

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.394/94

New Delhi this the 16th Day of September, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

S.P. Chauhan,
S/o Sh. Chander Singh,
R/o 34, Nangle Razepur,
Nizamuddin East,
New Delhi.

...Applicant

(By Advocate Sh. S.K. Bisaria)

Versus

1. Union of India through
the Secretary, Ministry
of Information & Broadcasting,
New Delhi.

2. Chief Producer,
Films Division,
24, Dr. Deshmukh Road,
Bombay.

...Respondents

(By Advocate Sh. K.C. Sharma)

ORDER

Hon'ble Mr. N.V. Krishnan:-

The applicant is aggrieved by his transfer from Delhi to Bangalore, on the ground that, in the circumstances, the juniormost person should have been transferred and not the applicant.

2. The facts are not in dispute. The applicant is an Assistant Cameraman under the second respondent - Chief Producer, Films Division, Bombay. Till recently, there were 22 posts of Assistant Cameraman under respondent No.2. Only 20 officials were in position. Two posts, one each at Bangalore and Calcutta were vacant. There were six posts at Delhi. All of them were filled up. The applicant was one of them.

3. The second respondent intimated the Delhi office on 15.9.93 (Annexure-3) about the decision to abolish certain vacant posts keeping in view the reduced funds allocated by the Ministry of Agriculture. The posts to be abolished included the two vacant posts of Assistant Cameraman.

4. Accordingly, the second respondent issued the impugned Annexure-1 order dated 13.12.93, transferring two Assistant Cameraman, including the applicant, one Electrician and one Unit Manager from the Delhi Office. The applicant was transferred to Bangalore.

5. The applicant made a representation on 3.1.94 (Annexure-4) to the second respondent stating that he has certain domestic problems, as he has to look after his old and blind widowed mother. He also pointed out that the juniormost person viz. A.K. Hiteshi should have been transferred and not he.

6. In reply, he was informed on 18.2.94 (Annexure-4) that his request for retention at Delhi has been rejected because the concerned post was abolished from 1.3.94 and there was no alternative but to adjust him by transferring him to Bangalore. He was, therefore, required by another order of the same date (Annexure-1) to get relieved of his duties at Delhi from the afternoon of 28.2.94 and directed to report for duty at Bangalore.

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7. It is against the order of transfer and the order of relief - both marked Annexure A-1 - that this O.A. is filed on the ground that, in the circumstances, only the juniormost person should be transferred.

8. The respondents have filed a reply. The facts are not denied. It is contended that the applicant was liable to serve in any part of India. The respondents decided to abolish two posts at Delhi (i.e. reduced from 6 to 4) instead of abolishing the vacant posts at Calcutta and Bangalore. Therefore, two Assistant Cameramen had to be transferred. Therefore, the applicant was transferred to Bangalore. The respondents contend that the plea that only the juniormost person should be transferred is without substance. This is purely a case of redeployment of staff by transfer and the administrative authority has to take into account various factors before deciding who should be transferred out. It is an administrative decision.

9. The only question that arises is whether, in the above circumstances, only the juniormost persons working at Delhi should have been transferred to Bangalore and Calcutta consequent upon the reduction of posts at Delhi. It is clear that, this is a case of reduction by two posts in strength of the establishment but not leading to any reduction in the staff because two posts were vacant and the staff existing (i.e. 20) can be accommodated in the reduced strength (20 posts) of the cadre. No retrenchment was, therefore, involved. The learned counsel for the respondents admits that if retrenchment was to be effected the principle of 'last come first go' would have applied and the juniormost two Assistant Cameramen would have been

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retrenched. In the present case, no such situation has arisen. There are only 20 officials. They have to be redeployed and in the process of redeployment the vacancies at Calcutta and Bangalore have to be filled up by transfer. The learned counsel for the respondents contends that in this situation the principle of 'last come first go' will not apply. There is no such rule or direction in the Department.

10. We have heard the learned counsel for the parties.

11. The first decision relied upon by the learned counsel for the applicant is Jawahar Lal Nehru University (JNU) v. Dr. K.S. Jawalkar 1989 (3) SLR (SC) 731. We have seen that judgement. We are of the view that the decision therein has been rendered in totally different circumstances and has no application to the facts of the present case. A centre of post graduate studies was established by JNU at Imphal in Manipur at the request of the Government of India. The intention was that that centre could be later on made over to the Central University which the Central Government had decided to establish for the N.E. Region at Shillong. The respondent was posted by the JNU at the Imphal Centre as Assistant Professor. Subsequently, the Manipur University was set up. It was decided, with the consent of the parties, to transfer the Imphal Centre of the JNU to the Manipur University. The necessary statutory resolutions were passed by both the Universities. The Manipur University Act, 1980 passed by the Manipur Legislature, provided that after the Act came into force, the JNU ceased to exercise

jurisdiction over the Centre at Imphal and that the Government of Manipur could make provisions for the transfer of employees from that Centre to the Manipur University. On 31.3.91, the Governor of Manipur issued an order that members of the faculties at the Imphal Centre of the JNU immediately before its merger into the Manipur University, would become employees of the Manipur University from 1.4.91. Accordingly, the respondent (i.e. K.S. Jawalkar was made an employee of the Manipur University. This was challenged by him in the Delhi High Court. It was held that he could not be obliged to join the Manipur University, as he was a confirmed Assistant Professor in the employment of the JNU at the Imphal Centre. Accordingly, his writ petition was allowed and he was deemed to continue in the service of JNU. Against this decision the JNU filed an appeal before the Supreme Court. It is in this context that the Supreme Court held that the respondent's employment could not be transferred by the JNU to the Manipur University without his consent, notwithstanding any statutory provision to the contrary. It was held that no employee can be transferred without his consent from one employer to the another. Thereafter, the Court observed as follows:-

"8. In as much as the transfer of the centre of Post-graduate Studies from the appellant University to the Manipur University could not result in a transfer of the employment of the respondent from the one to other, it must be concluded that the respondent continues in the employment of the appellant university. The transfer of the centre of Post-graduate studies to the Manipur University may be regarded as resulting in the abolition of the post held by the respondent in the appellant University. In that event, if the post held by the respondent is regarded as one of a number of posts in a group, the principle "last come, first go" will apply, and someone junior to the respondent must go. If the post held by him constitutes a class by itself it is possible to say that he is surplus to the requirements

of the appellant University and is liable to be retrenched. But it appears that the respondent has been adjusted against a suitable post in the appellant University and has been working there without break during the pendency of this litigation, and we cannot, therefore, permit the appellant University to retrench him."

12. In other words, the transfer of the respondent was primarily quashed because he was transferred to work under a new employer without his consent. That is not the situation in the present case. It was also held that if the changes referred to above necessitated a retrenchment, 'last come first go principle' will apply. In the present case we have already found that there was no need to resort to retrenchment even after the abolition of 2 posts of Asstt. Cameraman.

13. The learned counsel for the applicant also relies upon an earlier decision of the Allahabad High Court in S.N. Misra and others vs. B.L. Rastogi and others 1978 (1) SLR - 824.

14. We have seen that judgement. That judgement is also distinguishable. Paragraphs 9 and 10 of that judgement are relevant and are reproduced below :-

"9. The relevant portion of Annexure 10 on which reliance has been placed by the respondents runs as under:

' A copy of the Railway Board's letter No. E/NC/66/TR/2/20 dated 27.7.1966 addressed to General Manager, All Indian Railways & others.

Sub: Transfer in the event of the curtailment of cadre etc.

It has been brought to the notice of the Board that the practice of transferring staff in the event of curtailment of a cadre varies from Railway to Railway and even from Division to Division on a Railway. With a

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view to bring about uniformity in the matter, the Board desire that, as a general rule, juniormost employee should be transferred first whenever any curtailment in a cadre takes place.'

The evidence in the case shows that due to divisionalisation some ministerial staff became surplus and it had to be absorbed and that some of them were absorbed in the open line cadre. It is on this basis that the learned single Judge held that the Annexure 10 was applicable and will make the transfers invalid. The advice contained in Annexure 10, in our opinion, is meant to be operative only in such cases where retrenchment takes place in a particular cadre due to the decrease in need and by reason thereof there is curtailment in the cadre. The intention of Annexure 10 is that when other things remain the same, that is, when there is no wholesale readjustment in the administrative setup and till a curtailment in the cadre, the transfers should follow the rule, last come, first go. Such is not the situation here. There was no retrenchment or curtailment in the cadre of ministerial staff but the surplus staff had occurred in the process of the implementation of the scheme of divisionalisation. The scheme of divisionalisation had necessitated readjustment of the employees and it was in the course of this readjustment that transfers had been effected. The transfers were the part of the scheme itself and they could not have been governed by the general rule contained in Annexure 10 about the transfers on curtailment of a cadre.

10. Looking from another angle, if the rule laid down in Annexure 10 is made applicable to the present case, it would result in unreasonableness. The open line cadre promises better prospects of promotion. It could not have been the intention of the Railway Board in its letter of guidance (Annexure 10) to give this opportunity to juniormost and deny it to the senior people in the cadre. Here, the employees were not to be transferred as such only after they receive a particular training, and pass the test, and get selected on the basis of the suitability for the open line cadre. The rule of last come, first go could not be meant to apply to such extraordinary situations."

The first point of distinction is that there is a letter of the Railway Board dated 27.7.66 (Annexure 10) stating that as a general rule the juniormost employee should be transferred first whenever any curtailment in a cadre takes place. There is no such rule in the respondent's department applicable to the present case. Secondly, as seen from the judgement it has been held by the Full Bench of the High Court that the advice contained

in the Annexure 10 circular is meant to be operative only in such case where retrenchment takes place in a particular cadre.

15. We are unable to see how this judgement helps the applicant.

16. It is necessary to mention that the learned counsel for the respondents has relied on a judgement of the Allahabad High Court in Govind Lal Srivastava vs. Commissioner, Village Development - 1972 (65) SLR 515 (All.), a copy of which is kept on record and the Supreme Court's decision in Shilpi's case (1992 (6) SLR 713. In the view we are taking we see no need to consider then.

17. We are of the view that no retrenchment was involved. There is no rule or law, which requires that only the juniormost person should be transferred when retrenchment is not involved. The applicant has not made out any case for our interference. Accordingly, the application is dismissed. No costs.

(C.J. Roy)
Member (J)

'Sanju'

(N.V. Krishnan)
Vice-Chairman (A)