



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: October 10, 2023

(1) + W.P.(C) 12216/2023 & CM APPLs. 48000-48002/2023

UNION OF INDIA THE GENERAL MANAGER & ANR.

..... Petitioners

Through: Mr. Rajesh Gogna, CGSC with
Ms. Pooja and Ms. Priya Singh, Advs.

versus

P K TOMAR

..... Respondent

Through: Mr. Pratiksha Sharma, Mr. M.K.
Tripathi, Mr. Ankit Acharya and
Ms. Ritu Chaudhary, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 48002/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 12216/2023

1. The challenge in this petition is to a judgment / order dated July 6, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA 1381/2023, whereby



the Tribunal has allowed the OA filed by the respondent herein by stating in paragraphs 5 & 6 as under:

“5. ANALYSIS:

5.1 The impugned order dated 04.05.2023, for the sake of brevity is re-produced as under:-

“Sh. P.K.Tomar S/O Sh. R.S.Tomar working as SSE/ACSP/DLI in 1-7 (PF No.50302863340) is transferred from Delhi Division to Moradabad Division along with post on administrative ground with immediate effect under GM(P) Letter No.752E/160/GS/E-II/A/PT-III dated 25.05.2017.

Hence, the above employee may be spared and directed to this office for further sparing to Moradabad Division. Northern Railway, along with leave account duly completed in all respect with six passport size photograph.

This has approval of competent authority.”

5.2 The Office Order dated 25.05.2017 vide which the applicant has been ordered to be transferred from Delhi Division to Moradabad Division, for sake of brevity is also reproduced as under :-

“Sh. P.K.Tomar, SSE/Power supply/DKZ working under Sr. DEE/G/DLI is transferred to Moradabad division along with post on Administrative ground with immediate effect.

He may immediately be spared and directed to report to DRM (P) Moradabad for his further posting in Electrical department in Moradabad division.

This has the approval of Competent Authority.”

5.3 As can be borne out of the records, that the Railway Board issued circular dated 25.09.2019, according to which in case of imposition of minor penalty, employee can be posted back after completion of three years beyond the date of completion of the period of punishment and in the present case three years have already been completed and therefore, there is no reason and justification to implement the transfer order of 2017 in the year



2023. Applicant has left with only two years for his retirement and as such the transfer of the applicant at this stage is without any reason and justification.

5.4 As per Railway Board circular dated 02.11.1998 only staff who are in mass contact area and are found involved in malpractices can be transferred on inter divisional basis. It is relevant to point out here that there was no such allegation against the applicant and hence his transfer is against the policy of the Railways. Can the applicant who was involved in unauthorized occupation of Railway Quarter No.1/23, Delhi Kishanganj Railway Colony, Delhi and unauthorized use of electricity in the aforesaid Railway quarter be said to involved in mass contact area and are found involved in malpractices is also questionable. The Impugned office order has been passed by respondents based on the fact that the applicant who was involved in unauthorized occupation of Railway Quarter No.1/23, Delhi Kishanganj Railway Colony, Delhi and allowed unauthorized use of electricity in the aforesaid Railway quarter. The case of the applicant was investigated by Northern Railway Vigilance and as per vigilance recommendation minor penalty charge-sheet was issued to applicant and inter divisional transfer was ordered since the 11 OA No. 138 applicant has already been punished for said action, the transfer order is punitive in nature in facts of present case, even though it is well settled law that the transfer is incidence of service.

CONCLUSION:

6. In view of above analysis, the impugned office order dated 4.5.2023 (Annex.A/1) and order dated 25.5.2017 (Annex.A/2) are quashed and set aside. However, the respondents are not precluded from passing appropriate order(s) qua the applicants in terms of Rules position and/or on merits of the transfer if so, required in future. OA is allowed in aforesaid terms. No order as to costs."

2. The brief facts to be noted for a decision in this writ petition are that the respondent was initially appointed in the Railway Department



on the post of Chargeman (now Junior Engineer) on April 29, 1988 through Railway Recruitment Board. He was subsequently promoted as Senior Section Engineer. On May 25, 2017, petitioners decided to transfer the respondent from Delhi Division to Moradabad Division along with the post on administrative ground. In compliance thereof, the DRM office issued an order of transfer to the respondent dated June 13, 2017. The respondent challenged the order of transfer dated June 13, 2017 before the Tribunal in OA 2129/2017. It appears that during the pendency of the OA, the respondent requested the competent authority to transfer him within the Seniority Unit. The authority vide order dated January 28, 2021 accepted his request and transferred him from Delhi Kishanganj to Delhi Junction. The OA was disposed of on September 28, 2022, wherein a statement was made by the counsel for the respondent that in view of the transfer order dated January 28, 2021, the OA has become infructuous, though it may be stated here that said submission was disputed by the counsel for the petitioners.

3. In terms of the impugned order dated May 4, 2023, it was once again decided that the respondent be transferred to Mordabad Division. It is this order and the earlier order dated May 25, 2017, which were challenged by the respondent before the Tribunal. It may be stated here that a chargesheet was issued to the respondent on August 14, 2017 alleging that he allowed unauthorised the use of electricity and Railway quarter to an illegal occupant.

4. The chargesheet resulted in the order of disciplinary authority dated February 12, 2018 wherein a minor penalty was imposed.



5. The case of the respondent was that he is not involved in any corrupt activities or any serious misconduct which could result in his transfer to a different division, i.e., Moradabad Division. The respondent had relied upon the Railway Board circular dated November 2, 1998 which contemplates transfer from one Division to another Division, to contend his case does not fall in the said circular.

6. The submission of Mr. Rajesh Gogna, learned CGSC appearing for the petitioners is that the respondent had not joined the place of posting at Moradabad and no order has been issued transferring the respondent from Delhi Kishanganj to Delhi Junction. His submission is it is in furtherance to the earlier order dated May 25, 2017 that the order dated May 4, 2023 has been issued. According to him, the Tribunal could not have set aside the impugned order when the Railway Board circular dated November 2, 1998 specifically provides for transfer of a Railway employee from one Division to another Division.

7. On a specific query to Mr. Gogna that if the respondent was not transferred from Delhi Kishanganj to Delhi Junction, how could he continue to be posted at Delhi Junction and paid salary. No reply to the same is forthcoming

8. On the other hand, learned counsel appearing for the respondent would justify the order of the Tribunal. In this regard, she has drawn our attention to a circular dated November 2, 1998 on which reliance has been placed by the petitioners to submit that the said circular has no applicability to the respondent, inasmuch as the same is only relatable to ticket checking staff indulging in malpractices and also with regard to staff in mass contact areas detected to be indulging in malpractices.



The respondent herein is not posted as ticket checking staff nor in a mass contact area. He is working as an Engineer in the Electricity Department. She also submits that the transfer order of May 25, 2017 has become infructuous in view of the subsequent order passed by the petitioners transferring the respondent from Delhi Kishanganj to Delhi Junction. Moreover, the Moradabad Division is a different seniority area and transfer, affecting seniority cannot be made. That apart, she submits that only two years are left for the respondent to attain the age of superannuation and as such he cannot be transferred.

9. Having heard the learned counsel for the parties and perused the record, it is true that on May 25 2017, respondent was transferred to Moradabad Division. But it is a fact that the respondent was also transferred from Delhi Kishanganj to Delhi Junction and has been working there. The respondent had withdrawn the OA challenging his transfer order dated May 25, 2017. If that be so, surely the order of May 25, 2017 has become infructuous in that sense. Even if the petitioners have passed an order dated May 4, 2023 that will also not help case of the petitioners as their case in support of the said transfer order is primarily by relying upon the Railway Board circular dated November 2, 1998. The same reads as under:

“In terms of existing instructions ticket checking staff detected to be indulging in malpractices, are required to be invariably sent on inter-divisional / inter-railway transfer as a matter of policy.

2. The question of feasibility of effecting inter-divisional transfer of staff in mass contact areas including ticket checking staff, was discussed in the conference on Malpractices and Corruption in mass



contact areas organized by the Ministry of Railways on 10.07.98.

3. Pursuant to the above discussion, 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 should also be transferred on inter-divisional basis.

Please acknowledge receipt.”

10. Learned counsel for the respondent is right in stating that the same is relatable to ticket checking staff and also other staff who are indulging in malpractices in mass contact area. Nothing has been shown to us depicting the respondent is working as ticket checking staff or in a mass contact area.

11. It is the case of the respondent that he is working as an Engineer in the Electricity Department. If that be so, the circular shall not have any applicability to the respondent. Additionally the Tribunal has also relied upon the fact that the respondent is retiring within two years from the date of the judgment of the Tribunal. The conclusion of the Tribunal is that the order of transfer was primarily for the reason that the respondent was involved in unauthorized occupation of Railway quarter and allowed unauthorized use of electricity in the aforesaid quarter. It was investigated and a chargesheet was issued resulting in minor penalty. As such, the order of transfer to Moradabad Division cannot be sustained.

12. We agree with the conclusion drawn by the Tribunal.



13. In the facts of this case, we are of the view that the impugned order does not require any interference. The petition is dismissed.

CM APPLs. 48000/2023 & 48001/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 10, 2023/jg