

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

6

O.A. No. 126 of 1988
T.A. No.

DATE OF DECISION 22.8.1988

MATADIN

Petitioner

Shri D.P. Gupta

Advocate for the Petitioner(s)

Versus

Union of India & ors

Respondent

S.N. Sikka

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

The Hon'ble Mr. —

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? NO

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN.NO. O.A. 126/1988 Date of decision : 22.8.1988.

Shri Matadin Petitioner

vs.

Union of India & others Respondents

Coram : Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

For the Petitioner Shri O.P. Gupta, Advocate

For the Respondents Shri S.N. Sikka, Advocate

JUDGEMENT of the Bench delivered by Hon'ble
Mr. Ch. Ramakrishna Rao, Member (J)

JUDGEMENT

The applicant was recruited as Gangman in the Northern Railway on 22.8.1981 and was subsequently selected for training, after completion of which, he was posted as Pointsman at Railway Station (RS) Bishanpura, Delhi Division in Jhind District (Haryana) under the Station Master, Bishanpura (SM: Respondent 2 - R2) w.e.f. October 1986. He was served with a notice dated 23.12.1987 by the SM transferring him to Tepri Railway Station. The applicant in this application filed under Section 19 of the Administrative Tribunals Act, 1985 assails the legality and validity of the aforesaid notice.

2. Sri O.P. Gupta, learned counsel for the applicant, raised several contentions but ultimately confined himself only to one viz., that the order of transfer was not passed in administrative interest but as a punitive measure. Sri Gupta elaborated his contention thus: The SM directed the applicant to see the Traffic Inspector/JHIND (TI) on 31.10.1987 for further orders as he was absent from 30.10.87.

...2

Ch

The applicant attended the office of TI as directed by the SM. The SM again issued a note dated 7.11.87 directing the applicant to see the TI for further orders as he was absent from 30.10.87. Though he attended the office of the TI as directed on 31.10.87 and 7.11.87 he was not given any order. In expectation of further orders he continued to attend the office of TI until 22.12.87. Meanwhile he served a lawyer's notice dated 9.12.87 for payment of salary which he did not receive from 30.10.87 but to no purpose. On 23.12.87 the applicant received the order transferring him from Bishanpura to Tapri, which, in the circumstances is penal in nature. *CS*

3. Sri S.N. Sikka, learned counsel for the respondents, refuted the contention raised on behalf of the applicant that the order of transfer was punitive in nature. According to Sri Sikka, it was passed in the normal course in the interest of administrative efficiency.

4. I have considered the rival contentions carefully.

In P. Pushpakaran v. Chairman, Coir Board (Kerala) 1979(1)

SLR 309 V. Khalik J (as he then was) observed:

"An order of transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this that transfers when effected by way of punishment, though on the face of it may bear the insignis of innocence, are quashed by courts."

These observations were quoted with approval by the Principal Bench of this Tribunal in K.K. Jindal v. General Manager, Northern Railway & Ors ATR 1980 CAT 304. It is, therefore, necessary to examine whether the order transferring the applicant was passed as an administrative measure or was prompted by extraneous considerations or ulterior motives.

.....3

CS

5. In the affidavit filed by Sri Piara Singh, who was working as TI at the relevant time, it is stated :

That the applicant Shri Mata Din pointsman was directed to the deponent on 7-11-87 by Station Master Bishan Pura for disciplinary action and Sh. Mata Din was asked to come the next day. The applicant Sh. Mata Din did not appear before the deponent since then.

It is apparent from this statement that disciplinary action against the applicant was in contemplation when the SM directed him to TI on 7.11.87. The applicant appeared on that day but he was asked to report on 8.11.87 and he defaulted. It is not clear as to why no follow up action was taken against the applicant when he desisted from appearing on 8.11.87. This apart, the applicant had sent a legal notice on 9.12.87 to R1 regarding non-payment of his salary payable from 30.10.87 but no reply was sent by R1. Be that as it may, disciplinary action was in contemplation as stated by TI in his affidavit and instead of pursuing the same to the logical end an order was passed transferring the applicant from Bishanpura to Tapri.

6. Sri Sikka invites my attention to paragraph 6 - xi and sub para (c) thereof of the reply filed on behalf of the respondents wherein it is stated

"..... there are serious complaints against applicant of misbehaved with senior staff as well as other staff members of the station to keep the peace and smooth working of the station. His transfer is justified on administrative grounds."

was not good and was justified

Handwritten signature/initials

7. Sri Sikka relies on the decision of a Single Member of the Principal Bench of this Tribunal in Ashok Kumar Sabharwal vs. Union of India & ors 1(1988) ATLT 365 wherein the plea of the applicant that his transfer was mala fide due to inter-union rivalry and it was passed as a punishment was rejected. Counsel relied on the following observations in the judgement :

Handwritten signature/initials

"If a transfer is made even to appease a large number of workers, it would be an administrative order to ensure smoother functioning of the railways. Railways are a public utility service and in the larger interest of smooth functioning of such an organisation, certain discretion has to be left with the railway authorities. Even if it is accepted that the transfer was a result of inter-Union rivalry, if in the larger interest of keeping a healthy atmosphere in the organisation, the competent authority felt it necessary to transfer the applicant, I feel that it would not be correct for a court to interfere in such a transfer."

8. In my view the decision relied upon by Sri Sikka is clearly distinguishable from the facts of the present case. This is not a case of inter-union rivalry undermining the discipline and the transfer effected for achieving smooth functioning. As already noticed, the applicant was directed by the SM to see the TI and this is, as stated by the TI in his affidavit, was in the context of taking disciplinary action. No such action was actually taken but after a couple of months he was transferred by the SM to Tapri. Further, the ~~allegation~~ averment in the reply extracted above does not disclose the nature of the so-called serious complaints unlike in the case of Ashok Kumar Sabharwal cited supra wherein the reason for the transfer was stated more specifically as arising out of inter union rivalry and for appeasing a large number of workers with a view to ensuring smoother functioning of the Railways. In the absence of any specific averment the ipsi dixit of the respondents that the transfer of the applicant was effected to keep peace and smooth functioning of the Bishanpura Railway Station is not accepted.

8-A In view I have taken, it is not necessary to consider other decision cited at the bar.

Handwritten signature

9. I am, therefore, satisfied that the order of transfer dated 23.12.1987 is legally unsustainable and is accordingly set aside. Respondents are directed to put the applicant back to duty at Bishanpura Railway Station on or before ^{1.9.1988} and pay the applicant the wages/salary to which he ^{is} entitled for the period from 30.10.1987 upto the date of such payment on or before 30.9.1988.

10. In the result the application is allowed. Parties shall bear their own costs.

Ch. Ramakrishna Rao

(Ch. Ramakrishna Rao)
Member (J)

bsg/-