

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1581/2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

Date of decision: 06.09.2000 /13.10.2000

Shri K.K.Chakraborty
R/o D-2-3, M.S.Flats
Sector XIII, R.K.Puram
New Delhi.

... Applicant

(By Shri K.R.Sachdeva, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Railways
Rail Bhawan
New Delhi - 110 001.
2. The Chairman
Railway Claims Tribunal
No.2, Rajpur Road
Delhi - 110 054.
3. Shri D.S.Dhaliwal
Chairman
Railway Claims Tribunal
No.2, Rajpur Road
Delhi - 110 054.
4. Shri R.N.Bhattacharya
Member (Technical)
Railway Claims Tribunal
Calcutta. ... Respondents

(By Shri V.S.R.Krishna, Advocate for R-1 and Shri H.K.Gangwani, Advocate for R-2 and 3).

O R D E R (Oral)

By Justice V. Rajagopala Reddy:

Heard the counsel for the applicant and the respondents.

2. The applicant, Mr. K.K.Chakraborty, Additional Member, Railway Board has filed this OA challenging the order of transfer passed by the Railway Claims Tribunal dated 7.6.2000, transferring

Shri R.N.Bhattacharya, another Member (Technical),
Bhubaneswar Bench of the Tribunal to Calcutta Bench. A
The facts in brief are as under:

3. In pursuance of an advertisement issued by the Government of India, Ministry of Railways inviting the applications for recruitment to the posts of Member (Technical) in the Railway Claims Tribunal in various Benches in the country, the applicant applied for on such post at Calcutta Bench. He along with others has been selected and approved for appointment to the Bench at Calcutta vide order dated 21.2.2000. He was thereafter duly appointed by the Government in its order dated 15.5.2000 to the bench at Calcutta Bench. The tenure of the office is for five years from the date of assumption of the charge or the date on which he attains 62 years of age which ever is earlier. It is the case of the applicant that after he was selected on 21.2.2000, he had applied for voluntary retirement and the same has been accepted by the Railway Board. He was, however, not relieved by the Railway Board due to administrative reasons. Meanwhile, Shri R.N. Bhattacharya, Respondent No.4 who was also appointed along with him as Member (Technical) and posted the Bench at Bhubaneswar and who assumed office on 1.6.2000, had sought for transfer to Calcutta Bench. The impugned order was accordingly passed transferring him to Calcutta Bench on 7.6.2000. It is vehemently contended by the learned counsel for the applicant that this order of transfer has been passed only to frustrate and circumvent the order of appointment made by the Government posting him to the bench at Calcutta.

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4. It is however the stand of the Railway Claims Tribunal which is represented by Shri Gangwani, learned counsel, that Shri Bhattacharya, Respondent No.4 has been transferred to Calcutta only in public interest in order to clear the back log of huge pendency in the Calcutta Bench. It is also stated that the applicant had not taken any steps after receipt of the order of appointment for getting himself relieved and to join the Bench at Calcutta. As there was delay in assuming office at Calcutta by the applicant, to clear the large volume of work pending before the Calcutta Bench, the Chairman of the Railway Claims Tribunal has passed the impugned order. Shri V.S.R.Krishna, appearing for the Railway Board reiterates the stand taken by the Railway Claims Tribunal.

5. We have given careful consideration of the pleadings and to the arguments of the learned counsel. Ordinarily this Court would not interfere with the orders of transfer of an employee. It is not in dispute that the Members of the Tribunal of one bench are liable to be transferred to any of the bench in the country and the power of transfer is vested with the Chairman of the Railway Claims Tribunal. But a close scrutiny of the facts of the instant case gives us an impression that the impugned order of transfer has been passed in a colourable exercise of power. It should be noticed that the applicant had been selected as Member of the Tribunal on 21.2.2000 and immediately thereafter he has taken steps for seeking voluntary retirement which in fact has been accepted by the

Railway Board and he also made a request for relieving him from the Railway Board on the date of his appointment, namely, 15.5.2000. For purely administrative reasons the applicant was however not immediately relieved by the Board. It is also noticed that the applicant had applied for the post at Calcutta Bench only and considering his request he was accordingly selected and appointed by the Government to the Bench at Calcutta. On the other hand Respondent No.4, Shri R.N.Bhattarcharya has given option at two places, i.e., Calcutta and Bhubaneswar and he was appointed to the Bench at Bhubaneswar and he in fact joined at Bhubaneshwar Bench on 1.6.2000 having been relieved sooner. The applicant cannot be faulted for not joining immediately and the contention that he had delayed to join is baseless. The contention that the impugned order was passed only in the public interest also appears to be hollow. The impugned order itself says that he was transferred at his own request. It is also admitted in the counter affidavit that Shri Bhattacharya was transferred on the grounds that his two daughters did yet to complete their studies in Calcutta and Jadavpur Universities and his wife needed medical attention often at Calcutta. Taking into consideration of the above factors, the impugned order has been passed posting him at Calcutta. The public interest of the heavy pendency of case at Calcutta bench was far from the mind of the Chairman when he ordered the transfer. Respondent 4 was opted to the bench at Bhubaneshwar rejecting his option for the Calcutta Bench. On perusal of the order of the Government, appointing the applicant, it is clear that the applicant has

specifically been posted at Calcutta. The order was yet to be implemented by the Chairman of the Tribunal. The averments of public interest were only made to sustain the impugned order, but it was not in the mind of the Tribunal at the time of passing of the impugned order. It should also be noticed that there is only one vacancy for Member(Technical) at Calcutta Bench. Thus the action of the Respondent No.2 clearly circumvents the order of the Government. We are of the view that the impugned order is vitiated by the colourable exercise of power and legal malafides.

7. On the above findings the OA was allowed. Before we appended our signatures to the judgement, it occurred to us whether the Tribunal has indeed jurisdiction to entertain the OA to quash the order of the third respondent, namely, Chairman, Railway Claims Tribunal. Hence, we heard the counsel on either side on the question of jurisdiction.

8. The learned counsel for the applicant, Shri K.R.Sachdeva strongly urges that the Chairman of the Railway Claims Tribunal ~~and~~ or the Members thereof are holding a civil post or at any rate are in the service of Union of India in connection with its affairs. They had been appointed by the President of India and their pay was drawn from the consolidated fund of the

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Government of India. Hence it is contended that they come within the ambit of Section 14(1) of the Administrative Tribunals Act, 1985 (for short, the Act). Learned counsel relies upon several decisions of the Tribunal.

9. The learned counsel for the respondents Shri H.K. Gangwani contesting the arguments and submits that as the Chairman/ Vice-Chairman/ Members of the Railway Claims Tribunal having been appointed under a statute they cannot be ~~considered~~ to be holding civil post under the Government of India or in service of Union of India. He places reliance upon the judgment of the co-ordinate bench of the Tribunal in OA No. 1576/99 (Shri V. Radhakrishnan Vs. Union of India & Others).

10. We have given careful consideration of the contentions. The order under challenge is the order of the Chairman of the Railway Claims Tribunal in Transferring the Member(Technical) of the Railway Claims Tribunal from the Bench at Bhubaneshwar to the Bench at Calcutta. The Railway Claims Tribunal was set up under the Railway Tribunals Act, 1987 for inquiring into and determining claims against a railway administration for loss, etc. or for compensation for death or injury to passengers occurring as a result of railway accidents and for

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matters incidental thereto. The Railway Claims Tribunal consists of Chairman/ Vice-Chairman /Members (Judicial and Technical).

11. Before the Madras Bench of this Tribunal in B.R.Nair Vs. Union of India & Others, 1993(25) ATC 314 the same question as to the jurisdiction of the Tribunal to entertain an application filed by the Member of the Railway Claims Tribunal seeking to set aside the order passed by the President of India in accepting his resignation, came up for consideration. The Tribunal placing reliance upon the Full Bench decision of the Tribunal in the case of Rehmat Ullah Khan & Others Vs. Union of India & Others, 1989(10) ATC 656, held:

..... the expression "civil service of the Union" as occurring in Section 14 of the Administrative Tribunals Act. It would cover all persons who render service to the Government of Union or who render service in connection with the affairs of the Union other than the categories of persons exempted in Section 2 of the Administrative Tribunals Act, and are paid by the Union. In the light of the above interpretation, it is easy to see that the Members of the Railway Claims Tribunal come under the category of persons appointed to a "civil service of the Union". From the preamble to the Railway Claims Tribunal Act, which has been quoted and from Section 13 dealing with the jurisdiction, powers and authority of the Claims Tribunal which we have also extracted earlier, it is clear that the Members of the Tribunal are rendering service in connection with the affairs of the Union. They also fulfil many of the other tests of a civil servant such as being paid from the Public Funds, in this case the Railway Fund, which is part of the Consolidated Fund of India; they are

appointed by the President; they may be removed from service by the President, albeit on certain specific grounds and in the manner laid down in the Railway Claims Tribunal Act. Their salaries and allowances and other terms and conditions of service are regulated by the Government by rules. All these go clearly to show that Members of the Railway Claims Tribunal come within the ambit of Section 14 of the Administrative tribunals Act." (3)

12. The view taken in B.R.Nair's case appears to get support from another Full Bench decision of the Tribunal in Bhalchandra Chintaman Gadgil Vs. Union of India & Others, 1997(2) ATJ 303, wherein the question whether the Tribunal has jurisdiction to entertain the application filed by the retired Vice-Chairman of the Central Administrative Tribunal seeking interest on delayed payment of cash equivalent of leave salary for Earned Leave, arose. The Tribunal held that it has jurisdiction. The Full Bench observed as under:

..... As against this the provisions pertaining to appointment, terms and conditions of appointment and the mode of resignation and removal are provided in the Sections 6 to 9 of the Administrative Tribunals Act., 1985, (in short, the Act.). The mode of removal of Chairman, Vice Chairman, or other Members of the Tribunal has altogether differently provided in S.9 of the Act. They cannot therefore claim to be constitutional functionaries. Their mode of appointments, mode of removal and conditions of service are such as may be equated to its any other Government employees of the Centre. Under the circumstances, we are of the view that this Tribunal has jurisdiction to entertain and decide disputes raised by any Chairman, Vice Chairman, or Members of the Tribunal in regard to service matters."

13. But Supreme Court in Union of India Vs. K.B.Khare and Others, 1994 Supp(3) SCC 502 has struck a different note, while considering the nature of the service of the Chairman, Vice-Chairman and Members of

the Central Administrative Tribunal. In that case, the Supreme Court was to consider the claim of clubbing of the services for pension of a Member of the Central Administrative Tribunal who was appointed after his retirement from the post of District Judge from State Judicial service. The Supreme Court observed that the service of the Members of the CAT was of judicial nature and that it was not reemployment in connection with the affairs of the Union. It is an independent judicial service and the pension relating to such post was governed by the Rule 8 of the Central Administrative Tribunals Act which is exhaustive in nature. Certain observations made by the Supreme Court in S.P.Sampat Kumar Vs. Union of India, 1987(1) SCC 124 were quoted to show that the nature of the functions in the service of CAT are essentially judicial in character as it was established as a substitute to the High Court in adjudging the service of matters. The subsequent decision in L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261 has not changed the nature of duties of CAT except asserting the High Court's constitutional right of judicial review under Article 226 of the Constitution of India over the decisions of the Tribunal.

14. Placing reliance upon K.B.Khare's Judgment, the Co-ordinate Bench of the Central Administrative Tribunal in V.Radhakrishnan Vs. Union of India & Others, OA No.1576/99 held that the application filed by the retired Member of the Central Administrative Tribunal, claiming that the reduction of pensionary amount from the salary of the applicant

was not justified. In that view the application filed by him was held as not maintainable. The observations of the Supreme Court in Khare's case, in our view, are equally applicable to the service in the Railway Claims Tribunal. A careful reading of the provisions of the Railway Claims Tribunal Act, 1987 clearly establishes that it has been constituted as a judicial body to enquire into the claims against a railway administration for loss or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or for compensation for death or injury to passengers occurring as a result of railway accidents and for matters incidental thereto. A Judge of the High Court sitting or retired only has to be appointed as Chairman. The Vice-Chairman has to be appointed from a sitting or retired Judge of a High Court or a Member of the India Legal Service, etc.. The Judicial Members are also to be appointed from a persons who ~~are~~ or ~~have~~ been qualified as a Judge or of the Indian Legal Service. A person was not qualified for appointment as Technical Member unless he has considerable experience in the Railway Administration, carrying the scale of pay which is not less than that of Joint Secretary to the Government of India and has adequate knowledge of Rules and procedure and experience in the claims and commercial matters relating to railways and all of them has to be appointed by the President of India after consultation with the Chief Justice of India and they shall not be removed from office except by an order made by the President on proved misbehaviour on stipulated grounds. On ceasing the holding office the Chairman is ineligible for the employment either under the

Government of India or under the Government of State. (6)
A Vice Chairman is eligible only for appointment as Chairman of the Railway Claims Tribunal or as the Chairman/Vice-Chairman or Member of any other Tribunal established under any law but not for any other employment either under the Government of India or under the Government of State. A Member is eligible for appointment as Chairman or Vice-Chairman of the Railway Claims Tribunal or as Chairman or Vice Chairman or Member of any other Tribunal established under law. The appeal shall lie for every order of the Tribunal only to the High Court. All suits or claims pending before any other Court or authority shall be transferred to the Railway Claims Tribunal. Section-25 also implicit that the proceedings before the Railway Claims Tribunal shall be deemed to be judicial proceedings. The service is of a tenure basis. In the discharge of their duties it may become necessary to enquire into the validity of the provisions of the Railway Act or the Rules framed thereunder. Thus it ^{safely} ~~can~~ be said that the nature of the service of the Chairman, Vice Chairman and Members in the Railway Claims Tribunal is not much less judicial than that of the Central Administrative Tribunal. Hence the service of the Railway Claims Tribunal constituted an independent judicial service to enquire into the railway claims unconnected with the affairs of the Union of India. The view taken by the Tribunal in B.R.Nair's case is no longer correct. The Madras Bench in V.Ganesh Vs. Union of India & Others, OA No.786/99 has issued certain directions against the Chairman of the Railway Claims Tribunal and quashed the orders passed by its Chairman, but as

it did not consider the question of jurisdiction of the Central Administrative Tribunal, it is not a decision on the point. (F)

15. In view of the foregoing, we ~~now~~ hold that the Tribunal has no jurisdiction to entertain the present application. We are precluded to give any directions to the respondents or to interfere with the impugned order. The Office is directed to return the OA to the applicant ^{✓ proper} for presentation before the appropriate forum.

16. The OA is accordingly disposed of. We do not order costs.

/RAO/

(GOVINDAN S. TAMPI)

MEMBER(A)

Om Rajagopal Reddy
(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN(J)