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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.583/2003

New Delhi, this the 11th day of May, 2004

Hon'ble Shri S.K.Naik, Member(A)

Vijayant Sharma
B-140/B, Railway Colony
Ambala Cantt.

.. Applicant

(Shri B.S. Mainee, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Personnel Officer
Northern Railway, Ambala Cantt. .. Respondents

(Shri Rajinder Khatter, Advocate)

ORDER

Applicant has challenged the order dated 3.3.2003 by which he has been transferred from Ambala to New Delhi. By an interim order dated 13.3.2003 the said order, however, has been stayed.

2. Relevant brief facts leading to the present application, according to the version of the applicant, are that on 21.12.2002 he detected two passengers with irregular tickets and as such he demanded fare plus penalty in accordance with rules from them who subsequently identified themselves as decoys. They paid the money demanded by the applicant and before he could issue receipt for extra ticket fare he was pounced upon by the Vigilance Inspector alleging that he accepted the money for his own benefits. The vigilance staff gave a false report to the GM who by an order dated 25.2.2003 directed the DRM, Ambala to transfer the applicant from Ambala to New Delhi thus resulting in the impugned order, which according to the applicant is against the Rules.

[Signature]

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3. Applicant contends the transfer order has neither been issued on administrative interest nor exigency of service but to punish him. Also he has not been given time to make representation to DRM/GM in terms of Railway Board's instructions dated 6.2.1978. Still applicant made a representation on 7.3.2003 which has not been replied to. Hence this application.

4. While contesting the case, respondents in their reply have stated that on 21.12.2002 while the applicant was manning the exit gate at Ambala City RS, he was subjected to a decoy passenger. The decoy passenger was having one bundle luggage weighing 45 Kgs alongwith II class ordinary ticket ex. Delhi to Panipat for two adults. He travelled in Train No.4553 UP alongwith independent witness. On seeing the short journey ticket, the applicant demanded Rs.150 from the decoy and the independent witness, accepted the same and allowed them to pass through the exit gate without issuing any receipt. The decoy had requested the applicant to issue extra ticket fare (EFT) which was denied. Applicant produced Rs.275 as Govt. cash against actual amount of Rs.123, thus he was having an excess of Rs.152. This amount was later deposited on 21.12.2002 as excess Govt. cash by the applicant himself. Based on the report of the vigilance team, the GM has passed the order transferring the applicant from Ambala Dn. on administrative ground and in public interest as per their policy. However, the applicant even after the service of the order of transfer remained absent unauthorisedly from

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5.3.03 to 17.3.03. It has been stated that the services of the applicant had been spared by SS/UBC on 5.3.03 in compliance of DPO letter dated 3.3.03.

5. In reply to the reliance placed by the learned counsel for the applicant on the Railway Board's circular dated 6.2.1978, learned counsel for the respondents has stated that the same will not come to the rescue of the applicant, as firstly the circular is very old and outdated. Secondly, subsequent circulars dated 13.10.98 and 2.11.98 which are on the very same subject of transfer of staff indulging in malpractices etc. supersede the circular of 1978. The applicant therefore is trying to take technical shelter behind this circular which has long past been given a go-bye by the Railway Board. The latest circular dated 2.11.98 holds good as of now and the applicant having been transferred in keeping with the policy prescribed therein, the counsel contends that the application has no merit and deserves to be dismissed.

6. I have heard the learned counsel for the parties and also perused the records of the case.

7. At the outset it may be stated that Shri Maine, learned counsel for the applicant does not dispute the contention raised by the learned counsel for the respondents that the circular dated 2.11.1998 prescribes the policy of the Railway Board with regard to transfer of employees found to be indulging in malpractices and detected by the Vigilance Wing. He also does not dispute the other averments made by the learned counsel for the respondents that the Tribunal should not interfere in

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matters of transfer unless such orders are passed in exercise of the powers malafide or against the rules/instructions on the subject. Shri Maine thereafter contends that the only ground on which the matter deserves to be remitted back to the respondents is purely on the basis of the circular dated 6.2.1978, according to which the applicant is entitled to submit his grievances before the competent authority and is further entitled to a hearing and the final decision should be taken only thereafter. This procedure not having been followed, Shri Maine vehemently argues that the order of transfer should be set aside and respondents directed to afford the applicant an opportunity of being heard.

8. I am afraid the contention raised by Shri Maine is not tenable. As has been contended by the learned counsel for the respondents, various circulars issued from time-to-time by the Railway Board on the subject of transfer of staff indulging in corrupt/malpractices whereby the image of the Railways gets tarnished and public image undermined have to be seen in the correct perspective. The circulars have evolved as per the changing times. The circular of later date has to take into account the type and category of staff and the level of malpractices etc. detected which need to be tackled and accordingly and modify/ prescribe remedial action. The latest circular therefore has to be taken to have superceded the earlier circulars.

9. The counsel further stated that there was a circular dated 13.4.67 which had provided complete restriction on the transfer of non-gazetted staff whose conduct was

under investigation meriting dismissal/removal from service during the pendency of the departmental proceedings. This was followed by circular dated 6.2.78 in which a hearing before transfer was provided for on which the applicant now relies. This was followed by circular dated 30.10.98 which prescribed inter-divisional/inter-railway transfer of ticket checking staff found indulging in corrupt practices. The earlier restriction imposed did not apply thenceforth. Further by circular dated 2.11.1998 not only the ticket checking staff but also the staff in mass contact areas were brought under the policy decision of transfer on inter-divisional/inter-railway basis. On careful perusal of the circulars, I notice that all of them have been issued on the same subject of transfer of staff coming under adverse notice of vigilance wing. When viewed in this background, it is to be held that the circular dated 6.2.78 on which the learned counsel for the applicant solely relies stands superceded. The contention of Shri Maine that the latest circular does not specifically mention that the earlier circulars stand superceded has to be rejected as whatever is implicitly implied need not necessarily be required to be stated.

10. Since Shri Maine does not contest on any other ground and the sole ground having failed, I find no merit in the application and the same is rejected, without any order as to costs. The interim order, it goes without saying, stands merged with the main order.

S.K. Naik
(S.K. Naik)
Member(A)

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