
(2018) 01 GAU CK 0041
In the Gauhati High Court
Case No : 4197 of 2016

ANUP CHAKRABORTY & ORS

APPELLANT

Vs

THE UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 23-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0041

Hon'ble Judges : Manojit Bhuyan

Bench : Single Bench

Advocate : P K TIWARI, M C BORA

Final Decision : Dismissed

Judgement

1. The three petitioners are Loco Pilots/Engine Drivers under the N.F. Railways . They belonged to the Rangia Division and were posted at New

Bongaigaon. On 23.02.2016, they were transferred out from Rangia Division to Badarpur under Lumding Division. This order was assailed before

the Central Administrative Tribunal, Guwahati Bench in O.A. No. 040/00059/2016, which was dismissed on merits. Hence the present writ

petition.

2. We have heard Mr. P.K. Tiwari, learned Senior Counsel representing the petitioners, assisted by Mr. A.R. Gogoi, Advocate, as well as Mr.

H.K. Das, learned counsel representing the respondent Railways.

3. Primary challenge to the transfer Order dated 23.02.2016 is on the premise that the same had been issued in lieu of punishment. Justification

made is that in November, 2015 as many as 91 Loco Pilots of Rangia Division, including the three petitioners herein, had made complaints against

the Senior Sectional Engineer i.e. respondent no. 5 before the Divisional Railway

Manager (Personnel) i.e. respondent no. 3, with copy to the Senior DME., Rangia Division. The said complaint made against the Controlling Officer and brought to the notice of the higher authorities, according to the petitioners, was not taken in good stead and wrath fell on the petitioners as the complaint had been made allegedly at their initiative. On 8th January, 2016 the Senior DME. had instructed the respondent no. 2 to transfer 5 Loco Pilots, including the three petitioners herein, from New Bongaigaon under the Rangia Division to Badarpur under Lumding Division. Thereafter, on 19th February, 2016, an Office Order was issued on behalf of the respondent no. 2 in this regard and the consequential order of transfer was eventually issued on 23rd February, 2016. Facts admitted are that the petitioners are active trade union members who had incurred the ire of the respondent authorities in course of their union activities, aggravated further by the complaint so made against the Controlling Officer. Thus, the impugned transfer order, according to the petitioners, had been issued in lieu of a punishment, although the same, at first blush, does not partake the character of being punitive in nature.

4. To test the submission so made on behalf of the petitioners, we have gone through the materials on record and have also carefully perused the findings and decisions of the Tribunal. At the very outset we place on record our complete agreement with the findings and decision of the Tribunal, save the observation made at paragraph 41 thereof, to which we shall shortly refer to.

5. The Office Order of 19th February, 2016 as well as the consequential order of transfer of 23.02.2016 have been passed on administrative grounds/exigencies, which power can be traced to Regulation 226 of the Indian Railway Establishment Code (Volume-I). The said orders makes no mention of any other considerations leading to the transfer of the petitioners, save and except on administrative grounds. On our asking, Mr. Das has produced a copy of the letter dated 08.01.2016 of the Senior DME, whereby request had been made for transferring out 5 Loco Pilots, including the petitioners. Apparently, the said letter makes mention of the petitioners creating nuisance, lodging fabricated complaints against the Controlling Officer, making threats etc. affecting smooth running of trains in the Division. The letter does make clear mention of a request to

arrange transfer of 5 Loco Pilots, including the petitioners. However, such request is shown to be made on administrative grounds towards safe

and smooth running of trains and for maintaining unity amongst the staff and the administration. A perusal thereof does not go to vindicate the

ground of challenge made by the petitioners.

6. No malafide is alleged by impleading any of the officers by name to demonstrate that the transfer order had been issued only as a mask or a veil

to conceal or camouflage the real intent of causing punishment. It would be worthwhile to note that in a given case a transfer order would be valid

even if effected on ground of undesirability or misbehaviour, thereby necessitating transfer in exigency of service. The same would not invite

interference of the Court as latitude should be given to the administration to enforce discipline in public service. So long the official status, career

prospects, namely, seniority, pay scale and secured emoluments are not adversely affected, an order of transfer does not stand to be vitiated. On

these grounds alone, we find no infirmity in the transfer order dated 23rd February, 2016.

7. It is brought on record by means of rejoinder affidavit filed by the petitioners that during the pendency of the present writ petition and following

the directions of this Court in its interim Order dated 08.08.2016, the three writ petitioners herein came to be posted at New Guwahati under the

Senior Section Engineer (Loco), New Guwahati against the vacancies of Lumding Division. Order to that effect was issued on 12.09.2016. Each

of the petitioners have also joined at New Guwahati under the Lumding Division.

8. As this Court refrains from interfering with the transfer order dated 23rd February, 2016 as well as to the judgment of the Tribunal and also

having regard to the fact that the petitioners have joined at New Guwahati under Lumding Division, this writ petition has no merits and stands

accordingly dismissed on the findings reached by this Court, as above.

9. Before parting with the case we, however, make it clear that the transfer and posting of the petitioners shall, in no way, adversely affect their

seniority in their particular grade/cadre. Also, the observations made by the Tribunal at paragraph 41 of the judgment, asking the respondent

Railways to make endorsement in the service records of the petitioners by marking that ""these employees are prone to vexatious litigation"", would

stand expunged, as the same was totally uncalled for in the facts and circumstances of the case.

To the extent above, the present writ petition stands dismissed, however, without any order as to cost.