

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1794/2003

New Delhi, this the 2nd day of July, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

Prashant Kumar Garg
S/o Late Sh. V.K.Garg
R/o 42, Guru Road, Dehradun.

OR

(By Advocate Sh. Susheel Sharma)

...Applicant

VERSUS

Union of India through

1. The General Manager
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager
Northern Railway, Moradabad.

...Respondents

(By Advocate Sh. Rajender Khatter)

ORDER (ORAL)

The applicant has challenged the impugned order dated 8-7-2003 issued by respondent No.2 transferring him from Dehradun to Delhi. He has prayed that, while the said impugned order be quashed, the respondents be directed not to relieve him from his present duty at Dehradun.

2. The applicant joined the Railways on 13-4-93 as a Token Porter and became a Clerk in the year 1998. He is presently working as a booking clerk at Dehradun. He was placed under suspension on 29-4-2003 after having been allegedly found charging excess amount of Rs.20/- for the tickets issued to a decoy passenger on 30-1-2003. The suspension was, however, revoked on 30-6-2003 and he resumed duties on 1-7-2003. The impugned order transferring him from Dehradun to Delhi was issued on 8-7-2003 without any opportunity of being heard as alleged by him. He has not been relieved of the present charge of the post at Dehradun, as claimed by him. He has also been granted interim relief restraining the respondents from giving effect to the said order till the next date vide order of this Tribunal dated 8-8-2003. The interim relief continues till date.

3. The applicant has submitted that the impugned order has been issued malafidely on selective basis and the same is arbitrary and discriminatory and also that it has not been issued in public interest. He has



also submitted that he is already facing disciplinary proceedings in the matter and the same are at a very initial stage of issuing chargesheet etc. According to him, another six persons, who had allegedly been trapped by the vigilance team, have not been transferred. Their names are given in paragraph 4.11 of the OA.

4. The respondents in the reply have, however, submitted that the applicant has approached the Tribunal with this OA without exhausting departmental remedies and as such it is not maintainable under the law. Reference in this regard has been made to the decision of the Hon'ble Supreme Court in the case of **Gujarat Electricity Board v. Atma Ram Sungomal Poshani** (SLJ 1989 (3) SC 68) in which it has been held as under: -

"Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in the public interest and efficiency in the public administration. Whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the orders of transfer."

It has also been submitted by the respondents that the General Manager, Northern Railway has gone through the entire case and that transferring the applicant from Dehradun to Delhi Division along with the post has been done in the exigencies of service. The respondents have also referred to large number of cases decided on the subject by the Hon'ble Courts/Tribunal including the Hon'ble Apex Court holding, among other things, that the transfer orders should not be interfered with by the Courts if ordered in public interest or in the exigencies of service following the due process/norms on the subject. Some of the decisions as referred to and relied upon in this regard by the respondents are listed hereunder :-

- 1) Rajesh Talwar v. S.T.C. (1999 (6) SLR 725)
- 2) Union of India & Ors. v. Tamil Civil Supplies Corp. Ltd. (1999 (2) SLR 169).
- 3) Arun Demodar Veer v. State of Maharashtra & Ors. (1999 (4) SLR 125).
- 4) Union of India v. S.L.Abbas (1993 (2) SLR 385 SC).
- 5) Gujrat Electricity Board v. A.R.Sungomal (AIR 1989 SC 1433).

P.W.

6) N.K.Singh v. UOI and Ors. (1994 (28) ATC 246 SC).

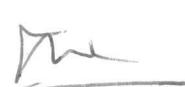
While it may not be necessary to reproduce the relevant portions of the orders/observations of the Hon'ble Courts/Tribunal/Apex Court, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh v. S.S.Kourav** (1995 SCC (L&S) 666) wherein it has been held that Court cannot sit as an appellate forum to decide transfer of officers on administrative grounds. It is also relevant to refer to the decision of the Full Bench of the Tribunal in the case of **K. Trivedi v. ICAR & Anr.** (1988 (7) ATC 253) in which it has been held that merely because a complaint is being investigated into the charge of misconduct, it will not be appropriate to say that the order is penal in nature. As held by this Tribunal in OA 2311/98 and OA 2453/98, it has been argued by the respondents that the OA is not maintainable under Section 20 of the Administrative Tribunals Act, 1985 as the applicant has rushed to this Tribunal without availing the departmental remedies.

5. In all the decisions as referred to and relied upon by the respondents, it has been clearly held that the orders on transfers issued by the respondents need not be interfered with for the reasons as given in the said orders particularly for the reason that the respondents have followed the due process of law on the subject and that they are at liberty to transfer the employees under the existing policy that they have laid down on the subject and also under the relevant instructions on the subject.

6. The applicant has also not been able to establish malafide against the respondents which is his responsibility in terms of the decisions of the Hon'ble Apex Court in **E.P.Royappa v. State of Tamilnadu and Anr.** in W.P.No.284/1972 as passed on 23-11-1973 in which other important principles on the subject like exigencies of administration have also been laid down.

7. As law on the subject is quite well settled as affirmed in the decisions cited by the respondents, it would not be necessary to go over the matter repeating the same. In brief, I find that the applicant has not approached the departmental authorities seeking the remedy which he has sought in the present OA and has, instead, rushed to this Tribunal. It is also observed that the applicant has not been able to establish malafide against the respondents. Further, he has not clearly disputed the fact that he was not involved in the incident/charge as has been alleged against him. Moreover, transfer being a condition of service, he cannot run away from it.

8. Keeping thus in view the facts and circumstances of the case and also the decisions as cited by the respondents as have been referred to above, I am convinced that the applicant has no case and, therefore, this OA fails and is dismissed.

(Sarweshwar Jha)
Member (A)

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