

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 579 1986
T.A. No.

DATE OF DECISION 21st April, 1987

Shri S.P.Gautam

Petitioner

Shri S.K.Bisaria and

Advocate for the Petitioner(s)

Shri R.C.Kapur.

Versus

Union of India and ors.

Respondents.

Shri M.L.Verma

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.S.Puttaswamy .. Vice Chairman

The Hon'ble Mr. V.S.Bhir .. Member (AM)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether to be circulated to the other Benches?

Mr. Puttaswamy
(K.S.PUTTASWAMY)
VICE CHAIRMAN

21/4/87

V.S.Bhir
(V.S.BHIR)
MEMBER (AM)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Dated the 21st day of April, 1987.

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY, VICE CHAIRMAN

THE HON'BLE SHRI V.S.BHIR .. MEMBER (AM)

ORIGINAL APPLICATION NO.579 OF 1986

S.P.Gautam .. Applicant

(By Shri S.K.Bisaria & R.C.Kapur, Advocates)

-vs.-

Union of India and others .. Respondents.

(By Shri M.L.Verma, Adv. for respts.)

Application coming on for hearing this day,
PUTTASWAMY, J. (Vice Chairman) made the following:

ORDER

In this application made under Section 19
of the Administrative Tribunals Act, 1985 (Act),
the applicant has challenged order No.12/86 dated
28th January, 1986 (Annexure-R1) of the Chief Perso-
nnel Officer, Head Quarters, Bombay Central Railways
(CPO), Bombay.

2. Prior to 28-1-1986, the applicant was working
as Head Travelling Ticket Examiner ('HTTE') in the
time-scale of Rs.425-640 (pre-revised) at the Agra
Contonement of the Jhansi Division of the Central
Railway. On 28-1-1986, the CPO has transferred the

applicant from Agra Cantt. to Bombay Division of the Central Railway. That order made in Hindi but translated to English, reads thus:

"The following order is implemented with immediate effect:

Shri S.P.Gautam, HTTE, Agra-Cantt. in the scale of Rs.330-560 is transferred to Bombay in the same capacity on administrative grounds."

Aggrieved by this order, the applicant has approached this Tribunal, inter alia contending that in the guise of transfer, the CPO had reduced him to a lower grade time-scale and pay as against the higher grade time-scale and pay he was earlier drawing, which was illegal and impermissible.

3. In their reply, the respondents have asserted that the time-scale of Rs.330-560 indicated in the order was by a clerical mistake and the applicant had been transferred in his own grade and the time-scale of pay and the pay he was drawing prior to 28-1-1986. The respondents have asserted that the transfer had been made on administrative grounds in the public interest and this Tribunal cannot examine the same as if it is a Court of Appeal.

4. Shri S.K.Bisaria, learned Senior Counsel, along with Shri R.C.Kapur, have appeared for the applicant. Shri M.L.Verma, learned Counsel has appeared for respondents.

5. Shri Bisaria contends that in the guise of transfer, the CPO had reverted the applicant to a

lower grade time scale of pay and pay and the same was plainly illegal and improper.

6. Shri Verma contends that though in the impugned order, the CPO had stated that the applicant was posted in the time-scale of Rs.330-560, that was only a clerical mistake, which had also been later corrected and the transfer had been made, without resulting in reduction in rank or pay, purely on administrative grounds and the same does not call for interference by us on any ground.

7. We have earlier reproduced an authenticated English translation of the Hindi version of the order made by the CPO. In that order, the CPO while inadvertently stating that the time-scale was Rs.330-560, had stated that the applicant was being posted in his own grade and time-scale and the pay he was then drawing. When the order is read as a whole in the proper context, as is necessary to do so, it is clear that the CPO inadvertently referring to the time-scale of Rs.330-560 as against Rs.425-640, had really posted the applicant in his own grade and pay he was drawing prior to 28-1-1986. In the later correspondence as also in their reply, the respondents had stated that the applicant was being transferred and posted in his own grade and pay viz., Rs.425-640 before his transfer. In his very first representation made on 17-2-1986 (Annexure-VII) though styled as an appeal, the applicant had understood the order in that way only. For all these reasons, we hold that in the guise of transfer, there is no reduction in rank and pay of the applicant, as contended by him. We see no merit in this contention of Shri Bisaria, and we reject the same.

8. Shri Bisaria next contends that since the CPO had stated Rs.330-560 and that mistake can only be corrected by him and not by others and so long as that was not done, the impugned order had only to be construed as reducing the rank and pay of the applicant.

9. Shri Verma contends that there was no merit in this contention of Shri Bisaria also.

10. We have earlier held that the CPO has posted the applicant in his own grade and pay. If that is so, then the fact that the CPO did not issue a corrigendum correcting the time-scale from Rs.330-560 to Rs.425-640 will not make any difference at all. Even otherwise, in their reply, the respondents have not rightly persisted in contending that the applicant had been posted in the time-scale of Rs.330-560. If that is so, then we will not be justified in holding that the applicant had been posted in the time-scale of Rs.330-560 and the same requires to be corrected. We see no merit in this contention of Shri Bisaria. We reject the same.

11. Shri Bisaria contends that transferring the applicant from Jhansi Division to Bombay Division, in contravention of the circular instructions of the Railway Board, was impermissible and illegal.

12. Shri Verma contends that the circular instructions of the Railway Board did not place an absolute embargo on inter-divisional transfers and the transfer of the applicant had been made on administrative grounds with due regard to all of them also.

13. We have carefully read the circular instructions issued by the Railway Board from time to time regulating transfers in the Indian Railways. The circular instructions issued by the Railway Board, do not place an absolute embargo on inter-divisional transfers. If that is so, then in justifiable cases, the competent officers are competent to make inter-divisional transfers. The fact that the post held by the applicant was a Division-wise cadre post has no relevance to the power of the competent officer to transfer the applicant from Jhansi Division to Bombay Division. Every one of the rulings relied on by Shri Bisaria and in particular, the one in K.K.JINDAL vs. GENERAL MANAGER, NORTHERN RAILWAYS & ORS. (ATR 1986 CAT, 304) of this Tribunal, do not bear on the point. We see no merit in this contention of Shri Bisaria and we reject the same.

14. Shri Bisaria next contends that the personal problems of the applicant highlighted in the application and at the hearing, did not justify the CPO to transfer him from Jhansi Division to Bombay Division.

15. Shri Verma contends that the transfer made on administrative grounds was justified and cannot be examined by us as if we are a Court of appeal.

16. In his application and at the hearing, the various personnel problems of the applicant like his health condition, his children's education at Agra and the difficulty of his children in securing admission in the new place were highlighted before us.

17. A transfer undoubtedly causes some dislocation and hardship to every civil servant, can hardly be doubted. But, on that or other scores, we cannot examine the order of transfer as if we are a Court of appeal and come to a different conclusion. From this, it follows that we will not be justified in examining the various factors in any detail. We, therefore, decline to do the same. But, this should not be understood as debarring the authorities from re-examining the case of the applicant on any of them or even on fresh grounds.

18. Before us, both parties made reference to a disciplinary proceeding. As they have no relevance to the impugned order, we decline to notice them in any detail.

19. We have earlier noticed that the transfer order was made on 28-1-1986. His prayer for stay of the same was also rejected by this Tribunal on 19-12-1986. But, notwithstanding all these, the applicant has not so far reported for duty at Bombay. In this view, we consider it proper to grant at least 15 days from this day to the applicant to report for duty at Bombay.

20. When the applicant reports for duty at Bombay, the Railway Administration is bound to make payment of the salary due to him from the date and time he reports for duty at Bombay without unnecessarily linking the same with the earlier absences, which has to be separately examined and decided on its own merits in accordance with law.

21. Shri Bisaria urged that we should direct the respondents to allot Railway Quarters to the applicant at Bombay Division. We have no doubt that the authorities will do their best to provide Railway Quarters to the applicant at Bombay Division with all such expedition as is possible in the circumstances of the case.

22. In the light of our above discussion, we make the following orders and directions:

(1) We dismiss this application in so far it challenges the transfer order No.12/86, dated 28th January, 1986 (Annexure-R1), made by the CPO. But, notwithstanding the same, we grant 15 days time to the applicant from this day to report for duty at Bombay.

(2) We direct the respondents to arrange ~~for~~ payment of salaries to the applicant from the time he reports for duty at Bombay without linking the same with the absence of the applicant till he reports for duty. But, this does not prevent them from determining that absence in accordance with law.

23. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

Mr. Puttaswamy
(K.S.PUTTASWAMY)
VICE CHAIRMAN
21/4/87

Mr.
(V.S.BHIR)
MEMBER (AM).