

Central Administrative Tribunal
Jaipur Bench, Jaipur
O.A. No. 356/2018

Reserved on : 11.12.2018
Pronounced on : 28.01.2019

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

Manish Sharma S/o Late Shyam Sunder Sharma aged about 35 years, R/o Sudha Sagar Building, Opp. Bal Mandir School, Kota Junction, Kota (Raj.). Presently working as Chief Booking Clerk, West Central Railway, Kota Division, Kota (Raj.) UNDER TRANSFER) 323021.

...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.) 323021.

...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 14.03.2018 levelling allegation of misconduct during the period of

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demonetization. Thereafter, the applicant has been transferred from Kota Division to Jabalpur Division of West Central Railway on 11.04.2018. 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 was taken by them. Aggrieved by his transfer order, the applicant preferred an Original Application No.181/2018 before this Tribunal. In the said OA, while passing an interim order on 24.04.2018, this Tribunal also directed the respondents to decide the applicant's representation within a period of 15 days. Pursuant to said order, applicant's representation was considered and rejected by the respondents on 18.05.2018. Thereafter, on 25.07.2018, the aforesaid Original Application was withdrawn by the applicant with liberty to file fresh one challenging the order dated 18.05.2018. The applicant has further averred that the order dated 18.05.2018 has been passed as a punishment. He has been transferred from Kota Division to Jabalpur Division ignoring the fact that the seniority of Chief Booking Clerks 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

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itself. The applicant has further stated that his wife is posted as Accounts Assistant in the office of Senior Divisional Financial Manager, West Central Railway in Kota Division at Kota and in view of the transfer policy of the respondents, he cannot be transferred outside the division. Aggrieved by the order dated 11.04.2018 (Annexure A/1) and the order dated 18.05.2018 (Annexure A/2), 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 or malice of anyone. The applicant has failed to disclose any such illegality. It has further been averred that the applicant has been transferred due to his involvement in corruption during demonetization defeating the sole aim of government's scheme against corruption. The applicant belongs to a post which has direct interaction with public. Thus, transferring him out of Kota vide order dated 11.04.2018 is just and legal. It has further been averred that the Vigilance Wing of the Railway keeps vigil on the employees and in case they are found to be involved in the activities in violation of rules/procedure, it makes the recommendations to the concerned competent authority. It has further been averred that the competent authority has passed the

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order dated 18.05.2018 after considering all the aspects of the matter and the order of applicant's transfer cannot be said to be an order of punishment. The applicant has been transferred on administrative ground. In the matter of transfer, the applicant cannot allege discrimination while referring the matter of Shri Harikesh Meena. The respondents have further averred that though the guidelines issued by the Railway Board are obligatory and provides for its compliance as far as possible, but the applicant was also informed that his wife may also make an application for inter-divisional transfer from Kota to Jabalpur. The applicant has already been served with a charge memorandum dated 14.03.2018 and it is yet to be enquired into. The applicant belongs to a post which has exposure to finance and public and thus his retention at the same place of posting cannot be allowed. With all these assertions, the respondents have prayed for dismissal of the OA.

3. While filing a rejoinder to reply, apart from reiterating the facts already pleaded in the OA, the applicant has further submitted that in view of the law laid down by the Hon'ble Supreme Court in the case of **Somesh Tiwary vs. Union of India & Others** (2009) 2 SCC 592, the order of his transfer cannot be sustained. It has further been averred that the respondents themselves have stated in their reply that the applicant has been transferred because of his involvement in

corruption during demonetization. As such, the transfer of the applicant is by way of punishment. The fact with regard to his involvement in corruption activities during demonetization has been specifically denied by the applicant in his rejoinder. With these assertions, the applicant has further stated that the order of his transfer from Kota Division to Jabalpur Division cannot be sustained.

4. Heard learned counsels for the parties.

5. Shri Amit Mathur, learned counsel for the applicant submitted that the order dated 18.05.2018 itself is very clear that the applicant has been transferred from Kota Division to Jabalpur Division by way of a punishment. He while referring a judgment rendered by the Hon'ble Supreme Court in the case of Somesh Tiwary (supra) 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 Clerk 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. Learned counsel while referring the policy decision of the Railway Board further submitted that the applicant cannot be transferred as his wife is also working at Kota in the office of Senior

Divisional Financial Manager. The respondents cannot be allowed to violate their own policy guidelines.

6. *Per contra*, Shri Anupam Agarwal, learned counsel for the respondents submitted that the applicant's transfer order from Kota Division to Jabalpur 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. He further submitted that though as per policy guidelines, an effort is made to retain both the spouses at one place but in the case in hand, the applicant has been transferred due to administrative exigencies and in case his wife also applies for inter-divisional transfer, her request can also be considered for the said purpose.

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 Jabalpur Division of West Central Railway on the recommendations of the Vigilance Department. A perusal of the order dated 18.05.2018 passed by the respondents, while

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disposing of the applicant's representation, reveals that on the basis of a preventive Vigilance Check conducted by Railway Board on 18.01.2017, the applicant was charged with serious misconduct and on the recommendations of the Vigilance Department, he was served with major penalty charge-sheet along with an order of inter-divisional transfer. It further reveals from the said order that the presence or absence of the applicant is not an issue that detracts from the gravity of his violation of service conduct rules, which has resulted in an order for inter-divisional transfer. The recommendation of Vigilance Department with regard to transfer of the applicant was based on the charges of serious misconduct 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 11.04.2018 (Annexure A/1) transferring the applicant from Kota Division to Jabalpur 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 categoric 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."

9. The respondents have further failed to offer any reason as to why they cannot adhere with the policy of the Railway Board wherein it has been laid down to keep both husband and wife together at one place as far as possible. The reason offered by the respondents that the applicant's wife may also apply for inter-divisional transfer and her request can be considered by them; does not appear to be a plausible reason. Admittedly, the applicant is working as Chief Booking Clerk and his seniority is maintained at divisional level only. Similarly, his wife is also maintaining her seniority at divisional level. The inter-divisional transfer, in any case, will adversely affect the seniority of the applicant as well as his wife, if she is also transferred from Kota Division to Jabalpur Division. In our considered view, such an arbitrary order transferring the applicant from Kota Division to Jabalpur Division cannot be sustained.

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10. The record of the case further reveals that the respondents served a charge memorandum upon the applicant on 14.03.2018. A period of more than 9 months 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 14.03.2018 (Annexure A/3) 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 11.04.2018 (Annexure A/1) and the order dated 18.05.2018 (Annexure A/2) are held to be illegal and arbitrary.

12. Accordingly, the present Original Application is allowed. Order dated 11.04.2018 (Annexure A/1) and the order dated 18.05.2018 (Annexure A/2) are 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 14.03.2018 (Annexure

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A/3) 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.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/