

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1912/2003

New Delhi, this the 14th day of November, 2003

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

A. K. Gandhi,
Booking Clerk,
Office of D.R.M., New Delhi,
R/O Flat No.130, Pocket E-I, Group-7,
Sector-11, Rohini,
New Delhi.

... Applicant
(By Shri Amit Anand, Advocate)

versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

... Respondents
(By Shri Satpal Singh, Advocate)

O R D E R

Applicant has challenged order dated 16.6.2003 (Annexure A-1) transferring him along with the post on administrative grounds in public interest from Delhi Division to Ferozepur Division.

2. The learned counsel of applicant contended that disciplinary proceedings had been initiated against applicant vide Annexure A-2

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dated 19.5.2003 in connection with a vigilance check involving applicant, a Booking Clerk/New Delhi, conducted on 29.1.2003. He stated that while the disciplinary proceedings are still pending against applicant, he has been transferred out from the Division. The learned counsel relied on 2003 (1) Administrative Total Judgments 267 : **Jasbir Singh v. Union of India & Ors.** in which, in an identical case, the order of transfer of the applicant therein was quashed with liberty to the department to transfer him after conclusion of the departmental proceedings and in case administrative exigency so required. The learned counsel stated that during the pendency of the disciplinary proceedings against applicant, he has been transferred out. While in the transfer orders it is stated that applicant was being transferred along with the post on administrative grounds in public interest, the respondents have now stated additional grounds in the counter reply regarding the vigilance check conducted on 29.1.2003 and that the applicant was found responsible for committing irregularities by demanding and accepting illegal money for which he has been issued a major penalty chargesheet. The learned counsel relied on the judgment of the Supreme Court in the case of **Mohinder Singh Gill & Anr. v. Chief Election Commissioner**, AIR 1978 SC 851. The Supreme Court held as under :

"....when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an

order bad in the beginning may, by the time it comes to court on account of a challenge get validated by additional grounds later brought out."

3. On the other hand, the learned counsel of respondents contended that respondents had followed the instructions contained in RBE No.251/98 on the subject of inter-divisional transfer of ticket checking staff and other staff in mass contact area. These instructions were issued on 2.11.1998. These instructions state that the ticket staff detected to be indulging in malpractices are required to be invariably sent on inter-divisional/inter-railway transfer as a matter of policy. He further relied on order dated 24.9.2003 in O.A. No.2166/2003 : **Dharamvir v. General Manager, Northern Railway & Ors.**, in which it was held that the transfer made in public interest and administrative exigency cannot be questioned in judicial review unless the same is *mala fide* against the statutory rules or issued by incompetent authority. It was further stated that a railway servant has no indefeasible right to be posted at a particular place.

4. I have considered the rival contentions. Admittedly, while disciplinary proceedings were pending against applicant, the impugned order of transfer of applicant has been issued. While the impugned order has been made transferring applicant along with the post on administrative grounds in public interest to another Division, in the counter reply, respondents have taken the plea that the transfer

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has been necessitated to provide clean administration, in terms of policy decision of the respondents contained in instructions of the Railway Board dated 2.11.1998 for transfer of the staff detected to be indulging in malpractices in mass contact area, on inter-divisional basis.

5. The facts of the case of **Jasbir Singh** (*supra*) and those of the present case are identical. In both the cases, applicants have been transferred with the post. It was held that there was no vacancy or demand by the other Division; still the applicants were transferred on inter-divisional basis. Circular dated 23.5.1967 and that dated 2.11.1998 were considered in this judgment. Such a consideration was not given in the case of **Dharamvir** (*supra*). In the case of **Jasbir Singh**, it was observed as follows :

“10. The fact that the departmental proceedings are pending against the applicant is not denied. The interpretation of the Circular dated 13.4.1967, as relied upon by the applicant and subsequent circular dated 2.11.1998, as relied upon by the respondents are concerned, the court has to examine the same to see as to whether a person against whom the disciplinary proceedings are pending can be transferred during the pendency of the departmental proceedings. The reading of the circular dated 13.4.67 would show that it has been specifically stated that the Railway Board has considered that matter further and has now decided that non-gazetted staff against whom the disciplinary proceedings is pending or is about to start, should not normally be transferred from one Railway/Division to another till after the finalisation of the departmental or criminal proceedings, irrespective of whether the charges

(b)

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merit imposition of a major or a minor penalty. Thus, the circular dated 13.4.67 creates an embargo for transfer of those non-gazetted employees who are facing departmental proceedings, the result is still awaited. Whereas the circular dated 2.11.1998 simply stated that it has been decided that while the existing policy of inter-divisional/inter-railway transfer of ticket checking staff detected to be indulging in malpractices shall continue, other staff in mass contact areas detected to be indulging in malpractices can also be transferred on inter-divisional basis. The interpretation of this clause would show that earlier the ticket checking staff detected to be indulging in malpractices could not be transferred but now even those staff in mass contact areas if found indulging in mal practices can be transferred on inter-divisional basis under the existing policy. This enables the authorities to transfer even the other staff who comes in mass contact areas but the policy remains the same that once the disciplinary proceedings are pending then the staff should not normally be transferred."

It was further held that transfer along with the post means that there was no such administrative reason that the applicant along with the post should have been transferred. In the reply, respondents have stated that applicant had been transferred to provide clean administration in mass contact area. In the light of Supreme Court's ruling in the case of **Mohinder Singh Gill (supra)** original reasons cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. The case of **Jasbir Singh (supra)** is fully applicable to the facts of the present case. It is immaterial that the applicant has not made any representation to the respondents, as such a representation against the order of transfer does not envisage any statutory appeal

against the impugned order. No statutory remedy is said to be available to applicant. Such an objection made on behalf of respondents does not have any force.

6. In the light of the above discussion, impugned order dated 16.6.2003 is quashed. However, the department would be at liberty to transfer applicant after the conclusion of the departmental proceedings, and if the administrative exigency so requires. Respondents shall also be at liberty to transfer the applicant within the same Division.

7. The OA is allowed in the above terms. No costs.

(V. K. Majotra)
Vice-Chairman (A)

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