

2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 296/87
T.A. No.

1987

DATE OF DECISION 18.3.1987

Uttar Railway Karamchari Union Petitioner

Shri A.K. Goel Advocate for the Petitioner(s)

Versus

General Manager, Northern Railway Respondent

None 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 other Benches? *Yes*

Kaushal Kumar
(Kaushal Kumar)
Member
18.3.1987

K. Madhava Reddy
(K. Madhava Reddy)
Chairman
18.3.1987

3

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. No. OA 296/87.

Uttar Railway Karamchari Union Applicant

Vs.

General Manager, Northern Railway ... Respondent.

CORAM :

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

Hon'ble Mr. Kaushal Kumar, Member.


For the applicant Shri A.K. Goel, counsel

For the respondent None.

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

This is an application by some of the Goods Clerks employed by the Northern Railway at New Delhi through their Union (Uttar Railway Karamchari Union), calling in question the order of transfer dated 4.3.1987 (Annexure B). On 13.3.1987, when this application came up for admission, Shri A.K. Goel, learned counsel for the applicant, sought leave to amend the petition, seeking to implead Shri J.B. Tandon, one of the Goods Clerks affected by the impugned order. That petition is allowed and accordingly Shri Tandon is impleaded as petitioner.

Under the impugned order, as many as 300 Goods Clerks are transferred. Of these, 123 Goods Clerks are transferred from New Delhi to other stations, some within Delhi and some outside Delhi. The main contention is that though the impugned order is purportedly issued on the basis of "pin-pointing", it does not adhere to that principle. It is also the contention of the applicant that the impugned transfer order disregards

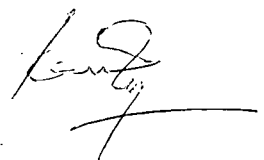


the instructions governing such transfers in as much as persons with shorter stay at Delhi are transferred and those with longer stay are retained, persons who have been in Delhi for less than two years of service at Delhi have also been transferred and further persons who are due for retirement in less than two years are also transferred. It is also alleged that respondents have deviated from the standing instructions in posting juniors to nearer places and posting seniors to far off places. The transfers are arbitrary and vitiated by malafides and non-application of mind. The transfers disrupt the families and the education of their children.

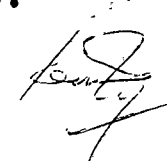
Before we go into the merits of the contention, we may point out that the order of transfer affects each individual employee differently. It is the individual employee who has a grievance in this behalf. Generally, no common question of law or fact is involved. In this application, it is not the case of the applicants that any policy governing the transfers is illegal or arbitrary and it should be struck down and consequently the orders of transfer should also be quashed. On the other hand, it is the contention of the Applicants that these transfers are in violation of the Transfer Policy and the standing instructions. One such example is that of the second applicant who, according to them, is to retire in October, 1987 and contrary to the standing instructions contained in copy of the Railway Board's letter No. E(NC)1-81-TA-19 dated 23.5.81 addressed to all the General Managers of the Indian Railway (Annexure A) exempting transfers of persons who are to retire within one or two years.



The grievance of each individual employee with regard to his transfer under the impugned order would have to be examined on the facts and circumstances peculiar to his case. In that context the nature of the service, for how long he was occupying the particular post xxx at a particular place, the date of his retirement, the length of the period for which all other persons in the same category have been posted at that place and many other factors would be relevant. Assuming that the instructions contained in Annexure "A" have statutory force and must be ordinarily followed and do not admit of any deviation, it is seen that the second petitioner who is due to retire in October 1987 has been transferred from New Delhi Railway Station to Shakurbasti which is just a few kilometers away and is within Delhi Metropolis. Such a transfer does not cause any dislocation to the petitioner; he is neither required to change his residence nor is his children's education affected in any manner. Irrespective of the fact whether his transfer contravenes the instructions contained in Annexure A, or not, no court would interfere with such an order of transfer merely because it contravenes those instructions. The transfer is an incidence of service and where it does not cause any dislocation whatsoever, it would not be interfered by this Tribunal even if prima facie it is not in strict compliance with the standing instructions. Undoubtedly, the second petitioner himself can apply for the redressal of his grievance



by way of a petition under Section 19. An Association of Employees may also be entitled to represent the grievance of the petitioner. But nonetheless, if the grievance represented by the Applicant requires consideration of the facts and circumstances peculiar to each of the several individuals affected by an order, the aggrieved person individually by himself or through the Union will have to file separate applications under Section 19. Unless a common question of law is raised or some rule or instruction is attacked which if upheld or struck down, relief could be granted or refused to all, in our view, an order affecting several persons cannot be questioned in a joint petition under Section 19 by all or several of them when it involves consideration of their individual cases for granting or refusing relief. A Union or an individual representing a category of employees cannot be permitted to file a single petition to redress the grievance of several employees whom it seeks to represent if the facts and circumstances peculiar to each individual employee affected by the order have to be answered by the respondents and examined by the Tribunal. Permitting a single petition to be filed in such a case involving consideration of facts and circumstances peculiar to each individual employee, would create confusion. The grievance of the several individual employees cannot be satisfactorily dealt with in a single petition. But if such an application involves going into the facts and circumstances peculiar to each of the employee ~~then~~ they must be required to file separate applications. Since the transfer policy or the instructions or any rule is ~~not~~ questioned in this application, the grievance of the other employees with regard to the impugned order of transfer cannot be gone into. The application is, therefore, not maintainable with respect to the grievance of other employees.



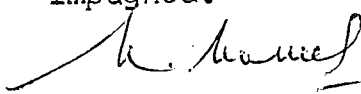
It is, however, argued that the respondents in making the impugned order have stated that the postings and transfers have been ordered by the Senior Divisional Commercial Superintendent "as a result of revised 'pin-pointing'". If the petitioners are able to establish that the revised pin-pointing did not necessitate these transfers, the impugned order of transfer should be quashed and the respondents should be directed to consider the matter afresh and pass appropriate orders and, therefore, a single petition is maintainable.

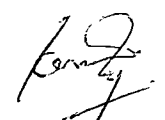
It is not very clear as to what 'pin-pointing' is or means. In the application, the applicants have averred that 'pin-pointing' means "a study of the work requirements and other relevant criteria". But that does not throw much light on what exactly 'pin-pointing' is. 'Pin-pointing' is not defined in any Act or Rule. Nor is it clarified by any instructions. ~~xxxxxx~~ At least none have been brought to our notice in spite of some time being allowed to the Applicants. We, therefore, requested the learned counsel to throw further light on this aspect. The learned counsel, however, only stated that "pin-pointing" means "pointing" or "fixing" the number of posts at a particular station and making adjustments for differences and surpluses". The applicants contend that the power to transfer was purported to be exercised for the aforesaid purpose but the same was not adhered to. To substantiate this contention, the learned counsel refers to the averment made in paragraph (viii) that while in the Grade of Rs.700-900 two are going out of Delhi, three are brought in. Likewise in the Grade

Party

of Rs.550-750 while 9 are posted out, 7 are brought in. This, according to him, demonstrates that these transfers were not ordered to implement the revised "pin-pointing"; it is based on extraneous considerations. Even assuming that the transfers did not faithfully give effect to the revised pin-pointing, as discussed above and as demonstrated by the case of Applicant No.2, the order of transfer of a particular employee may not call for interference by the Tribunal. Each individual case has to be examined. Even assuming that there is an error in giving effect to revised pin-pointing, unless we examine the case of each individual as to how the transfer has affected him, we would not be justified in quashing orders covering the transfer of several employees. This calls for examination of each individual case and unless a separate application is filed either by the each individual applicant or by the Employees' Union representing him and unless it is shown as to how the order affects him, no relief can be granted.

For the aforesaid reasons, this Application is dismissed. However, nothing said herein would affect the right of the individual employees, if they so desire, to make separate appropriate applications for the redressal of their grievance in relation to the order impugned.


(Kaushal Kumar)
Member
18.3.1987.


(K. Madhaya Reddy)
Chairman
18.3.1987.