

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 512 1986
T.A. No.

DATE OF DECISION 6.2.1987

Shri O.P. Chhabra ~~Petitioner~~ Applicant

Shri K.N. R. Pillai, Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India & Ors. Respondent_s

Shri Rajinder Dutt, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

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
4. Whether to be circulated to all the Benches ? No

Kaushal Kumar
(Kaushal Kumar)
Member 6.2.87

K. Madhava Reddy
(K. Madhava Reddy)
Chairman 6.2.87

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO OA 512/86

Dated: 6.2.1987

Shri O.P. Chhabra

....

Applicant

Vs.

Union of India & Others

....

Respondents

CORAM

Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicant

....

Shri K.N.R. Pillai, counsel

For the Respondents

....

Shri Rajinder Dutt, counsel

(Judgement of the Bench delivered by Hon'ble
Mr. Justice K. Madhava Reddy, Chairman)

Shri O.P. Chhabra, Power Transportation Inspector, Railway Electrification, was repatriated to his parent division and was ordered to be relieved of his duties with effect from 7.6.86 forenoon. He was also required to hand over the charge of Stores and other papers to one Shri Ajay Sharma and report to DRM(R) JHS by impugned order dated 6.6.1986. It is this order that is called in question in this application, filed under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant is a Senior Loco Inspector of the Central Railway working as a Senior Power Transportation Inspector(P.T. I. for short) in the Railway Electrification Organisation(R.E.O) . The Railway Electrification Organisation is a temporary organisation without a cadre of its own. It draws staff on transfer from various Zonal Railways on terms contained in Ministry of Railways (Railway Board) letter No.E(NG)II-80/RCI/81 dated 25.8.81. The applicant was drawn from the Central Railway and transferred to^{the} R.E.O against the quota allotted to the Central

Railway. When the impugned order was made, he was posted at Agra. He was the sole Inspector working as a regular measure. It is his case that contrary to all instructions issued by the Railway Board one Shri Joginder Singh, a retired employee over 61 years old, is retained in the R.E.O as a Loco Inspector on daily wages. He claims that his work has received appreciation from all concerned and he was given cash awards and commendation certificates as well. His allegation is that this order repatriating him to his parent Railway is mala fide and is with a view to punish him because of his Trade Union activities. He is the Chairman of the Railway Electrification branch of the National Railway Mazdoor Union affiliated to the All India Railwaymen's Federation. In his capacity as Chairman he has been representing the grievances of the Railway workers and more specifically of the casual labourers. The grievance of the employees arising out of the illegal discharge of 15 casual labourers and their replacement by fresh casual labourers in violation of all standing instructions of the Railway Board was taken up by him for representation to the concerned Authorities. All efforts of the Union to get the grievances of the discharged casual labourers redressed having failed, a meeting was arranged to resolve the dispute. The applicant states " On the failure of the meeting there was exchange of hot words between the Union officials and the authorities. This seems to have infuriated the authorities who issued an order on 23.7.85 taking away Mathura-Gangapur Section including Stores of Rs.4 lakhs from the applicant, putting a ban on his coming to Mathura and handing over his work to a Transportation Inspector, a non-technical man " . According to him this order

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was made with a view to prevent legitimate trade union activities. This further ^{impugned} order has been made repatriating him to the Parent Railway particularly because he had submitted a memorandum on 1.5.86 to the Additional General Manager, Allahabad, the highest authority in the R.E.O.

3. The impugned order is challenged primarily on the ground that it violates the instructions issued by the Ministry of Railways (Railway Board) in letter No. E(NG)II-80/RCI/81 dated 25.8.81 (Annexure P-II). It is challenged on two other grounds, namely:-

- (i) it is mala fide; and
- (ii) while retaining a retired employee and a daily wager a permanent P.T.I. is being transferred which is contrary to the standing instructions of the Railway Board.

4. The main defence of the Respondents is that since the work of R.E. O in this section is completed the applicant is moved to his parent Railway. It is, however, an admitted fact that one Shri Joginder Singh was appointed as P.T.I and his appointment is permitted upto 31.3.1987. Obviously if the continuance of the daily wager Shri Joginder Singh was necessary upto 31.3.1987 then the applicant's repatriation to his parent Division on the ground that there is no work for a P.T.I. at Mathura in this Section cannot obviously be correct. Although there was some argument on the question whether Shri Joginder Singh was appointed as a P.T.I or as a Safety Counsellor Loco, from the record it is fairly clear that he was described as holding the post of Safety Counsellor Loco before retirement but was actually appointed as a P.T.I. Assuming that he was

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appointed as P.T.I. on daily wages, this question has become purely academic inasmuch as the services of Shri Joginder Singh, daily wager has been terminated by an order dated 29.1.1987. In any event as on today, if there is no work for a P.T.I in R.E.O the applicant cannot claim any right to be retained in this section and he cannot obviously have any objection to his being repatriated to his parent Railway. The other ground of attack is that this order is vitiated by mala fides. The applicant, however, does not allege mala fides against any individual. No one has been impleaded by name as party respondent. The allegation of mala fides are vague and are not directed against any individual. Hence mala fides, if any, could only be malice in law, that is the repatriation of the applicant should be shown to be in contravention of standing instructions. We have, therefore, to examine whether the repatriation of the applicant conforms to the instructions of the Railway Board in this regard. The applicant cannot have any claim for continuance in the R.E.O for even as admitted by the applicant the R.E.O has no cadre of its own. The entire staff is drawn from the various Zonal Railways against the quota allotted to each of these Railways. The applicant is drawn against the quota allotted to the Central Railway. If he continues in the R.E.O he may be entitled to further promotion in accordance with the instructions of the Railway Board. But we are not now concerned with the question as to what benefit would accrue to him if he continues with the R.E.O. The impugned order is one of repatriation to the parent Railway and the question to be considered is whether the repatriation is illegal or contrary to the instructions. The applicant joined as P.T.I on 1.9.1981 in the R.E.O project and the impugned order was made nearly 5 years after he joined this organisation. Paragraph 7 of the Annexure P-II instructions

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which governs drafting of staff from Zonal Railways and their posting under R.E.O and their repatriation from R.E.O reads as under :-

"7. Place of posting in the R.E.

7.1. Notices for volunteers and selections for vacancies in consequences of manpower mobilisation may indicate that reasonable consideration will be given by RE Organisation in regard to place of posting and also the possibility of accelerated promotions even though of an ad-hoc nature within the RE organisation. These arrangements are expected to be an inducement to the staff. Further as the completion of RE Projects is likely to take about 4 years, the staff can expect a tenure of about 3 years on one project before moving to the next project or return to parent cadre"

5. From the above it would be clear that any Railway employee drawn for being appointed in the Railway Electrification Organisation can expect a tenure of about three years. Even if it is envisaged that the project is likely to last for about 4 years, the employees drafted from Zonal Railways could expect a tenure of only 3 years. There is no further assurance that if the project is completed he would be transferred to another project. On the other hand it is made clear to them that they can be moved to another project or returned to their parent cadre. May be, as contended by the applicant if the project is not completed he could be retained and if completed he could still be shifted to another project of the R.E.O. But that is a matter lying within the discretion of the appropriate authority. So far as the applicant is concerned, he does not have any right to be continued in the R.E.O for more than 3 years which period he has admittedly completed. In fact he had completed almost 5 years before the impugned order was made.

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6. In this view of the matter, the applicant's further contention which is based on paragraph 2 of the Railway Board's letter dated 25.8.1981 is untenable. That paragraph reads as under:-

" In order to attract sufficient numbers of staff for R.E. they may be offered next higher grade on posting to the R.E. organisation. Such posting in the next higher grade will be made on the basis of seniority, taking into account the suitability of the staff concerned in case the number of volunteers exceeds the provisional figure shown. Where such higher grades are selection grades, postings will be ad hoc till selections are conducted by the Zonal Railways concerned. R.E. Organisation will not conduct selections, but may effect further promotions within R.E. to selection grade as an ad hoc measure on considerations of suitability."


7. This question would arise only if the applicant continues in R.E.O and someone is considered for ad hoc promotion. The fact that if he were to continue in R.E.O he would have got ad hoc promotion and that benefit he is being deprived of because of his repatriation to his parent division, ~~xxx~~ cannot in any way affect the power of administration of the R.E.O to order repatriation of its employees to the parent Railway as per standing instructions. Unless the order of repatriation is shown to be mala fide, the mere exercise of power of posting which is in accordance with paragraph 7 of the Railway Board's letter cannot be held to be illegal or arbitrary. The applicant may have engaged himself in trade union activities but there is nothing on record to establish that the


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impugned order is made because of his trade union activities. Merely because of the failure of the meeting at which he represented the employees^{and}/where - at there was exchange of hot words, this order of repatriation cannot be deemed to be the consequence of that incident.

8. In the result, we do not find any merit in this application. This application fails and is accordingly dismissed. No order as to costs.


(Kaushal Kumar)
Member 6.2.87


(K. Madhava Reddy)
Chairman 6.2.87