant to office memorandum dated 05.12.2017 (Annexure A/2) within a period four months from the date of receipt of a certified copy of this order and in case, the applicant is found to be guilty of the charges, the disciplinary authority may proceed further in accordance with law.

13. Ordered accordingly. There shall be no order as to costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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