
(2016) 01 AHC CK 0229
In the Allahabad High Court
Case No : Special Appeal No. 969 of 2015

Union of India and Others	Vs	APPELLANT
Vishnu Kant Pal		RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Citation : (2016) 1 ADJ 854 : (2016) 2 AILLJ 181 : (2016) 3 AllWC 2330 :
(2016) 115 ALR 562 : (2016) 34 LCD 722 : (2016) 1 UPLBEC 762

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Vivek Singh, for the Appellant; Shiv Shankar Pd. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Dr. D.Y. Chandrachud, C.J.

1. The learned Single Judge by a judgment and order dated 6 November 2015 has interfered with an order dated 21 October 2014 by which the respondent who is a constable in the Railway Protection Force in the North Central Railway was transferred from the Diesel Loco Shed Jhansi Division to the Allahabad Division on administrative grounds. In setting aside the order of transfer, the learned Single Judge has observed as follows:

"...Although the case of the respondents is that the order has been passed in administrative interest and not under the provisions of Rule 148(4) of the Rules, 1987 nevertheless the very heading of the order itself mentions "Petty Punishment" and in the transfer order also it is mentioned that the transfer is on account of the suspicious role of the petitioner in the cable theft in the Diesel Loco Shed, Jhansi. In this view of the matter the order of transfer cannot be said to have been passed merely in administrative interest but rather by way of "Petty Punishment". Petty Punishment not being one of the penalties prescribed under Rule 148 of the Rules, 1987 such a penalty could not have been imposed against

the petitioner."

2. The second reason which has weighed with the learned Single Judge is that in the counter-affidavit which was filed by the appellants, it was "admitted" that the respondent was transferred on the administrative side when a complaint was made by the Senior Divisional Mechanical Engineer (Diesel) Jhansi. This, in the view of the learned Single Judge, would imply that the order is stigmatic since it accuses the respondent of being involved in the theft of cables and before such an observation could have been made, a disciplinary enquiry should have been held. The learned Single Judge has held that the order of transfer is, in fact, in the form of a "Petty Punishment" and since Rule 148(4) of the Railway Protection Force Rules, 1987 (Rules) does not contemplate a Petty Punishment by way of transfer, the order is contrary to law.

3. In order to bring clarity to the issue which arises in the special appeal, it would at the outset be necessary to extract the order of transfer which was issued by the Senior Divisional Mechanical Engineer (Diesel) Jhansi on 21 October 2014. The order reads as follows:

4. Ex facie, the order of transfer does not purport to be an order of punishment nor has it been issued for the reason that the respondent was implicated in the case of theft. The order is plain and simple an order of transfer on administrative grounds. The respondent, admittedly, is in a service which is transferable being a constable in the Railway Protection Force.

5. What weighed with the learned Single Judge, however, was an "observation" made in the form of "Petty Punishment" on 21 October 2014. Again for the sake of clarity, we would quote the "observation" hereinbelow:

"OBSERVATION

In terms of letter No. JHS. M. DSL. Con. Dated 13.10.14 by Sr. DME(D) JHS. "The role of Sri Vishnu Kant Pal has come out to be Suspicious (Cable theft case of Diesel Loco Shed).

Vide letter No. E/34/RPF/ALD/14 Dated 20.10.2014. CSC/RPF/NCR has transferred Sri Vishnu Kant Pal Constable Diesel Loco Shed from Jhansi Division to Allahabad Division.

Dated - 22.10.2014"

6. This observation notes that there was a letter of the Senior Divisional Mechanical Engineer (Diesel) dated 13 October 2014 in which the role of the respondent in a case of cable theft at the Diesel Loco Shed was noted to be suspicious. The observation notes that thereafter on 20 October 2014, the respondent was transferred from Jhansi Division to Allahabad Division. This observation, first and foremost, does not impose a penalty on the respondent.

7. On 20 October 2014, the Inspector General of the Railway Protection Force issued a Force Order (bearing No. 145 of 2014) by which the respondent was

transferred from Jhansi Division to Allahabad Division. This direction and order is not in the nature of a punishment. At the highest, the case of the respondent can be that there was a letter dated 13 October 2014 of the Senior Divisional Mechanical Engineer implicating that the role of the respondent in a case of cable theft was found to be suspicious. That would, however, not render the order of transfer to be a stigma, penalizing the respondent.

8. In the counter-affidavit which was filed on behalf of the appellants, it was specifically clarified that no punishment under Rule 148(4) of the Rules was initiated against the respondent and the transfer was made on the administrative side when a complaint was made by the Senior Divisional Mechanical Engineer (Diesel), Jhansi.

9. The issue is as to whether the learned Single Judge was justified in holding that this statement in the counter-affidavit would indicate that the order of transfer is "stigmatic" on the ground that it accuses the respondent of being involved in the theft of cables. With great respect, the impugned order confounds the order of transfer with the "observation" which we have extracted above. At the highest, the statement which was made in the counter-affidavit would indicate that a report had been submitted by the Senior Divisional Mechanical Engineer (Diesel) on the administrative side. Even if, the order of transfer was passed upon the receipt of the report, we are emphatically of the view that the transfer cannot be regarded as being stigmatic. The authorities are entitled to issue such orders of transfer on administrative grounds. Even assuming that a complaint is received against an employee, it is for the employer to make suitable arrangements to ensure that the interest of the employer - in the present case, a public employer such as the North Central Railway is duly taken care of by assigning suitable duties to the employee.

10. The learned Single Judge, with great respect, has erred in coming to the conclusion that since the petty punishment contemplated by Rule 148(4) does not include an order of transfer, the order of transfer in the present case was liable to be invalidated. The fact of the matter is that the order of transfer is not a petty punishment but was pure and simple an administrative direction by which the respondent was transferred from Jhansi to Allahabad Division on administrative grounds. Moreover, in the grounds of appeal, it has been stated that, as a matter of fact, the respondent was posted at Jhansi for nearly ten years.

11. For these reasons, we are of the view that the impugned judgment of the learned Single Judge dated 6 November 2015 is unsustainable. The special appeal is, accordingly, allowed by setting aside the impugned judgment and order of the learned Single Judge dated 6 November 2015. In consequence, the writ petition filed by the respondent shall stand dismissed. However, there shall be no order as to costs. The special appeal is, accordingly, disposed of. There shall be no order as to costs.