

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1511/1988
T.A. No.

198

DATE OF DECISION August 7, 1989.

Shri Prabhu Dayal Applicant (s)

Shri G.D.Bhandari, Advocate for the Applicant (s)

Versus

Union of India & Others Respondent (s)

O.P.Kshatriya Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. L.H.A. REGO, Member (Administrative)

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

The applicant has challenged herein the order dated 2.5.1988 (Annexure A-1) passed by(R-II) transferring him from Gurgaon in Haryana to Hanuman Garh in Rajasthan and has prayed that the same be set aside with a direction to the respondents to permit him to retire from Gurgaon where he is presently working. Succinctly, the facts of the case are as follows:

2. At the relevant time, the applicant was holding the post of Assistant Station Master (ASM), Gurgaon in the Northern Railway. He has been holding this post since about four years. He is due to retire on superannuation on 30.6.1990.

3. The applicant states that according to the policy of the

Railway Board in its Circular letter dated 14.3.1974 (Annexure A-2), ^{the} a railway servant should not be transferred from one station to another in the same grade as a matter of principle within two years of the date of his superannuation.

4. He further states, that according to the instructions of the Railway Board in its letter dated 19.2.1986 (Annexure A-3), such of the Railway staff who do not hold sensitive posts and who do not frequently come into contact with public or/and contractors/suppliers should be continued beyond a normal term of 4 years.

5. The applicant avers, that in view of the instructions of the Railway Board, he ought not to have been transferred from Gurgaon to Hanuman Garh as he was on the verge of superannuation within about two years, particularly as he was not holding a sensitive post in the Railways as envisaged by the Railway Board in its aforesaid letter dated 19.2.1986 (Annexure A-3).

6. He submits, that the order of transfer issued by R-II on 2.5.1988 (Annexure A-1) is of a general nature which has not taken into account, the instructions of the Railway Board in the aforesaid two communications.

7. The applicant ^{is} said to have sought interview with the Senior Divisional Operating Superintendent, Northern Railway, Bikaner to explain his difficulty, in regard to the said transfer but to no avail, on account of which, he was constrained to approach this Tribunal, through this ~~the~~ Application under Section 19 of the Administrative Tribunals Act, 1985.

The respondents have filed their reply resisting the Application and the applicant has filed a rejoinder thereto.

8. Shri G.D .Bhandari, learned counsel for the applicant contended, that at the time of his impugned transfer on 2.5.1988 from Gurgaon to Hanuman Garh, his client had barely two years left prior to his retirement on superannuation and that at the present stage, he had only 10 months to retire. He also submitted, that the post held by the applicant was a routine one and was ^{not} of a sensitive nature as envisaged by the Railway Board, in its letter dated 19.2.1986 (Annexure A-3). He, therefore, asserted that R-II ought not to have transferred his client at the fag-end of his service i.e. barely two years prior to the date of ^{his} retirement on superannuation, from Gurgaon to Hanuman Garh, thereby causing him no little inconvenience and financial hardship. His client is said to have been transferred in the same grade of Rs.1400-2300 ^{and posted} as a Relieving Assistant Station Master at Hanuman Garh.

9. In order to buttress his contention, he relied on the decision of the ratio of this Tribunal in K.K.JINDAL Vs. GENERAL MANAGER, NORTHERN RAILWAY & ORS (1) which is in the following words:

"Though the state is not bound to enunciate a policy in this regard, in which case individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would prima facie be unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy. Like every other

administrative order, an order of transfer also must conform to rules if any framed and policy, if any enunciated by the Government. Even if there are none, an order of transfer cannot be arbitrary or discriminatory, for that is a constitutional requirement which every order must satisfy."

10. Shri G.D. Bhandari argued, ^{as} that the Railway Board had laid down specific guidelines for transfer of railway employees, who were on the verge of retirement on superannuation within a period of two years, R-II ought not to have deviated from those guidelines.

11. Relying on the decision of the Chandigarh Bench of this Tribunal in KARAM SINGH Vs. UNION OF INDIA & OTHERS (OA No.520/HR 1986) decided on 11.2.1987, he sedulously contended, that the respondents could not take ^a too technical ^a view in transferring the applicant on the plea, that he had more than two years to retire on superannuation, ignoring the fact that the excess period was quite marginal and was only about two months or so, as on the date, ^{the} ~~xx~~ the transfer order was issued on 2.5.1988 (Annexure A-1).

12. Shri G.D.Bhandari, learned counsel for the applicant stressed that the applicant had barely ten months now to retire on superannuation and that it would be travesty of justice to transfer him at this stage to Hanuman Garh disregarding the instructions of the Railway Board issued in their letters referred to above.

13. Shri O.P.Kshatriya, learned counsel for the

respondents refuting the arguments of Shri G.D.Bhandari contended, that as on the date viz. 2.5.1988, when the applicant was transferred from Gurgaon to Hanuman Garh, he had more than two years to retire on superannuation and, therefore, he ~~XXXX~~ legitimately came within the purview of the instructions issued by the Railway Board in its aforesaid Circular letter dated 14.3.1974 (Annexure A-2). Further, according to him, the post of Assistant Station Master held by the applicant, fell within the category of a 'sensitive post' and, therefore, he was bound by the instructions of the Railway Board, issued in their letter dated 19.2.1986 (Annexure A-3). He, therefore, asserted, that he was required to comply with the order of his transfer dated 2.5.1988 (Annexure A-1) by R-II.

14. Referring to a decision of the Jodhpur Bench of the Tribunal in MADAN LAL KAPIL Vs. UNION OF INDIA AND OTHERS⁽²⁾, he submitted, that a transfer was not judicially reviewable, except for proven arbitrariness or mala fide, or if the same was made as a measure of penalty or in disregard of statutory rule of binding administrative instructions or was a case of abuse of power.

15. He emphasised, that the order of transfer of the applicant was neither mala fide nor actuated by collateral reasons nor was it as measure of penalty. It was in

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public interest be asserted and, therefore, urged, that the applicant be directed, to proceed to Hanuman Garh, as ordered by R-II, on 2.5.1988.

16. I have given due thought to the rival contentions and have gone through the relevant record placed before me. The impugned order of transfer dated 2.5.1988, was stayed by this Tribunal, until further orders, on 2.9.1988, on the ground, that if given effect to, it would cause the applicant grave and irreparable damage. As on the date viz. 2.5.1988, when the impugned order of transfer of the applicant was issued, he had barely two years, one month and twenty nine days, to retire on superannuation. This period of one month and twenty nine days, could have been regarded as marginal. As of today, the applicant has barely ten months to retire. The fact- situation in this case is almost analogous, to that in the case of KARAM SINGH, (supra) on which Shri G.D.Bhandari has relied, to strengthen his contention. I am of the view, that the Railway Administration, has taken too captious a view in the matter and could have treated this case liberally, in the light of the instructions issued by the Railway Board, in its aforesaid Circular letter dated 14.3.1974 (Annexure A-2), without making undue fetish, of the nominal period of one month and twenty nine days, exceeding the minimum of two years specified therein. R-II, in my opinion, ought to have considered the matter, in the spirit of the aforesaid instructions of the Railway Board and not in its stark literalism. The legal maxim says:

"a curious and captious interpretation of the law is to be reprov'd - curiosa et captiosa."

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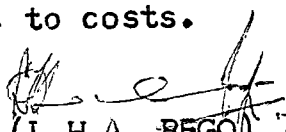
in lege reprobatur."

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It equally applies to the interpretation of a guideline, in its substance and not in its mere form. In this context Jindal's case supra, comes to the aid of the applicant.

17. It is apt to quote here, the aphorism, by that famous jurist, John Stuart Blacket:

"Sympathy without judgment, is like wine without water, apt to degenerate into intoxication, Judgment without sympathy, is like water, without heat, destined to end in ice"

18. In view of the foregoing, the impugned order dated 2.5.1988 (Annexure A-I) of R-II, is hereby set aside, in so far as it relates to the applicant, with a direction, to the respondents, to retain the applicant, in his present post at Gurgaon. The application is disposed of in the above terms, with no order, however, as to costs.


(L.H.A. REGO) 7.8.1989
MEMBER (ADMINISTRATIVE)
7.8.1989.