

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.2942/2001
with
O.A.2998/2001
and
O.A.3035/2001

(13)

New Delhi this the 15th day of March, 2002

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

O.A.2942/2001.

1. Radhey Shyam,
2. Surender Singh Beniwal,
3. Naurang Lal,
4. Yusuf Ali,
5. Bhanwar Lal,
6. Rameshwar,
7. Rafiq Mohd.,
8. Sanwarmal,
9. Sravan Kumar,
10. Rajender Kumar,
11. Shanker Lal,
12. Jhabar Mal,
13. Liyakat Ali,
14. Mumtaj,
15. Shambhu,
16. Gauri Shanker,
17. Rupa Ram,
18. Mukna Ram,
19. Sadhu Ram,
20. Puran,
21. Banwari Lal,
22. Kishan Lal,
23. Chand Ratan,
24. Munshi Khan,
25. Samudra Khan,
26. Dharmavir,
27. Jai Prakash,
28. Ayub,
29. Mohd. Hanif,
30. Uma Shankar,
31. Karan Singh,
32. Babu Lal Meena,
33. Mohd. Hussain,
34. Ganpat Ram,
35. Kuna Ram,
36. Bhaira Ram,
37. Parmeshwar,
38. Nagarmal,
39. Parmeshwar,
40. Panchu Ram,
41. Sattar,
42. Gokul,
43. Bhagwana,

44. Shaukat Ali,
45. Mahipal,
46. Rohtas,

47. Ved Prakash,
48. Mahavir Singh,
49. Ram Ratan,
50. Madaan Lal,
51. Hira Lal,
52. Jagdish Prasad,
53. Ram Chander,
54. Amar Singh,
55. Rameshwar.

(All at Carriage & Wagon Depot,
(B.G.) Northern Railway,
Delhi Sarai Rohilla, Delhi). ...Applicants

(By Advocate Shri G.D. Bhandari)

Versus

Union of India, through

1. The General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway
Bikaner. ... Respondents

(By Advocate Shri R.L. Dhawan)

O.A.2998/2001

1. Gordhan,
S/o Shri Mahayas,
Carpenter.

2. Prabhu,
S/o Shri Grasai,
Fitter -III.

3. Mangla Ram,
S/o Shri Mani Ram,
Helper Khalasi.

4. Sohan Lal,
S/o Shri Chiranjit Lal,
Helper Khalasi.

5. Sadhu Ram,
S/o Shri Munshi Ram,
Safaiwala.

6. Madan Lal,
S/o Shri Ganpat Ram,
Safaiwala.

7. Giri Raj Meena

...Applicants

(All working under Sr. Section Engineer,
Carriage & Wagon (BG), Northern Railway,
Delhi Sarai Rohilla, Delhi).

(By Advocate Shri G.D. Bhandari)

Versus

Union of India, through

1. The General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway
Bikaner.

... Respondents

(By Advocate Shri R.L. Dhawan)

O.A.3035/2001

1. Hoshiar Singh,
S/o Shri Net Ram,
Khalasi.

2. Banwari Lal,
S/o Hukma Ram,
Painter.

3. Vinod Kumar,
S/o Shri Hema Ram,
Khalasi.

4. Mani Ram,
S/o Shri Mangla Ram,
Khalasi.

...Applicants

(All working under Sr. Section Engineer,
Carriage & Wagon (BG), Northern Railway,
Delhi Sarai Rohilla, Delhi).

(By Advocate Shri G.D. Bhandari)

Versus

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Union of India, through

1. The General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway
Bikaner. Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The above three applications (O.A.2942/2001, O.A.2998/2001 and O.A.3035/2001) have been filed by the applicants seeking to set aside the impugned order issued by the respondents dated 19.10.2001 (Annexure A-1), whereby they have been transferred from Bikaner Division to old Delhi Junction, after they had been earlier transferred by order dated 15.06.2001 (Annexure A-2), when they were transferred from different C&W Depots of the Bikaner Division to C&W Depot Delhi Sarai Rohilla. As the facts and issues in the aforesaid three applications are the same and learned counsel for the parties have been heard not only on interim relief but also on merits of the case, they are being disposed of by a common order.

2. Annexure A-2 letter issued by the D.R.M. Office, Northern Railway, Bikaner dated 15.06.2001 deals with the transfer of C&W staff along with their posts, due to closure of trains activities in certain Depots mentioned therein. Annexure A-1 letter has been issued by Headquarters Office, Northern Railway, dated 17.10.2001, wherein it has been stated, inter-alia, that the Bikaner Division staff being headquartered and posted at Delhi

Junction will maintain certain trains mentioned therein. It is also mentioned that the Bikaner Division Staff will be given an office at DLI and Sr. DME/Delhi will make all the other arrangement for the purpose and the DEE staff may be asked to report at DLI immediately. Another letter from the office of the DRM, Bikaner dated 19.10.2001 which is also marked as Annexure A-1 is on the subject of posting of C&W Staff of Bikaner Division at Delhi Junction which states that in terms of the earlier Office Order dated 17.10.2001, those transferred staff, who have joined their duties at Delhi Sarai Rohilla will be re-posted at old Delhi Junction and their administrative control/supervision will continue to be exercised by the Bikaner Division.

3. The main contention of Shri G.D. Bhandari, learned counsel for the applicants in the aforesaid three Original Applications is that the applicants, who are stated to have been rendered surplus, were originally brought to Delhi Sarai Rohilla along with their posts. He has very vehemently submitted that declaring them surplus and transferring them again to Delhi Junction while keeping the posts to which they were posted at Delhi Sarai Rohilla by adopting a pick and choose policy, is highly objectionable and illegal. He has submitted that the Bikaner Division staff cannot be controlled by Delhi Division. He has also submitted that in view of four months stay of the applicants at DEE on their transfer under the first order issued by the respondents dated 15.06.2001, they were declared surplus and transferred to DEE (BG) along with their posts due to closure of trains activities. Then the second order of posting has been issued dated 19.10.2001 by the DRM, Bikaner with reference

to Headquarters Office letter stating that those transferred staff are further posted to Delhi Main Junction. He has stated that this has been done without any rhyme or reason and the circumstances show that neither additional trains have been added nor any work load increased at Delhi Junction to transfer and consequently disturb the applicants again within a short period. He has very vehemently submitted that the respondents are merely acting on conjectures and surmises and bad planning and, according to him, there are no additional trains at Delhi Junction justifying any additional staff being posted there. He has also relied on Circular No.21 issued by the respondents, stating that juniormost employees should be rendered surplus irrespective of the manner in which they had been recruited/entered to the post/grade. He has, therefore, contended that as there are posts lying vacant with the Bikaner Division in C&W Depots, there was no reason to shift the applicants out of that Division which is, therefore, illegal.

4. We have seen the replies filed by the respondents and heard Shri R.L. Dhawan, learned counsel. They have submitted that a decision had been taken by the Headquarters office that juniormost artisan staff and unskilled staff from under-loaded areas may be brought to Delhi Sarai Rohilla. They have referred to the impugned order dated 15.06.2001. They have submitted that 76 staff have since joined at Delhi Sarai Rohilla, including the applicants. Later, with the consent of both the recognised Unions, lady staff who had been transferred to DEE were retained at their respective Depots and Loco Maintenance staff were also retained in Mechanical Loco in

administrative interest. They have also submitted that all 76 staff who had joined at DEE, have now been posted at Delhi Junction for maintenance of certain trains. Learned counsel has denied that the staff have been transferred to Delhi Division. He has drawn our attention to the letter issued by the respondents dated 19.10.2001, in which it has been stated, *inter alia*, that the administrative control/supervision of the staff transferred and posted to old Delhi Junction from Delhi Sarai Rohilla for maintenance of certain trains mentioned in that letter will continue to be exercised by the Bikaner Division. He has explained that in Para 2 of the letter dated 17.10.2001, it has been mentioned that the Bikaner Division will be given an office at DLI and Senior DME/Delhi will make all the other arrangement for the purpose i.e. for giving office at DLI. He has, therefore, submitted that there are no infirmities in the transfer orders, as alleged by the learned counsel for the applicants, which orders have been issued in public interest for the staff to join at Delhi Junction for maintenance of the designated trains. He has, therefore, prayed that the ad-interim order granted by the Tribunal dated 29.10.2001 should be vacated and the O.A. be dismissed.

5. The respondents have also taken a preliminary objection that the application is premature and not maintainable under Section 20 of the Administrative Tribunals Act, 1985. They have submitted that the applicants were transferred by the impugned order dated 19.10.2001 and even without making a representation to the respondents, they have filed the OAs on 25.10.2001, 1.11.2001 and 6.11.2001, respectively. Shri R.L. Dhawan,

learned counsel, has relied on the judgement of the Supreme Court in Gurjarat State Electricity Board Vs. A.R. Sungomal Poshani (AIR 1989 SC 1433). He has, therefore, submitted that if any of the applicants has any genuine difficulty, they should make representations to the respondents for stay or modification or cancellation of the transfer orders, otherwise they should carry out the transfer orders in the administrative interest.

6. We have seen the rejoinder filed on behalf of the applicants where they have more or less reiterated their arguments in the O.A. They have submitted that as the issues involved in the present application involve a large number of employees in the matter, being grave in magnitude, the O.A. does not suffer from any legal infirmity. They have submitted that the impugned transfer orders have been issued contrary to the rules which is mala fide and based on pick and choose policy.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. We are unable to agree with the contentions of the learned counsel for the applicants in the aforesaid three O.As, that in the facts and circumstances of the case, they did not have to make any representation to the respondents in respect of the transfer order dated 19.10.2001 or that the provisions of Section 20 of the Administrative Tribunals Act, 1985 do not have to be complied with. It is relevant to note that this O.A. has not been admitted but at the same time the applicants have

also not made any representation against the impugned transfer order from Delhi Sarai Rohilla station to Delhi junction. It is a fact that they belong to C&W's staff of Bikaner Division, who had earlier been transferred from C&W Depots in Bikaner Division to C&W along with their posts. Following the judgement of the Hon'ble Supreme Court in A.R. Sungomal Poshani's case (supra), we are of the view that the applicants ought to have made the representations to the competent authority bringing out any difficulty they had in carrying out the transfer order in the first instance, which has not been done. However, in the present case, the ad interim order has been issued by the Tribunal dated 29.10.2001 directing the respondents to allow the applicants to work. Both the learned counsel have made submissions, learned counsel for the applicants challenging the validity of the transfer order and on the contrary learned counsel for the respondents justifying the same. We have, therefore, considered the cases on merits also.²⁴

9. It is clear from the orders issued by the respondents dated 17.10.2001 and 19.10.2001 that in terms of the earlier office letter issued by them dated 15.06.2001, the transferred staff i.e. the applicants who had joined their duties at Delhi Sarai Rohilla (BG) are to continue under the administrative control/supervision of the Bikaner Division. Therefore, the contention of Shri G.D. Bhandari, learned counsel that the transfer/shifting of the applicants from C&W Depots from Bikaner Division to Delhi Sarai Rohilla and again from Delhi Sarai Rohilla to Delhi Division, is arbitrary and illegal, is not correct and is accordingly rejected.

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10. The other main contention of the learned counsel for the applicants is that the impugned transfer order has been issued on conjectures and surmises with no planning or at best bad planning on the part of the respondents as, according to him, they were initially transferred from various C&W's Depots on the basis of certain work, including the increase of work-load at DEE (C&W) which has been belied. They have now been transferred to another Railway station i.e. the Old Delhi junction for maintenance of certain scheduled trains mentioned in the impugned order dated 19.10.2001. As mentioned above, the administrative control/supervision of the applicants who belong to Bikaner Division, continue to be exercised by the Bikaner Division and in this view of the matter, their objection that they have been transferred to C&W Depot DEE along with their posts, "cannot assist them. It is settled law that in exercising the power of judicial review in a transferred matter, interference will be justified only in cases of mala fides or infraction of any professed norms or principles (N.K. Singh Vs. Union of India & Ors. (1994 (28) ATC 246). It has also been held by the Hon'ble Supreme Court in Union of India Vs. S.L. Abbas (1993 (2) SLR 585) that unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it and it will be for the competent authority to decide who should be posted where. We are satisfied from a perusal of the documents on record and referred to by the learned counsel during the hearing, that the applicants have failed to establish any mala fide action on the part of the respondents in transferring them to old Delhi Junction instead of C&W Depot, as earlier posted vide order dated

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15.6.2001. As submitted by Shri R.L. Dhawan, learned counsel during the hearing, if any of the applicants had any genuine difficulty in carrying out the transfer order, they may make the representation to the competent authority who shall consider the same in accordance with the rules and instructions, keeping in view the status of the employees so transferred for cancellation/modification of the transfer order, as the case may be in individual cases..

11. In the facts and circumstances of the case and having regard to the judgements of the Supreme Court, referred to above, we are unable to agree with the contentions of the applicants that the impugned transfer order dated 19.10.2001 transferring them to Delhi Junction is vitiated either by mala fides or in violation of any statutory provisions/rules to justify any interference in the matter. The O.As (O.A.2942/2001, O.A.2998/2001 and O.A.3035/2001) accordingly fail and are dismissed. Interim order are accordingly vacated. No order as to costs.

12. Let a copy of this order be placed in O.A. 2998/2001 and O.A.3035/2001.

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

(S.R. Adige)
Vice Chairman (A)

'SRD'

Prin
Court Officer
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