

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1791/89

DATE OF DECISION: 20.9.1990.

SHRI KUL BHUSHAN

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI G.D. GUPTA

COUNSEL FOR THE APPLICANT

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

The applicant, Shri Kul Bhushan has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the following orders:-

- a) Order of transfer dated 13.2.1985, transferring the applicant as Chief Parcel Supervisor (Rs.700-900) from New Delhi to Jodhpur.
- b) Order No.CG80T/8/Misc/85 dated 6th September, 1988 conveying the order of Chief Commercial Superintendent, Northern Railway, New Delhi - the appellate authority - that the applicant "be deemed to have compulsorily retired with effect from the date, the orders for removal from service were passed."

2. The applicant was appointed as a Commercial Clerk in the Indian Railways on 2nd June, 1949. After successive promotions he attained the level of Chief Parcel Supervisor in the pay scale of Rs.700-900 on the Delhi Division of the Northern Railway. The applicant has been an active member and an office-bearer of the Uttariya Railway Mazdoor Union (URMU). He is said to have attracted hostile attention of the rival union viz. Northern Railway Mazdoor Union (NRMU) who according to him were instrumental in making a variety of complaints against him. The son of the applicant who is also working on the Northern Railway is said to have discovered/helped in unearthing fraudulent transactions thereby safeguarding the interest of the railway administration, inviting hostility of certain business houses in addition to some individuals.

In the interest of promotion of healthy trade union activities, the respondents have allowed the recognised unions etc. to borrow the services of serving Government employees on foreign service terms. In such cases leave salary and pension contribution are required to be paid by the union etc. in terms of the provisions of FR-115 read with FR-120. Pension contribution however is not payable in respect of not more than two of such serving employees on deputation with the unions etc. In accordance with the above scheme and at the request of the URMU the General Manager, Northern Railway, Respondent No.1 sanctioned the deputation of the applicant to work as a whole time trade union worker with the URMU with immediate effect on

usual foreign service terms vide order dated 31.12.1982 (page 87 of the paper book). Although the follow-up orders were issued by the lower authorities for relieving the applicant, he was relieved to join URMU on 14th December, 1983 (p.92 of the paper book). The sanction letter however did not indicate the duration for which the deputation was approved. While the applicant was relieved on 14.12.1983 to work as a whole time worker with the union, respondent No.1 issued a letter dated 20.2.1984 to the union that the deputation period of the applicant had expired on 31.12.1983 and that he may, therefore, be relieved and directed to report back to his parent department. The URMU, however, advised the respondent No.1 that it was not possible to relieve the applicant as he had joined their office only on 14.12.1983. The URMU also sought extension of the period of deputation for one year vide letter dated 13th March, 1984 (p.93 of the paper book). Since, however, no fresh sanction was issued by respondent No.1 and the URMU was being pressed to relieve the applicant he was relieved on 20.4.1984 with the direction to report to respondent No.4. URMU also requested that the applicant may be sent back to the union as soon as the fresh sanction extending the period of deputation is issued by respondent No.1, with whom the matter was being pursued. The applicant, however, resumed duty in the office of respondent No.4 on 20.4.1984. Thereafter respondent No.1 issued instructions on 8.5.1984 (p. 97 of the paper book) permitting the applicant to work as a whole time trade union worker on deputation with URMU from 14.12.1983 to 13.12.1984. The respondents

No. 2 & 4, however, did not react till 12.11.1984 when the applicant was relieved to join the office of the union. The applicant resumed duty with the Lent Authority on 30.11.1984 and remained on its role till 8th October, 1985. The applicant reported for duty in the office of respondent No.4 on 8th October, 1985 but he was not allowed to join duty. On 24th October, 1985, his reporting paper etc. were returned to him. This action seems to have been taken as the respondents treated the applicant on an unauthorised deputation with URMU, as his deputation had expired on 31.12.1984. In the meantime, respondent No.2 vide order dated 13.2.1985 (p.108 of the paper book) transferred the applicant along with the post to Jodhpur Division with immediate effect on administrative grounds for immediate compliance. It is the contention of the applicant that an office-bearer of the union cannot be transferred without prior consultation with the union. His next contention is that when the transfer order was issued, the applicant was with the URMU and that the General Secretary of URMU vide letter dated 16.2.1985 (p.117-121 of the paper book) had brought the entire matter to the notice of respondent No.1 with the request that the transfer order of the applicant may be cancelled. The applicant has, therefore, urged that his transfer order dated 13.2.1985 was in contravention of the instructions issued by the Railway Board vide letter dated 19.2.1960 (p.124 of the paper book) which provide that:-

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"The Board have decided that in future, when it is proposed to transfer a Trade Union official from one station to another, the proposal for transfer should be communicated to the Union concerned by the officer ordering the transfer. The Union should be allowed to bring to the notice of the DD/RS/DS and if necessary later to the G.M., any objection that they have to make against the proposed transfer. If there is no agreement at the lower level, the General Manager would consider the question and his decision would be final. The Board have also advised that sufficient notice should be given to the Union of the Transfer of a Union official to enable the union either to represent the case to the authorities or to arrange for the work of the union official to be taken charge of."

The transfer of an office-bearer of a recognised union from one station to another can, thus, be effected ordinarily in consultation with the union. In case of difference of opinion at the lower level, General Manager is the final arbiter.

In this case the transferee was not only an office-bearer but was also as a whole time trade union worker with URMU during the time period when he was transferred. A resolution is said to have been passed by the URMU to protest against the transfer of the applicant, serving a notice of strike w.e.f. 18th November, 1985. The applicant has contended that after the notice of strike was issued

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on 18th November, 1985, the respondents took a very vindictive attitude against him. Consequent to the notice of strike the conciliation proceedings started and during this period the applicant was served with a copy of the order, removing him from service vide Northern Railway's letter dated 27.11.1985, addressed to Assistant Labour Commissioner (C).

The order dated 27.9.1985, removing the applicant from service (p.176 of the paper book) reads as under:-

"RE: Removal from service of Sh. Kul Bhushan

Shri Kul Bhushan, Chief Parcel Supervisor Grade 700-900 has been removed from service with immediate effect by Divl. Railway Manager, Jodhpur vide letter No.80T/8/Misc/85 dated 6.8.85. His service particulars are as under:-

Date of birth	8.5.1930
Date of appointment	2.6.1949
Permanent/Temporary	Permanent
Present post	Chief Parcel Supervisor
Salary/grade	730 (700-900 R.S.)

Sd/-

Senior Divl. Personnel Officer["]
Northern Railway, Jodhpur.

3. The applicant submitted that appeal dated 1.1.1986 against the order of removal from service to the Chief Commercial Superintendent, New Delhi and a petition to the General Manager, Northern Railway, respondent No.1 on 18.1.1986. In the said appeal he pleaded that the order of removal from service communicated to him, does not

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indicate any reasons nor has an opportunity been given to him to defend himself. He further submitted that he has not received any charge-sheet. However, from the conciliation proceedings and the replies given by the administration before the Assistant Labour Commissioner, Delhi, he surmised that some vigilance case has been made out against him. He, however, disclaimed any knowledge of the details/vigilance case. In his petition to the General Manager, respondent No.1, he submitted that he was on deputation during the period from 12.11.1984 to 3.10.1985 in compliance with the order of respondent No.1 dated 8.5.1984. He was relieved to proceed on deputation by the Station Superintendent, New Delhi on 12.11.1984. He further urged that he was not working under DRM, Jodhpur and therefore he does not understand as to how DRM, Jodhpur has passed the orders removing him from service. He alleged that he has been perhaps made a victim of a conspiracy by the rival union along with the dis-honest merchants. He, therefore, pleaded that the order of removal from service issued by DRM, Jodhpur under whom he never worked, may be quashed. Despite issuing reminders, he did not receive any response.

4. Under these circumstances, he approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, challenging the validity of the order of removal from service dated 6.8.1985 in OA-646/86. The said OA-646/86 was disposed of by the Tribunal vide its judgement dated 20.4.1988 directing the appellate authority to dispose of

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the appeal of the applicant with the following directions:-

".....Applicant states that he has not filed any appeal except the one dated 1.1.86 addressed to the Chief Commercial Superintendent, the representation dated 18.1.86 to the General Manager, Northern Railway, New Delhi and the reminder to the Respondents on 5.7.86. If the respondents have received a Memorandum of appeal, it must be the appeal sent by him on 1.1.86. They have received the Memorandum of appeal filed by the applicant against the order of removal that appeal should be treated as one filed within time and disposed off the appeal within a period of three months from today and communicate the result to the applicant. This application is accordingly disposed off.

4. However, nothing said herein will stand in the way of the applicant challenging any adverse order that may be made by the Appellate Authority in this behalf. As the appeal is treated having been filed within time, the Respondents shall dispose off the same on merits.

5. In view of the subsequent order of removal made against the applicant, the consideration of legality or propriety of the order of transfer impugned in this application has become academic. We, therefore, do not propose to go into the merits of that order so long as the order of removal operates. It is, however, made clear that it does not amount to approving the order of transfer or treating it as a legal or proper one.

Whether the order of removal should be upheld or

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quashed, it is for the Appellate Authority to consider.

If the order of removal is quashed, if necessary, at this stage, it could be questioned and gone into.

5. This application is allowed to the extent indicated above."

5. In pursuance of the afore-quashed judgement of the Tribunal, the appeal of the applicant has been disposed of by the Chief Commercial Superintendent, Northern Railway in the following order dated 6.9.1990 (p.66 of the paper book):-

"Shri Kulbhushan should be deemed to have compulsorily retired with effect from the date the order for removal from service were passed."

6. Aggrieved by the order of the Appellate Authority dated 6th September, 1988 the applicant preferred a revision petition under Rule 24 (2) of Railway Discipline & Appeal Rules, 1968 to respondent No.1 on 11.9.1988. Without prejudice to his right the applicant also sent number of representations to obtain his retirement benefits from the respondents. In response he received two cheques for Rs.608 and Rs.37,788 dated 28.4.1988 and 18th May, 1988 respectively. The latter cheque is said to be towards payment of the Provident Fund money. In the end the applicant has approached the Tribunal again to seek redressal of his grievances and has prayed for the following reliefs:-

- i.) a) quashing the order of transfer dated 13th February, 1985;
- b) order of removal from service dated 6th August, 1985 passed by DRM, Jodhpur and communicated to the applicant on 27.11.1985, and;
- c) the order of compulsory retirement passed by the Commercial

Superintendent.

- ii) declaring the applicant entitled to be reinstated into service with all consequential benefits from the date from which he has been removed/compulsorily retired from service;
- iii) to pay the applicant all the retirement benefits to the extent they have not been paid with penal interest at 24% per annum.

7. This application was admitted on 26.9.1990 after hearing Advocate, Sri G.D. Gupta, who appeared for the applicant, notice was issued to the respondents for interim relief, returnable on 24.10.1989. On 24.10.1989 when the case came up again, the respondents were not represented although respondents 1 & 2 had been served. A fresh notice was issued to respondents No.3 & 4, returnable on 17.11.1989. On 17.11.1989 again a fresh notice was issued to respondents No. 3 & 4, returnable on 14.12.1989. On 14.12.1989 a fresh notice was issued to respondent No.4, returnable on 12.1.1990. On 8.1.1990 applicant was represented by Advocate, Shri G.D. Gupta, respondents No. 2 & 3 were not present nor had they filed their reply to the application. A fresh notice was ordered to be issued to respondent No.4, returnable on 5.2.1990, and an interim order directing the respondents to pay all the retirement benefits for the period of service in accordance with the Rules within one week from the date of receipt of a copy of this order was also passed. The

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respondents were again given time to file their written statement on 5.2.1990, although none of them was represented. On 5.4.1990 the learned counsel for the applicant Shri G.D. Gupta filed an affidavit in proof of service of the notice on respondent No.4. Since respondent No.4 was not present despite service, he was set ex-parte. The other respondents had also not entered appearance, nor had they filed any written statement. The Bench felt that for proper adjudication one more opportunity may be given to the respondents to file written statement within four weeks. The respondents were also directed to produce the relevant file relating to the disciplinary proceedings initiated against the applicant as well as file dealing with the payment of retirement benefits to him on the next date of hearing fixed for 28.5.1990. On 28.5.1990 the Court observed that neither the respondents entered appearance despite service nor had they filed any written statement. The case was, therefore, ordered to be listed for final hearing on 20.8.1990. On 31.8.1990 when the case came up for hearing again the respondents were not represented.

Since the respondents have neither put up their appearance, nor filed any written statement despite adequate opportunities, we have no alternative but to proceed in the case ex-parte. We, therefore, heard Shri G.D. Gupta, counsel for the petitioner.

8. The learned counsel for the petitioner urged that order of transfer of the applicant to Jodhpur had no validity, as he was on deputation with URMU to work as a

whole time trade union worker upto 8.10.1985. Since the order of the transfer is invalid any disciplinary proceedings/ action initiated against him for unauthorised absence would be invalid. The applicant could not be expected to join duty in Jodhpur Division on expiry of deputation with URMU on 31.12.1984, in terms of Divisional Railway Manager's New Delhi order dated 13.2.1985, transferring him to Jodhpur, as at that time he was actually on deputation with URMU.

Under these circumstances the charge-sheet issued and orders of removal from service passed are illegal, malafide and without any basis. He, therefore urged that order of transfer of removal from service and order of compulsory retirement should be set aside in the interest of justice.

9. The facts of the case as sifted from the record made available by the applicant are that being an active worker and office-bearer of the one of the recognised trade unions, his services were borrowed with the approval of the GM by the union (URMU). The sanction for deputing the applicant to URMU on foreign terms was first issued by the General Manager, respondent No.1 on 31.12.1982. The deputation was to be for a period of one year but he was spared to proceed on deputation only vide memo No.CPS/ Staff/83(KB) dated 14.12.1983. When the respondent No.1 asked for the repatriation of the applicant to the parent department on 20.2.1984 on expiry of the deputation period on 31.12.1983 the applicant was with URMU only for 17 days, extending the period of over-stay. The URMU has also explained to respondent No.1 on 14.12.1983 the

circumstances of the case, asked for extending the period of deputation for one year vide their letter dated 13.3.1984. Since no fresh sanction was received, the applicant was relieved by the union on 20.4.1984. In the meantime, a fresh sanction was issued by respondent No.1 permitting the applicant to work as a whole time trade union worker on deputation from 14.12.1983 to 13.12.1984 vide orders dated 8.5.1984. In spite of receipt of this sanction he was relieved by respondent No.4 to rejoin the URMU only on 12.11.1984, where the applicant resumed duty on 30.11.1984. From this day onwards he continued to remain on the role of the union till October, 8, 1985. On his relief from the URMU on 8th October, 1985 the respondents did not permit him to join duty and during the period when he was with URMU, he was transferred vide order dated 13.2.1985. The respondents had issued order transferring the applicant along with his post to Jodhpur Division on 13.2.1985 on the assumption that his period of deputation has expired on 31.12.1984. It is obvious from the above that when the second spell of deputation was sanctioned by respondent No.1 and he was relieved for the second time towards the end of the approved deputation period viz. on 31.12.1984 to join URMU (although the sanction issued was for the period was 14.12.1983 to 13.12.1984), URMU seem to have decided to retain the applicant for a period of one year. During this period he is also said to have been on sick leave.


The following facts militate against the action of the respondents. On both the occasions the General Manager approved the deputation of the applicant for a period of one year but the lower authority seems to have nullified the sanction on both the occasions relieving the applicant towards the fag end of the approved period of deputation. It is difficult to find fault with the applicant or the borrowing authority in such circumstances. URMU also have reasons to believe that the actual period of deputation on the second occasion which is within the limit of one year would be regularised by respondent No.1 as the approved deputation was intended to be for a period of one year on each of the two occasions. Further the General Secretary, URMU has also advised respondent No.1 that the applicant had joined their office only on 30.11.1984 and that they intended to retain his services for a period of one year. This was not contradicted by the respondents.

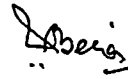
These above facts, however, do not appear to have entered in the reckoning of the concerned authorities when they took action against the applicant for unauthorised absence and removed/compulsorily retired him from service. The consideration given by the respondents to the recognised unions in the interest of promoting healthy and harmonious industrial relations seems to have been lost sight of. We do not believe that the respondents would have followed the path, which they did, intentionally. But we have not been able to determine the events that might have taken place in the green

room for lack of cooperation from the respondents. There is no alternative with us but to draw adverse inference.

Having regard to the above and recognising the facts as they are before us, we quash the order of transfer dated 13.2.1985, transferring the applicant from New Delhi to Jodhpur as arbitrary and illegal. Since the order of transfer dated 13.2.1985 is set aside as above, the proceedings/action taken against the applicant for unauthorised absence when actually he was on deputation also cannot survive. We, therefore, also set aside the order passed by the disciplinary authority, removing the applicant from service dated 6.8.1985 and the order of the appellate authority dated 6.9.1988 deeming the applicant to have compulsorily retired w.e.f. 6.8.1985 when the order for removal from service was passed by the Divisional Railway Manager, Jodhpur.

Consequently, we order and direct that the applicant shall be reinstated in service w.e.f. 6.8.1985 with all consequential benefits. He will be deemed to be in the service of the union (URMU) w.e.f. 6.8.1985 to 8th October, 1985 and thereafter he shall be in service of the respondents till the date of his superannuation. He shall be also entitled to all consequential benefits.


(I.K. RASGOTRA)
MEMBER (A) 20/9/1990

 20/9/90
(T.S. OBEROI)
MEMBER (J)