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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. OA 1635 of 198 9
T.A. No.

DATE OF DECISION 1.1.1990

Veerpal & Another Applicant (s)

Shri B.S. Mainee Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri Inderjit Sharma Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Veer Pal and Shri Prem Kumar, clerks in the Northern Railway against the impugned order dated 10.7.1989 passed by the Senior Divisional Personnel Officer, Northern Railway, New Delhi, against their transfer.

2. Brief facts of the case, as stated by the applicants, are that they were appointed in Class IV service in the Railways in 1976. Being graduates, they were promoted as LDCs on ad hoc basis in 1983 and regularised in 1986. A selection for promotion to the post of senior clerks was held in 1985 to fill up 10% quota against graduates. The applicants passed the written examination held for selecting graduates to fill up the posts of senior clerks, but the respondents did not call the applicants for viva voce test on the ground that they had been working as LDCs on ad hoc basis. When applicants did not get the releif of seniority from the date of their ad hoc promotion, the applicants filed an application at the Principal Bench of the Tribunal in OA 1143/88. The Tribunal decided this case on 29.8.88 and directed the respondents that the entire

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service of the applicants with effect from 2.6.1983 should be reckoned for the purpose of seniority in the post of L.D.Cs and on the basis of seniority, the applicants shall be entitled to all consequential benefits, including consideration for promotion to the next higher grade. The Tribunal directed the respondents to comply with the orders within three months, but in spite of representations of the applicants, the respondents failed to comply with the orders of the Tribunal. The applicants were compelled to file a Contempt Petition on 16.12.1988. Even after the C.C.P. was filed, the respondents failed to comply with the orders of the Tribunal and the Tribunal directed the Senior Divisional Personnel Officer to appear in court in person. In the mean time, the respondents gave seniority to the applicants in terms of their letter dated 14.6.1989 (Annexure A-4 to the application). But since the Tribunal had passed orders on 10.7.1989 directing the Senior Divisional Personnel Officer to appear in person, the Senior D.P.O. who was already angry with the applicants for filing the C.C.P. became revengeful and passed orders promoting the applicants as Sr. Clerks and transferring them out of their seniority group of Mechanical Branch to a different seniority group of Engineering Branch and transferring them from Ghaziabad to Safidon and Jind to Budhlana respectively. The applicants made a representation to the Sr. D.P.O. pointing out that the transfer order was illegal because as many as six incumbents who were junior to the applicants had been promoted as Head Clerks in Mechanical Branch while the applicants are being transferred out of the cadre without promoting them as Head Clerks and keeping their juniors in the Mechanical Branch. The applicants have pointed out that in the Engineering Branch, they would never be able to get their promotion as Head Clerks. It has been pointed out that five female Head Clerks belonging to 'P' Branch of the D.R.M. Office are working in Mechanical Branch and as such if there is any surplus staff of the 'P' Branch, it should be sent back to the Personnel Branch or the juniormost persons in the Mechanical Branch should be rendered surplus and transferred out. All the five female clerks of 'P' Branch working in the Mechanical Branch are junior to the applicants. It has also been pointed out that six of their colleagues were also promoted as LDCs on ad hoc basis and got orders from the Tribunal to get posts against the graduates quota like the applicants. These six colleagues had filed their application earlier

and got orders of the Tribunal earlier than the applicants entitling them to count their seniority from the date of their ad hoc promotion. The respondents implemented the judgment of the Tribunal and in the case of their six colleagues gave them seniority from the date of their ad hoc promotion. These colleagues were promoted as Senior Clerks as well as Head Clerks in accordance with their seniority. All these six persons, namely, S/Shri Madan Mohan, Vijay Singh, Mardan Khan, Chander Mohan, Sharma, Kamaljit and Kehar Singh are junior to the applicants. But the respondents have not promoted the applicants as Head Clerks although their juniors are working as Head Clerks in the Mechanical Branch. In order to deprive the applicants of their right of promotion as Head Clerks, the Respondent No. 3, namely, the Senior Divisional Personnel Officer, Northern Railway, transferred the applicants out of the cadre with a view to take revenge ^{for} ~~in~~ filing the CCP and for getting an order from the Tribunal directing him to appear in the court personally.

3. The representation of Applicant No. 2 protesting against his transfer from Mechanical Group and pointing out that a number of his juniors were working as Clerks in the Mechanical Branch was forwarded by the Loco Foreman, Jind, with the remarks that there were 4 posts only including one post of Janitor of Sr. Clerks and out of 4 posts, one was working and it was recommended that Applicant No. 2 be posted against the existing vacancies at Jind. The Senior Divisional Electrical Engineer (TRS), Ghaziabad, also wrote a letter to the Sr. D.P.O. on 4.8.89 expressing his inability to spare Applicant No. 1 without posting of a relief. But in spite of these recommendations, the Sr. D.P.O. has neither cancelled the transfer order nor given any reply.

4. It has been argued that in terms of Railway Board's letter dated 28.10.1968 when the staff are to be rendered surplus, the order of seniority should be the criterion for deciding the employees who are to be rendered surplus. The junior employees being rendered surplus earlier than the senior irrespective of the manner in which they entered the grade. The action of the respondents rendering the applicants surplus and transferring them out of the cadre of the Mechanical Branch to the Engineering Branch is illegal, arbitrary, malafide and discriminatory. The case of the applicants is that they are being transferred as a revenge for starting

a Contempt Petition before the Tribunal in which the Tribunal had directed the Sr. D.P.O. to appear in person. The applicants have been transferred out of the Mechanical Branch to deprive them of their promotion to the post of Head Clerks. While their juniors have been promoted as Head Clerks, the applicants in the Engineering Branch will not be due for promotion as Head Clerks for many years to come. As such, the transfer of the applicants is not in administrative interest, but a punitive action to punish them for securing their right through a court of law.

5. The respondents in their reply have stated that the transfer order has nothing to do with the C.C.P. as the C.C.P. filed by the applicants was dismissed by the Tribunal. The applicants had been given seniority by the respondents according to the court orders. In order to consider the applicants for promotion to the next higher grade, a selection was held for promotion to the post of Sr. Clerks against 10% graduate quota under the rules. Such a selection is conducted ^{by} a Board consisting of two administrative members under the Chairmanship of Railway Recruitment Board. The applicants on selection as Sr. Clerks were posted where the vacancies existed. The officials selected against 10% graduate quota through the Railway Recruitment ^{Board} are posted against the vacancies wherever available on the Northern Railway, the applicants have, however, been retained in Delhi Division. The applicants on their selection as Sr. Clerks against the 10% graduate quota through R.R.B. were posted at the stations where the vacancies existed at the relevant time and the case of the six persons stated to be junior to the applicants was thus not relevant. 8 lady officials who were working in Personnel Branch were posted to the Mechanical Branch because in 1985 the vacancies of Sr. Clerks existed in that Branch. These lady officials were selected in 1985 whereas the applicants have been promoted on the basis of vacancies in 1989. Similarly, while the applicants passed the selection test in 1989, the six employees passed the selection test in 1988. It has been stated in the counter that the applicants have ^{ing} been selected by the R.R.B. against the 10% graduate quota were posted against these vacancies and they could not claim their posting against the other vacancies (para 4.32 of the counter).

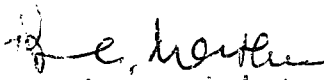
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6. The learned counsel for the applicants, Shri Mainee, said that the applicants had asked the Railway authorities to give them seniority and all the six colleagues of the applicants alongwith the two applicants have now been interpolated in the promotion quota, As they were not given seniority, they filed the CCP. The Sr. D.P.O. came to the court, allowed the seniority to the applicants, but transferred them while the juniors, including Shri Chander Mohan Sharma, were kept in the Mechanical Branch. The contention of the applicants is that the applicants would not get any promotion in the Engineering Branch for several years. Shri Mainee denied that there are specific posts against the 10% graduate quota. The posts of Sr. Clerks are available in the Mechanical Branch and persons eligible for promotion to Sr. Clerks are adjusted against all the vacancies. He said that the letter of Loco Foreman at Annexure A-6 and the letter of the Senior Divisional Electrical Engineer at Annex. A-7 to the application clearly show that vacancies of Sr. Clerks did exist and the Sr. Divisional Personnel Officer vide his notice dated 14.6.89 (Annex A-4 to the application) had also indicated that the applicant Shri Veer Pal was senior to Shri Prem Kumar by 9 positions. He said that since the ad hoc promotion has to be counted, seniority has to remain as in 1985 and as such, irrespective of the fact when promotions were done, the applicants would be senior to the other six colleagues. Shri Mainee argued that there was no justification for singling out the applicants out of the Mechanical Branch when there were vacancies there and even otherwise the junior persons should be moved out according to the Railway Board's circular dated 28.10.1968 dealing with surplus staff (Annex. A-10 to the application).

7. Shri Mainee also said that since malafide has been attributed to the Sr. D.P.O., he should have filed an affidavit, but he has filed no counter. Counter has been filed only on behalf of Respondent Nos. 1 and 2 and, therefore, the allegations made by the applicants against the Sr. D.P.O. (Respondent No. 3) must be accepted. The learned counsel for the respondents said that there has been no malafide on the part of any one and hence there was no need to file a counter by Respondent No. 3. Persons were posted on the basis of the vacancies wherever they were available at the relevant time. The cases of the 8 clerks in the

Personnel Branch are not relevant as they were promoted in 1985 when vacancies existed in the Mechanical Branch. Similarly, the cases of 6 colleagues of the applicants were considered in 1988 according to the vacancies then available. Shri Mainee, however, said that vacancies existed in the Mechanical Branch itself as has been pointed in para 4.32 of the application and this has not been denied by the respondents.

8. I have gone through the pleadings in this case and also the arguments on both the sides. While normally the courts would not like to interfere in matters of transfers in exigencies of service; it is for the authorities to deploy their persons in the best possible way they consider desirable. But I am afraid there appears to be ^a certain amount of arbitrariness in the posting of the two applicants. The respondents have not denied that the chances of promotion in the Engineering Branch will be much lower than in the Mechanical Branch and, therefore, it is not improbable that the two persons have been singled out for pushing the Sr. D.P.O. before the Tribunal in the contempt case. He has also not filed any counter in spite of the fact that malafide has been attributed to him for passing the impugned order. It is also noted that persons junior to the applicants have been promoted as Head Clerks. In the circumstances, the impugned orders of transfer are quashed. The applicants should be adjusted in the Mechanical Branch and allowed all benefits according to Rules. The application is allowed. There will be no orders as to cost.


(B.C. Mathur)
Vice-Chairman