

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 347
T.A. No.

1987.

DATE OF DECISION 28.5.1987

Shri B.L.Chauhan & Ors. Petitioner

Shri B.B.Srivastava Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri P.P.Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member

The Hon'ble Mr. Ch.Ramakrishna Rao, Member Judicial

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 ?

Ch.Ramakrishna Rao
(Ch.Ramakrishna Rao)

(S.P. Mukerji)
Administrative Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 347 of 1987

Dated: 28-5-87

Shri B.L. Chauhan & Ors.Petitioners

Versus

Union of India & Ors.Respondents

For Petitioners : Shri B.B. Srivastava, Advocate

For Respondents : Shri P.P. Khurana, Advocate

CORAM:

The Hon'ble Mr. S.P. MUKERJI, Administrative Member

Ch.

The Hon'ble Mr. / RAMAKRISHNA RAO, Judicial Member

JUDGEMENT

(Delivered by Mr. / Ramakrishna Rao, J.M.)

Applicants at serial Nos. 1, 2 and 3 of this application were appointed as Lower Division Clerks (L.D.Cs.) in Ganga Brahmaputra Water Transport Board (GBWTB) on diverse dates during the period from 1956 to 1965. Applicant at serial No. 4 was appointed as staff car driver in March 1963, in Prime Minister's Secretariat. The Inland Water Transport Directorate (IWTD) was set up in 1965 in the Ministry of Transport by Resolution of the Government of India, dated 23-2-1965 (Annexure - A-2). In 1967 GBWTB was merged with the IWTD by Resolution of the Central Government dated 16-2-1987 (Annexure A-3), as a sequel ^{to} which, applicants at serial Nos. 1, 2 and 3 joined IWTD while applicant at serial No. 4 joined the IWTD in 1968. When Inland Waterways Authority of India (IWAI) was established on 27-10-1986 under IWAI Act, 1985 (Act, for short) for the regulation and development of inland waterways and for matters

connected therewith, the applicants, along with some others were taken on the staff of IWIA. Aggrieved by the aforesaid transfer, the applicants have filed this application.

2. Shri B.B. Srivastava, learned counsel for the applicants, contends that his clients were working in IWTD and the Secretary of IWAI had no competence to issue the order of transfer (Annexure-A). According to Shri Srivastava, while the Act specified that every employee in IWTD shall be treated as on deputation with the IWIA, only some employees have been transferred as per Annexure-A dated 30-1-1987.

3. Shri P.P. Khurana, learned Counsel for the respondents, submits that IWAI is a creature of the statute, having been constituted under Section 3(1) of the Act with effect from 27-10-1986 by notification issued in the Gazette of India of even date; that the order transferring officers from IWTD to IWAI was issued pursuant to the provisions of Section 11(1)(f) of the Act and, as such, the order at Annexure-A is legally valid.

4. After giving careful thought, we find no substance in the contention and hold that the order of transfer is in consonance with the provisions of the Act.

5. The second contention of Shri Srivastava is that while Section 11(1)(f) of the Act envisages every employee in IWTD being treated as on deputation with the authority, only some have been transferred under the order dated 30-1-1987 and the said order is therefore arbitrary.

6. Shri P.P. Khurana invites our attention to paragraph 10(c) of the written statement (WS) filed on behalf of the respondents wherein it is stated:

relevant to the functions of IWAI have been treated as on deputation with the IWAI. Apparently, the employees of IWTD covered by the order dated 30-1-1987 were transferred to IWAI because they were dealing with the affairs of IWTD relevant to the functions of IWAI and if there are any others ^{of that category} left out, we direct that they also be transferred immediately.

9. Shri Srivastava next contends that there is no provision under Section 11(1)(f) of the Act for transfer of the employees but only for deputation from IWTD to IWAI; that before posting the applicants in the office of IWAI the option of the employees should have been obtained and the order of transfer is, therefore, invalid.

10. Shri Khurana submits that the employees of IWTD have been treated as employees of IWAI by operation of law and the order posting the applicants in IWAI is not, therefore, open to challenge.

11. In our view, transfer is a mode by which the provisions of Section 11(1)(f) of the Act have been effectuated. From the language of section 11(1)(f) of the Act extracted above, it is clear that every employee of IWTD dealing with affairs relevant to the functions of IWAI shall be treated as on deputation with IWAI. Thus, a legislative fiction has been introduced in Section 11(1)(f) of the Act so as to treat such erstwhile employees of IWTD as on deputation with IWAI, constituted under Section 3(1) of the Act. Further, the second proviso to Section 11(1)(f) enables absorption of employees sent on deputation to IWAI in its regular service if they so desire. The Central Government is also empowered to recall such of the employees, who do not express their intention becoming regular employees of IWAI. Therefore, by not obtaining the consent of

the employees of IWTD, before their transfer, they have not been prejudiced.

12. In this connection, we may refer to FR 110(a) of FRSR (Swamy's compilation 1986 Edition) which reads as follows :

"F.R.110(a) No Government servant may be transferred to foreign service against his will:

Provided that this sub-rule shall not apply to the transfer of a Government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government."

IWAI being a body corporate of the kind mentioned in FR 110(a), it is not necessary to obtain the consent of the employees in IWTD before transferring them to IWAI.

13. The fourth contention of Shri Srivastava is that while transferring the applicant along with others the terms governing their deputation to IWAI have not been spelt out. As already observed by us, this is not an ordinary case of employees being sent on deputation to another organisation after obtaining their option but an extraordinary case of deputation necessitated by the terms of Section 11(1)(f) of the Act, which make it abundantly clear that an employee of IWTD, on deputation to IWAI, shall be governed by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as he would have held such office, if the Authority had not been constituted.

14. Shri Srivastava next contends that applicants at serial no. 1 and 2 are allottees of Government quarters while applicants at serial no. 3 and 4 are residing in their respective villages near Delhi and as such their transfer outside Delhi would pose housing

problem to them and any change in the headquarters of the applicants would effect them adversely regarding allowances and other benefits. Shri Khurana submits that the respondents have clearly stated in the WS that the officers, who were allotted general pool accommodation would be allowed to retain the accommodation for a period of two years. He also submits that the applicants would not be adversely affected in any way.

15. In our view, Section 11(i)(f) of the Act has given protection to the employees in the matter of tenure, terms and conditions of service. In other words, all the benefits which the applicants were enjoying on 30.1.1987, when the order of transfer was passed, would continue to be applicable to them even after transfer. Regarding accommodation, respondents have given an assurance in the WS and this should suffice.

16. The sixth contention of Shri Srivastava is that while on deputation, an employee continues to hold his lien in his parent department and since the applicants have been sent on deputation from IWTD to IWAI, they should be allowed to retain their lien. As already held by us in paragraph 11 and 13 supra this is not a case of ordinary transfer/deputation of officers but a case of transfer necessitated by the provisions in the Act and as such, the question of lien does not arise. We, however, direct the respondents to complete the process of absorption of willing employees in IWAI and recalling of the unwilling as provided in Section 11(i)(f) on or before the end of the next academic year i.e. 31.5.87.

17. Shri Srivastava next contends that respondent No.4 has handed over the staff car on 7.11.86 to the driver newly appointed by the Chairman IWAI and as such there is no post available to him in IWAI. The respondents shall examine the factual position and issue suitable instructions regarding applicant No.4 if necessary.

18. Turning to the challenge by Shri Srivastava of the order dated 20.2.1987 (Annexure A-I), the respondents have stated in the Written statement that "consequent upon the merger

of the Inland Water Transport Directorate in the Inland Waterways Authority of India and shifting of the Authority's office to NOIDA, with a view to deal with the IWT work in the Ministry it was decided to transfer 12 posts of the IWT Directorate along with the existing incumbents thereof to the Ministry of Surface Transport". We find the explanation given by the respondents for retransferring the 12 employees convincing.

19. After the hearing concluded, the applicants filed a Miscellaneous Petition (MP) No.550/87 stating that the counsel for respondents misled the Court by stating that R-2 has been transferred to Assam Government from where he was taken on deputation to IWTD and that R-2 is very much in position. True, R-2 has filed an affidavit in addition to the W.S. filed on behalf of the respondents but we cannot help taking note of the following statement in the penultimate paragraph of the W.S.:-

"It is submitted that the respondent No.2 i.e. Chief Engineer-cum-Administrator, IWT Directorate has no locus standi in the instant case as the IWT Directorate no longer exists consequent upon the setting up of the Inland Waterways Authority of India w.e.f. 27-10-1986. Therefore any reply filed separately by or on behalf of respondent No.2 is unauthorised and may not be taken cognizance of."

In view of this categorical statement, the contents of the W.S. will over-ride the affidavit filed by R-2. It may be that Shri K.K. Gogil is still continuing to hold the post of Chief Engineer in IWTD but that has no bearing on the points at issue in this application.

20. The applicants have also questioned in the MP the selection of the employees retained in the Ministry without transferring them to IWAI on the

ground that they were not dealing with the affairs relating to IWAI. This is a purely administrative aspect and we have no reason to presume that the impugned selection was made arbitrarily.

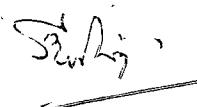
21. The last point raised in the M.P. is that the applicants were regularly attending the office in Transport Bhavan but they have not been allowed to mark their attendance. After the order transferring the applicants from IWTD to IWLA was passed, we find no justification for them to flout the order of transfer and act in a manner contrary to it by seeking to mark attendance at a place where they had no right to attend. In other words, it was incumbent on the applicants to comply with the order of transfer and thereafter question the validity of the order. We also note that operation of the order of transfer has not been stayed.

22. After giving our anxious consideration to the several points debated before us, we are satisfied that the impugned orders at Annexures A & A-I do not suffer from any legal infirmity.

23. In the result the application is dismissed, subject to the directions given in paras 8 & 16 and the observations made in paras 15 & 17 ^{supra}. There will be no order as to costs.



(Ch. RAMAKRISHNA RAO)
JUDICIAL MEMBER



(S. P. MUKERJI)
ADMINISTRATIVE MEMBER