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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : 01.11.2007
Judgment delivered on: 04.06.2008

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% **W.P. (C) No. 6398/2007**

Union of India & another ...Petitioners
Through: Mr. Rajiv Dutta, Senior Advocate
with Mr. Rajesh Singh, Advocate

versus

Smt. Kamlesh ...Respondent
Through: Ms. Meenu Mainie, Advocate.

And

W.P. (C) No. 6401/2007

Union of India & another ...Petitioners
Through: Mr. Rajiv Dutta, Senior Advocate
with Mr. Rajesh Singh, Advocate

versus

Shri Onkar Singh ...Respondent
Through: Ms. Meenu Mainie, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J.

1. These two petitions under Article 226 of the Constitution of India have been preferred by the Union of India to challenge the

common order dated 1.8.2007 passed by the Central Administrative Tribunal, Principal bench, New Delhi (the Tribunal) in OA Nos.571/2007 and OA No. 578/2007, whereby the said original applications filed by the respondents in the two writ petitions, namely Smt. Kamlesh (respondent in WP(C) No.6398/2007) & Shri Omkar Singh (respondent in WP(C) No.6401/2007) to challenge their transfer along with their respective posts from the Welding Plant, Meerut Cantt, Northern Railway to Ambala Division and to Delhi Division, respectively, on administrative grounds succeeded and the said transfer orders were set aside by the Tribunal.

2. The case of the respondents before the Tribunal was that the respondent, Smt. Kamlesh was appointed as peon on compassionate ground after the untimely death of her husband. She is a widow with two children and while in service, she claimed to have been sexually harassed and troubled by one Shri Mehboob Khan, office bearer of URMU (Uttary Railway Mazdoor Union). The said Mehboob Khan is working as a generator operator in the Flash Butt Welding Plant, Northern Railway, Meerut. Some employees including Omkar Singh, that is the respondent in WP(C) No.6401/2007, who was working as a helper khalasi under executive engineer Flash Butt welding Plant, Northern Railways, had made efforts to stop Mr. Mehboob Khan from indulging in illegal activities. She claimed that she had made a complaint to GRP, Meerut Cantt in respect of the harassment caused by Shri Mehboob Khan on 17.7.2004 but to no avail. She made a

further complaint to the Chief Engineer, Northern Railway, Baroda House, New Delhi on 19.7.2004. Another complaint dated 17.08.2004 signed by as many as 63 employees was made to the General Secretary, UMRU Central Office, Panchkuian Road, New Delhi against the illegal activities of Sh. Mehboob Khan requesting for removing him from the service. As a reaction and in retaliation to resentment of Smt. Kamlesh and Shri Omkar Singh, Shri Mehboob Khan succeeded in using his influence over the authorities in getting both of them transferred out of the Welding Plant to Ambala and Delhi Division respectively along with their respective posts by alleging that the respondents were habitual miscreants and indulged in several instances of “maarpeet” and misbehavior with the fellow employees and also with the superior officers. It was alleged that, as Mehboob Khan was at an influential position, being the union leader, he misused his position and made complaints through the General Secretary, UMRU alleging that both the respondents herein have manhandled and misbehaved with the Branch Secretary of the UMRU and other office bearers. Soon thereafter transfer orders were issued, transferring the respondents to Ambala division and Delhi division. After the aforesaid order was passed , 109 railway employees made complaints to the Dy. Chief Engineer(TM) in support of the respondents.

3. Aggrieved by the aforesaid orders, the respondents filed OA.No.571/2007 and O.A.No.578/2007 before the learned Central Administrative Tribunal (the Tribunal), challenging the aforesaid order

on the ground of same being arbitrary and illegal and being punitive and without affording an opportunity to them to defend themselves and also mala fide under the influence of Mehboob Khan.

4. The learned Tribunal called for the record and after perusing the same allowed the aforesaid original applications of the respondents. The Tribunal noted the decision of the Supreme Court in ***State of U.P & Another V. Siya Ram & Another***, 2004(7) SCC 405 wherein it has been held that transfer is not only an incidence of service but also a condition of service and that unless an order of transfer is shown to be an outcome of mala fide exercise or not in public interest, the same cannot be interfered with by the Court. The learned Tribunal held that though the transfer orders were stated to have been issued on administrative grounds, the petitioner herein had failed to disclose any public interest or other varied administrative ground necessitating the issue of the transfer orders of the respondents along with their respective posts. The Tribunal also took note of the letter written by the General Secretary, National Federation of Indian Railwaymen dated 22.12.2006 to the General Manager Northern Railway, Baroda House, New Delhi opposing the said transfer to conclude that the said transfer orders were occasioned by union rivalries. Last but not the least, the Tribunal also observed that the respondent, Kamlesh would not make allegations of sexual harassment at the hands of Mehboob Khan without there being any truth about the same.

5. Before us the submission of learned senior counsel, Mr. Rajiv Dutta was that both the respondents had in the past exhibited indiscipline and there were repeated complaints against them from various officers in this respect. He referred to some of the communications filed on record dated 19.6.2000, the memorandum and charge sheet issued to Onkar Singh dated 19.10.2000, the complaint against Onkar Singh dated 17.10.2000, the police complaint made by Dinesh Kumar Jain, SSE/Mech/Butt/Welding against Onkar Singh in the year 2003, the complaint made by the General Secretary of the Uthriya Railway Mazdoor Union (URMU) against the respondents in relation to an incidence of 10.6.2006 and the fact finding enquiry report dated 1.8.2006 submitted by the XEN/BWP/MUT. Learned senior counsel submitted that to maintain peace, order and discipline in the organisation, the petitioner authorities were completely justified in transferring the respondents along with their respective posts after holding a fact finding enquiry which also found the respondents guilty of misbehaviour and misconduct.

6. On the other hand, Ms. Meenu Mainee, learned counsel appearing for the respondent supported the decision of the Tribunal by contending that even according to the petitioner, the respondents were found guilty of misbehaviour and misconduct, and on that account they are being transferred. This itself shows that the transfer orders were punitive. The finding of guilt of the respondents is not preceded by any enquiry wherein the respondents have been given an opportunity to defend themselves. She further argued that even the

petitioners concede that the General Secretary of the URMU had made a complaint soon before the impugned transfer orders were passed, and it is at the behest of the said Union that the respondents have been transferred out.

7. We had required the petitioners to produce before us the original records and the same has also been perused by us.

8. There can be no doubt about the fact that it is the primary concern of the administration in any organisation, to maintain proper discipline and work environment. To achieve the same, the administration may, for administrative reasons validly transfer some of the employees who are serving on transferable posts from one department to another or from one branch of the organisation to another, provided there is no other legal impediment in effecting the transfer. Therefore, if in this case, the transfer had been merely to preserve the discipline and to maintain peace within the organisation, without anything more, the same would have been valid and unassailable. However, when we look at the original records, in this case, the irresistible conclusion that emerges is that the transfer of the respondents was punitive, and jettisoned by the communication of the General Secretary of URMU.

9. A perusal of the record produced before us as well as the documents filed on record by the petitioner shows that the complaints against the respondents are mostly of the year 2000, 2002 and 2004. It is also seen that the complaints are primarily in respect of the respondent, Onkar Singh and there are hardly any complaints so far as

respondent, Kamlesh is concerned. A perusal of the communication dated 1.8.2006 of the XEN/BWP/MUT filed as Annexure P-6 as well as the original record shows that while conducting the said fact finding enquiry, the concerned officer merely recorded the statements of a few persons. However the respondents were not associated in this enquiry and they did not have the opportunity to meet the allegations made against them. It is not even clear from the record, and it is not explained by the petitioner as to whatever became of the charge sheet issued to Onkar Singh on 19.10.2000. It appears that the said charge sheet was not taken to its logical conclusion, and no finding of misconduct was recorded in pursuance of the said charge sheet.

10. The file notings establish the fact that the petitioners have proceeded to recommend the transfer of the respondents, and to transfer the respondents on the ground that they have been found guilty of misbehaviour with fellow workers and even with their seniors.

The noting made by the XEN/TP dated 28.8.2006 reads as follows:-

“Shri Onkar Singh H/Khalasi and Smt.Kamlesh, Peon both the employees are working in BWP/MUT and are having their lien in BWP/MUT. Behaviour of both the employees towards fellow workers and seniors is not good. They unnecessary interfere in day to day matters of others, misbehave and even use abusive language and are creating hindrances to railway working in the plant.

On the points raised by GS/URMU, against both the employees, XEN/BWP/MUT has conducted a detailed enquiry. The enquiry report is placed at S.No.53 to 53/41. Statement of staff have been recorded and both Shri Onkar Singh H/Khalasi & Smt. Kamlesh Peon are found guilty of misbehaving with fellow workers & even with

the seniors. XEN/BWP/MUT has recommended their transfer from BWP/MUT as their continuation at BWP/MUT is against the interest of the plant and the administration. The feasibility regarding their posting in other divisions has been discussed with SPO/HQ.

Shri Onkar Singh H/Khalasi may be posted in DLI division under Sr.DEN/C and Smt. Kamlesh Peon may be posted in UMB division under Sr.DEN/C. CTE is requested to kindly approve their transfer from BWP/MUT to DLI & UMB division along with posts on administrative grounds please."

11. It further appears that the CTE approved the proposal to transfer the respondents on 29.8.2006. However since the approval of the PH.O.D was also required, the XEN/BWP/MUT put up the note on 31.8.2006 that the approval of the Pr.CE may also be taken. The noting of the APO/Eng dated 1.9.2006 takes note of the fact that the transfer had been done due to complaint given by the General Secretary URMU to be found at serial no.54 of the file and the enquiry conducted by the XEN/BWP/MUT. This noting reads as follows:-

"Sh. Onkar Singh H/Khallasi in Gr 2650-4000 & Smt. Kamlesh Peon in Gr. Rs.2550-3200 working under XEN/Butt Welding Plant/MUT have been transferred to DLI & UMB Din respectively on administrative ground with the approval of Sr. CCE. This transfer has been done due to complaint given by Genl.Secy/URMU vide S.No.54 and enquiry conducted by XEN/BWP/MUT. They are not the Union office bearers. They are being transferred along with post. The transfer can be done as per para 231 of 1REC Vol.I SN.56.

May kindly see for information before the transfer orders are issued. "

12. From the aforesaid it is evident that the transfer has been done primarily on account of the representation made by the General

Secretary URMU and the enquiry conducted by the XEN/BWP/MUT on the conclusion that the respondents are guilty of misconduct and misbehaviour. In the aforesaid backdrop, the transfer orders were issued in respect of the respondents. It appears that the respondents represented against their transfer and while dealing with the said representation the XEN/TPT put up the note, inter alia, stating:

“XEN/BWP/MUT through detailed enquiry report placed at SN.53 to 53/41 had found them guilty of misconduct and misbehaviour with the superiors & employees of BWP/MUT. XEN/BWP/MUT had recommended their transfer from BWP/MUT.”

13. The aforesaid notings leave no manner of doubt in our mind that the transfer of the respondents was punitive. It was founded upon the complaint of the General Secretary of URMU and the fact finding report compiled by the XEN/BWP/MUT. However the respondents were not given any opportunity to meet the allegations of misbehaviour and misconduct made against them. The fact finding enquiry did not comply with the basic requirements of principles of natural justice. Merely on the basis of some statements of a few persons recorded behind the back of the respondents, it was concluded that the respondents were guilty of misbehaviour and misconduct. The mechanism adopted by the petitioners has also to be viewed in the light of the allegations that the transfer orders were issued on account of union rivalry, though it appears that the respondents were not office bearers of any workers union. We may refer to the decision of the Supreme Court in **Syndicate Bank Ltd V.**

Workmen, AIR 1966 SC 1283 in this regard.

14. In these facts we have no option but to conclude that the transfer orders in respect of the respondents were not merely on administrative grounds, but were passed with a view to penalise the respondents.

15. We are not, for a moment, suggesting that the petitioners were not entitled to transfer indisciplined and recalcitrant employees with a view to rein in discipline and efficiency in the organisation. If they were so minded, it was open to them to have initiated disciplinary action against the respondents. However, the petitioner could not have punished the respondents by transferring them in violation of the principles of natural justice. We, therefore, uphold the order passed by the Tribunal and dismiss these petitions with costs quantified at Rs.15,000/- in each case. The petitioner is also directed to release all the dues of the respondents towards salary and other allowances within two weeks.

(VIPIN SANGHI)
JUDGE

(A.K. SIKRI)
JUDGE

June 04, 2008
aj/as