

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**FMA 415 of 2024
With
IA NO: CAN 1 of 2024

SRI SURYA KANTA MAJI
VS.
UNION OF INDIA AND ORS.**

For the Appellant : Mr. Achin Kumar Majumder
Ms. Ananya Adhikary, Advocate

For the UOI : Mr. Pralay Bhattacharya, Advocate

Heard & Judgement on : September 02, 2024

DEBANGSU BASAK, J.

- 1.** Appeal is directed against the order dated December 18, 2023 passed in WPA 26406 of 2023.
- 2.** By the impugned judgment and order, learned Single Judge dismissed the writ petition of the writ petitioner/appellant assailing an order of attachment of the appellant to a contingent at Malda.
- 3.** Learned advocate appearing for the appellant submits that, the appellant was posted as the Inspector of the Crime Intelligence Branch

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(CIB) Railway Protection Force, Eastern Railway, Sealdah. He submits that, tenure of posting is three years. During the tenure of the posting of the appellant, an order of attachment dated May 15, 2023 was passed. He refers to such order and submits that such order of attachment is essentially an order of transfer as, Railway Protection Force Rules, 1987 does not contemplate an order of attachment.

4. Referring to Rules 43.4 and 43.5 of the Railway Protection Force Rules, 1987, learned advocate appearing for the appellant submits that, since the order of attachment/transfer was coupled with the stigma of an allegation of the appellant indulging in activities involving moral turpitude, the appellant was prejudiced. He contends that, such order of attachment/transfer was passed without hearing the appellant. Consequently, the appellant was being condemned unheard.

5. Learned advocate appearing for the appellant submits that, during the pendency of the writ petition, certain documents were made over to the Court claiming to be confidential documents where, it was claimed that, appellant was allegedly involved in extorting money from smugglers while being posted at Sealdah. He submits that, certain documents were also produced before the Appeal Court. He refers to the affidavit-in-opposition filed by the Railway Authorities as also to the affidavit-in-reply filed by the appellant. He submits that, the impugned order of attachment/transfer is dated May 15, 2023, while, departmental proceeding was sought to be initiated on July 15, 2024. He contends that, the impugned order of attachment/transfer was issued as a penal measure. Since, such order of attachment/transfer is a penalty which is being inflicted upon the appellant without affording an opportunity of hearing to the appellant, such order of attachment/transfer is bad.

6. In support of his contentions, learned advocate appearing for the appellant relies upon **2006 (1) SLR 253 [Sree Prasanta Chaudhury vs. Union of India & Ors.]**; **(1998) 2 SLR 418 [Shamrao Chandrappa Kamble]**; **(2009) 2 SCC 592 [Somesh Tiwari vs. Union of India & Ors.]**; **unreported decision of a Division Bench of this Court dated February 9, 2005 passed in MAT 2668 of 2004 [Sri Sanjib Kumar Ray vs. Union of India]** and **unreported decision of another co-ordinate Bench dated August 25, 2011 passed in FMA 651 of 2011 [Tarkeshwar Giri v. Union of India]**

7. Railway Authorities are represented.

8. Affidavits filed in Court be taken on record.

9. Appellant was promoted to the rank of Inspector, Railway Protection Force (Executive) on January 20, 2022. On such promotion, he was posted at Crime Intelligence Branch (CIB) under Sealdah Division.

10. By an order dated May 11, 2023, appellant was temporarily attached to 'A' & 'D' wing of DSC Office, Malda in the interest of administration until further order.

11. The contentions of the appellant relating to Rule 93.4 and 93.5 of the Railway Protection Force Rules, 1987 requires consideration in such factual matrix. Such Rules are as follows : -

"93.4. Members of the Force who have been transferred out of a particular place or division on complaint of corruption or misconduct shall not be posted back to that post or place division even if they so request.

93.5. Members of the Force who have got adverse entries or enjoy poor reputation shall not be posted to sensitive posts till they get good entries for three consecutive years."

12. Rule 93.4 prohibits posting to the place or division from where, a member of a Force was transferred on complaint of corruption or misconduct.

13. Rule 93.5 prohibits posting of a member of a Force who received adverse entries or enjoyed poor reputation, to sensitive post till they received good entries for three executive years.

14. These Rules were considered by a learned Single Judge of this Court in **Sree Prasanta Chaudhury (supra)** and another learned Single Judge of the Bombay High Court in **Shamrao Chandrappa Kamble (supra)**.

15. In the factual matrix in these cases, there were transfer orders which were passed without hearing the delinquents involved. Such is not the case here. The impugned order here is not an order of transfer *per se*. All that the Railway Authorities did was to attach the appellant to the 'A' & 'D' wing of DSC office Malda in the interest of administration by the impugned order dated May 11, 2023.

16. **Somesh Tiwari (supra)** is of the view that, an order of transfer is an administrative order and should not be interfered with, save in cases where, *mala fide* on the part of the Authorities is proved.

17. In the facts of the present case, at the behest of the learned Single Judge, as also at our request, certain documents were produced before the Court for perusal. In the appeal, Railway Authorities used an affidavit where, Railway Authorities disclosed that, there is an ongoing investigation as against the appellant with regard to the extortion relating to smuggling of gold at the Sealdah Railway Station. A disciplinary proceeding was initiated as against the appellant and the same is pending.

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18. Taking such totality of the facts on record, we are not in a position to return a finding that the impugned order of attachment dated May 11, 2023 passed in respect of the appellant is vitiated by *mala fide*. The impugned order of attachment was passed in the interest of the administration and in view of the discovery of the materials which are being considered by the Authorities. In fact, the disciplinary proceedings are yet to arrive at a finality. No order of transfer was passed on the basis of any disciplinary proceedings as against the appellant as of now.

19. The co-ordinate Benches in **Sri Sanjib Kumar Ray (supra)** and **Tarkeshwar Giri (supra)** were concerned with different factual matrix where order of transfer was passed in respect of delinquent without hearing them.

20. In the facts of the present case, since the disciplinary proceedings are yet to be concluded and since, the appellant is justifiably anxious to clear his name as expeditiously as possible, it would be appropriate to direct the Authorities to dispose of the disciplinary proceedings as expeditiously as possible and preferably within three months from date. Authorities will not grant any unnecessary adjournments to any of the parties in such disciplinary proceedings.

21. In view of the discussions above, we find no merit in the present appeal.

22. FMA 415 of 2024 along with connected application are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

23. I agree.

(Md. Shabbar Rashidi, J.)