
(2018) 11 CAT CK 0059

In the Central Administrative Tribunal

Case No : Original Application No. 2384 Of 2018

Sanjay Chutani

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 27-11-2018

Acts Referred:

Citation : (2018) 11 CAT CK 0059

Hon'ble Judges : V. Ajay Kumar, J;Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Yogesh Sharma, S.M. Arif

Final Decision : Allowed

Judgement

V. Ajay Kumar, J

1. The applicant, an Office Superintendent in the respondent- Northern Railway, filed the O.A. questioning the Annexure A-1 Transfer Order dated 02.05.2018 of the General Manager, wherein he was transferred from Delhi Division to Lucknow Division and the Annexure A-2 Order dated 30.05.2017, issued on behalf of the Divisional Railway Manager wherein the representation of the applicant made against Annexure A-1, Transfer Order was rejected.

2. Shri Yogesh Sharma, the learned counsel appearing for the applicant submits that due to his hard work and clear service record, though appointed as Clerk/ LDC on 07.01.1992, was promoted from time to time and presently working as Office Superintendent. He further submits that though transfer of a railway servant like any other Government servant is an incidence of service and can be transferred from one place to another place, including one division to another division, as per rules and in the exigencies of service, but the respondents all of a sudden and in the middle of academic year, transferred the applicant from Delhi Division to Lucknow Division, i.e., an Inter Divisional Transfer, by issuing Annexure A-1 Transfer Order dated 02.05.2018. He preferred a representation against the same and when the respondents without considering the said

representation relieved the applicant on 04.05.2018, from Delhi Division, he filed OA No.1805/2018. This Tribunal, by its order dated 07.05.2018, disposed of the OA by directing the respondents to consider the representation dated 03.05.2018 of the applicant within 30 days and till then, not to insist the applicant to join at the new place of posting. Thereafter, the respondents passed the Annexure A-2 order dated 30.05.2017 rejecting the representation of the applicant. Hence, the OA.

3. The learned counsel, inter alia, raised the following grounds, in support of the OA averments:-

(i) The competent authority to transfer an employee from one division to another division, i.e., to effect Inter Divisional Transfer is the General Manager and, in fact, the Annexure A-1 Transfer Order of the applicant was passed by the General Manager of the Respondent-Railways. When this Tribunal directed to consider the representation preferred seeking cancellation of the transfer of the applicant, instead of the competent authority, i.e., the General Manager, the lower authority, i.e., the Senior Divisional Commercial Manager for and on behalf of the Divisional Railway Manager considered the representation of the applicant and rejected the same vide Annexure A-2 order dated 30.05.2017. Hence, the Annexure A-2 order dated 30.05.2017, being passed by an incompetent authority, is liable to be quashed. He further submits that the order dated 14.11.2018 passed by the General Manager stating that the representation of the applicant dated 03.05.2018 was considered by the General Manager and was rejected by him is only an afterthought and an order passed after the OA was partly heard and after the applicant's counsel raised the ground of incompetency of the officer, who rejected the representation of the applicant.

(ii) The applicant being part of his duties as the Office Superintendent in the Commercial Branch of the respondent-Railways submitted a proposal against one M/s Durga Travels for termination of their agency, basing on their performance, which was duly accepted and approved by the DCM, Sr. DCM and DRM, and accordingly his contract was cancelled. The said M/s Durga Travels submitted a complaint against the applicant as well as the Divisional Commercial Manager, raising false allegations and the respondents without investigating the said complaint and the veracity of the allegations made therein, transferred the applicant to another Division. Hence, the transfer order is not due to any administrative exigency, but only in lieu of punishment, and hence liable to be set aside.

(iii) Even if the respondents are contemplating to conduct any enquiry against the applicant, they can transfer the applicant to any other place within the same Division, wherein about 20 posts of Office Superintendent are in existence.

4. On the other hand, Shri S.M. Arif, the learned counsel appearing for the respondent-Railways submits that once the General Manager passed the order on 14.11.2018, the same merges with the order dated 30.05.2017 passed on behalf

of the Divisional Railway Manager and hence, it cannot be said that the representation of the applicant was rejected by an incompetent authority.

5. The YSTK contract of M/s Durga Travels was terminated due to 2 offences detected by the Vigilance Department which was accepted by the said agency and accordingly its contract was terminated on 18.09.2017 and on filing of the appeal by the agency, its contract was restored on 08.05.2018 after imposing of a penalty of Rs.50,000/- and a warning letter. Hence, it cannot be said that the transfer of the applicant is punitive in nature.

6. As admitted by the applicant himself, the respondents are empowered to transfer any employee either within the Division or to another Division of the Railway in the administrative exigency and in public interest and hence the instant transfer of the applicant, which was done in public interest, and in administrative exigencies, cannot be interfered with by this Tribunal.

7. The learned counsel placed reliance on the following decisions in support of his submissions:-

(i) Appeal (Civil) No.1010-1011/2004 in Union of India and Others Vs. Sri Janardhan Debanath and Another decided on 13.02.2004, of the Supreme Court of India.

(ii) Appeal (Civil) No.4360/2007 Mohd. Masood Ahmad Vs. State of U.P. & Others decided on 18.09.2007, of the Supreme Court of India.

8. Heard Shri Yogesh Sharma, the learned counsel for the applicant and Shri S.M. Arif, the learned counsel for the respondents and perused the pleadings on record.

9. In Sri Janardhan Debanath and Another (supra), the Hon'ble Apex Court, while dealing with the issue of a transfer order passed as a measure of penalty, observed as under:-

"The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly

indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs".

10. Since the case of the respondents is that the transfer of the applicant was not due to any allegation against the applicant or due to any prima facie satisfaction to contemplate any enquiry against him, the case of Sri Janardhan Debanath and Another (supra) has no application to the facts of the present case.

11. In Mohd. Masood Ahmad (supra), the Hon'ble Apex Court considering a transfer affected basing on a letter of peoples representative observed as under:-

"8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter affidavit filed on behalf of respondent Nos. 1 & 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an M.P. or MLA would be vitiated. It all depends on the facts & circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order.

9. The appeal is dismissed. There is no order as to costs".

12. Since in the present case, the transfer was not made in pursuance of any letter or intervention of peoples' representatives, the decision in Mohd. Masood Ahmad (supra) also has no application.

13. The respondents have admitted that to effect Inter Divisional Transfer of Office Superintendent, the competent authority is the General Manager and that the Transfer Order dated 02.05.2018 was passed by the General Manager. In this view of the matter, when this Tribunal directed to consider the representation of the applicant made for cancellation of the transfer order, the very same competent authority, i.e., the General Manager has to consider and pass appropriate order. But admittedly, the representation was considered by an incompetent authority and a lower officer, i.e., Divisional Railway Manager and rejected the said request by his order dated 30.05.2017. It is also not the case of the respondents that the General Manager himself, rejected the representation of the applicant on the file and that the same was communicated by a lower authority. The order dated 14.11.2018 passed by the General Manager after the OA was partly heard and after the learned counsel for the applicant raised the ground of incompetency, clearly indicates that the same is an afterthought and a post facto approval for the action done by an incompetent authority. It is the settled principle of law that if initial action is not in consonance with law,

subsequent proceedings would not sanctify the same (See CMD Coal India Ltd. Vs. Ananta Saha - JT 2011 (4) SC 252).

14. The applicant specifically contended that the cancellation of agency and subsequent imposition of fine on M/s Durga Travels was due to the proposal made by the applicant and thereafter, the said M/s Durga Travels made a complaint. The respondents have not denied the fact of making a complaint by the said M/s Durga Travels against the applicant as well as the Divisional Commercial Manager. The respondents also not shown that the applicant, an Office Superintendent, though now working in Commercial Section, cannot be transferred to any of the Office Superintendent posts of general nature, within the same Division.

15. In the totality of the facts and circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders are quashed and the 2nd respondent-General Manager is directed to pass fresh order keeping in view our observations and also by considering the possibility of transferring the applicant, to any other place within the same Division. This exercise shall be completed within one month from the date of receipt of a certified copy of this order. In the circumstances, the period between the relief of the applicant to till the date of passing of fresh order by the 2nd respondent, shall be treated as any admissible leave of the applicant, as per rules. No order as to costs.