

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 331/2017

Reserved on: 29.04.2019
Pronounced on: 03.05.2019

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

Vijendra Meena s/o late shri Mauji Ram Meena, aged about 28 years, r/o 282, Railway Colony, Bandikui, Dausa, presently working as Gateman in Group 'D' cadre, Bandikui.

...Applicant.

(By Advocate: Sh P.N.Jatti with Sh B.K.Jatti and Ms.A.B.Jatti)

Versus

1. Union of India through the General Manager, North Western, Jaipur.
2. Divisional Railway Manager (admn), North Western Railway, Jaipur.
3. Station Superintendent, Bandikui Railway Station, North Western Railway, Bandikui.

...Respondents.

(By Advocate: Shri M.K.Meena)

ORDER

Per: A. Mukhopadhaya, Member (A):

This Original Application, (OA), arises from an order of transfer dated 02.05.2017 issued by the respondents, (Annexure A/1 - the impugned order), transferring the applicant from Bandikui to Gegal Aakhri. The applicant states that having been

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appointed on compassionate grounds by the respondents on 31.05.2010 and posted at Kanauta, he represented repeatedly to the respondents to post him at Bandikui so as to enable him to look after his mother, (who is handicapped), two daughters and two brothers who are resident there. Finally, vide the respondents' order dated 03.12.2012, (Annexure A/6), the applicant was posted at Bandikui. He states that he performed his duties at Bandikui to the entire satisfaction of his employer respondents. In 2016 however, an FIR No.246/2016 was filed against him by the wife of a co-worker alleging assault and attempt at rape. The applicant states that owing to the police investigation and criminal proceedings that followed, he remained absent from duties between 18.06.2016 to 05.09.2016. The respondents thereupon served with him a charge memo dated 12.09.2016, (Annexure A/7), for imposition of minor penalties. During the pendency of these proceedings, the applicant also remained in judicial custody with effect from 20.12.2016 until he was released on bail by an order of the Session Court, Alwar on 24.12.2016; (Annexure A/8 refers). This development further led to the respondents suspending the applicant from duties with effect from 20.12.2016 vide their order dated 31.01.2017; (Annexure A/10). This suspension order was later revoked vide the respondents' order of 21.02.2017, (Annexure A/11), but the applicant was thereafter transferred out of Bandikui to Gegal Aakhri vide the impugned order of 02.05.2017; (Annexure A/1).

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2. The applicant contends that while the impugned transfer order states that the transfer has been made for administrative reasons, nevertheless, no such reasons have been detailed and the real reason for his transfer is the aforementioned complaint and the related criminal case against him which is presently under trial. He avers that the transfer will result in him having to vacate the official quarters allotted to him at Bandikui and also affect the studies of his minor children adversely. Further, he states that it will more difficult for him to attend his trial on each date of hearing as required in his bail order, (Annexure A/8), and thus the impugned order which has been made primarily and substantively on the ground of the criminal proceedings pending against him is unjustified. Accordingly, he has approached this Tribunal seeking the following relief:-

Relief

- 8.1 That by a suitable writ/order of the directions the impugned order dated 02.05.2017 annexed vide Annexure A/1 be quashed and set aside.
- 8.2 That by a suitable writ/order or the directions the respondents be directed to allow the applicant to perform his duties at Bandikui at least till the pendency of the criminal trial.
- 8.3 Any other relief which the Hon'ble bench deems fit.

Interim relief:

By a suitable writ/order or the directions the respondents be directed not to implement the order dated 02.05.2017 and the applicant may not be relieved from his post till the finalisation of the present OA or any further directions.

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3. This Tribunal vide its order dated 25.05.2017 has directed that the applicant may not be relieved from his present post in pursuance of the impugned transfer order dated 02.05.2017; (Annexure A/1).

4. In reply, the respondents aver that while the complaint of sexual harassment made against the applicant by the wife of a co-worker was addressed to the Hon'ble Prime Minister and the Hon'ble Railway Minister among others, the impugned order of transfer was based purely on administrative grounds in view of the long absence of the applicant from duties as well as the criminal and departmental proceedings pending against him. The respondents however specifically state that **"the applicant has been transferred as per the serious complaint against him,** (para 4(3) of reply to OA refers), and again reiterate at para 5(B) of the reply to OA that **"....the applicant has been transferred due to serious complaint against him".** The respondents further state, (para 4(4) of reply to OA refers), that the **"performance of the applicant has never been at the utmost satisfaction of the department, on the contrary, the acts of the applicant were shameful towards his co-workers and also remained long absent".** Finally, the respondents contend that transfer is a condition of service for the applicant and that no employee can claim the place of posting as a matter of right. Stating that the impugned transfer order does

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not affect the applicant's seniority in any way as it is in the same division of the respondent railways and not in another division, (Ajmer), as alleged in the OA, the respondents plead that this order made on administrative grounds should be upheld and the OA should be dismissed.

5. Learned counsels for the parties were heard and the material available on record was perused.

6. There is no dispute with regard to the factual matrix of this case and therefore the limited issue which arises here is whether the impugned transfer order has indeed been made on administrative grounds, (as claimed by the respondents in their reply and arguments), or whether it has arisen as a direct consequence of the complaint made against the applicant which is presently the subject of both criminal proceedings and a departmental inquiry. Here, a perusal of the reply given by the respondents, as referred to earlier, as well as the arguments advanced by both the counsels for the applicant and the respondents make it expressly clear that the primary reason for the transfer was the fact that charges of sexual harassment were levelled against him by the wife of a co-worker which had resulted in both criminal and departmental proceedings being underway. A plain reading of the reply of the respondents confirms this position with this particular reason for the transfer being specifically reiterated several times. As such therefore,

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while administrative reasons arising from the applicant's absence from duties have been referred to, these appear to be entirely secondary in nature as a causative factor behind the transfer. In the case of **Somesh Tiwary vs. Union of India & Others**, (2009) 2 SCC 592, the Hon'ble Supreme Court has clearly ruled that when an order of transfer was not based "**on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations....**", such an order would attract the principle of malice in law; (para 20 of the judgment refers). The Apex Court went on to state as follows:

"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."

7. In the present case, we are of the considered view that the reply given by the respondents confirms the averments of the applicant that the primary and substantive reasons behind his transfer were the allegations made against him resulting in both criminal and departmental proceedings. Since both these proceedings are reportedly still underway, the impugned order, which is admittedly based on the complaints against the applicant, cannot but be viewed as one in which the applicant has been sought to be punished. This being the case, in terms of the principles laid down by the Apex Court in the case of **Somesh**

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Tiwary, (supra), we find that the impugned order is unsustainable and illegal.

8. In the result, the O.A. is allowed and the impugned order dated 02.05.2017, (Annexure A/1), is quashed and set aside. The respondents are directed to allow the applicant to perform his duties at Bandikui and not dislocate him from that station on account of the criminal and departmental proceedings referred to. However, the respondents shall be at liberty to take action as per law in the departmental proceedings in question.

9. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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