

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(6)

O.A. No. 1880/90
T.A. No.

199

DATE OF DECISION 09.11.1990

Shri G.B. Gosavi & Others Petitioner

Dr. R.S. Kulkarni, Sr. Advocate Advocate for the Petitioner(s)
with Abhay Kulkarni, Advocate

Versus

U.O.I. through Goods Superin- Respondent
tendent, Western Railway

Shri Inderjit Sharma, Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE 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? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicants are working as Goods Clerks in the office of the Goods Superintendent, Western Railway, Bombay. The reliefs sought in this application filed under Section 19 of the Administrative Tribunals Act, 1985 are as follows:-

(a) to set aside and quash the impugned order dated 6.9.1990 whereby the applicants have been declared surplus and they have been redeployed to work as Booking Clerks at different stations shown against their names in the Annexure to the said order; and

(b) to direct the respondents not to change their cadre.

2. The application was filed in the Principal Bench of the

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Tribunal on 14.9.1990 as there was no Judicial Member in the New Bombay Bench to hear the case. On 14.9.1990, an ad interim order was passed directing the respondents not to give effect to the impugned order dated 6.9.1990. The said order has been continued thereafter on 28.9.1990 in respect of employees who have not been actually served with the transfer orders. The interim order has been continued till the case was finally heard at the admission stage itself on 30.10.1990.

3. We have carefully gone through the records of the case including the written submissions and additional documents filed by the applicants and have considered the rival contentions. At the outset, we may dispose of the preliminary objections raised by the respondents in their counter-affidavit to the effect that the application is liable to be dismissed on the short ground of misjoinder and non-joinder of parties and that the applicants have not exhausted the remedies available to them before filing the present application. We do not see any substance in these preliminary objections. Since ^a large number of employees of the Railways, who are aggrieved by the impugned order, are before us and in view of the exceptional circumstances of the case, we consider it appropriate to adjudicate upon the issues involved without requiring the applicants to exhaust their departmental remedies. The plea of misjoinder and non-joinder of parties is also not forceful as the

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Union of India which is the material party has been impleaded as the respondent.

4. As regards the facts of the case, there is difference in the versions of the two parties. The impugned order dated 6.9.1990 is to the effect that 98 posts of Goods Clerks have been identified as surplus to the requirement of the Curnac Bunder Goods Depot (hereinafter referred to as 'CCB') of the respondents at Bombay and that they should be redeployed to work as Booking Clerks at different stations as shown against the names of 84 persons as per the list annexed to the impugned order. The impugned order further states that these 98 persons will go along with their posts. 105 persons have been retained to work at CCB. There are altogether 203 posts of Goods Clerks out of which 105 will be retained at CCB and 98 persons will be redeployed but all of them will continue to form a combined cadre for the purpose of promotion etc. but eventually with the retirement of the 98 persons so redeployed, the working strength of CCB at Bombay will get reduced from 203 to 105. The redeployed staff have been relieved with effect from 10.9.1990 with the instructions to report to the respective stations. It has been stated that their leave/pass accounts and LPCs will be sent to the respective stations and that their salary will be prepared separately by ^{the} respective stations against

the cadre of GS/CCB (vide Exhibit 'A' at pages 15 to 19 of the paper book).

5. Before the impugned order was issued, discussions were held in the Chamber of DRM on 3.9.1990. The applicants have produced a copy of the record of notes of discussions held on 3.9.1990 at Exhibit 'M' to their rejoinder at pages 81 to 83 of the Paper Book. The respondents have also produced a copy of the same discussions at Annexure R-5 to their counter-affidavit at pages 54-55 of the Paper Book. There is difference in the language between the two documents. During the hearing of the case, Shri Inderjit Sharma, the learned counsel of the respondents clarified that the document produced by them at Annexure R-5 to the counter-affidavit is the draft and that the document at Exhibit 'M' to the rejoinder-affidavit is the final version and that the final version alone need be considered by us.

6. It will be noticed from the record at notes of discussions held in DRM'S Chamber on 3.9.1990 that the representative of two recognised Unions had also participated at the discussions. The record at notes of discussions also refer to a joint meeting held in DRM'S Chamber on 2.2.1990, copy of which is at Exhibit 'F' pages 37 to 40 of the Paper Book. The record notes of discussions held in DRM'S Chamber on

2.2.1990, contain the following salient points:-

(i) When the CCB Goods shed was set up 35 years ago, the traffic was quite high. Over the last 35 years, traffic has come down considerably at this Goods shed. The trend also indicates that it will further come down.

Operational working of the goods shed is also tedious.

(ii) The working of the Goods shed has been reviewed and it has been decided that it will work like any other normal goods shed. The goods shed require only 105 Class III staff and the remaining have to be declared surplus. Unions have been advised about the above change in pattern and consequences.

(iii) It was agreed that large number of Booking Clerks are required to be provided on the Bombay Division. The surplus Commercial Clerks (Goods) of CCB can be gainfully utilised as Booking Clerks over Bombay Suburban section between CCG-VR. There are other vacancies also in Commercial Branch of Head Office and in the Divisional Office where surplus staff of any category can be deployed. Administration is also prepared to create super-numerary posts to accommodate people.

(iv) Options will be called for from the serving employees and if the options are more than the requirement, the senior amongst optees will be posted to the suburban section. If, on the other hand, options are less than the required number, in addition

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to optees, the junior most will be transferred out of CCB and utilised as Booking Clerks in CCG-VR section.

7. After the discussion, it was agreed at the discussion held on 2.2.1990 as follows:-

- "(i) 13 directly recruited ACCs who have been posted at CCB will be transferred and posted to work as Booking Clerks in the Bombay suburban section. These posts would also be transferred on BCT sub-section as ACCs.
- (ii) The promotional prospect of the staff working in CCB will not be affected and the shadow control posts will be created.
- (iii) Such of the staff who are retiring upto the end of 1990 will not be from CCB*.

(vide pages 39-40 of the Paper Book)

8. At the meeting held in DRM'S room on 3.9.1990, the Unions were advised that as per an assessment made, the present work load of CCB would require only 105 posts in different grades and 98 surplus posts along with the staff are to be moved out of CCB. It was also explained that there was very urgent need for augmenting the booking arrangements at the suburban stations and the surplus staff of CCB would be redeployed as Booking Clerks on the suburban stations. Options were called from the employees. Since none of them have opted for the Booking side on the suburban section, it was proposed that the juniormost Goods Clerks be transferred from CCB to suburban section of BCT posted as Booking Clerks.

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9. The meeting also discussed the modus operandi to be followed keeping in mind the promotional and other interests of CCB. The views and suggestions of the two recognised Unions were also considered. After the discussion, it was agreed that action on the following lines would be taken:-

- "(i) 84 junior most employees plus 14 vacant posts of Goods Clerks will be transferred out of CCB to stations on Bombay suburban section and deployed as Booking Clerks. The 84 bodies will be posted at stations between CCB and Bhayandar.
- (ii) The person so transferred out will be kept as a separate cadre and maintain their lien for promotion etc., at CCB.
- (iii) The present strength of Higher graded posts falling vacant at CCB will be filled in from this cadre of 84 CCB staff. The lowest grade post thus falling vacant would be automatically converted at that stage to a post of Booking Clerks in the initial grade in the cadre of commercial clerks. Higher grade posts at CCB will not be reduced due to retirement, promotion etc., so that promotional chances of the present staff are not affected. These will be retained till the ultimate retirement of the present cadre of CCB staff till 1993
- (iv) To the extent feasible, elderly CCB staff beyond the age of 55 years may have some health problem, may be considered for table duties such as Ticket Stock Returns, Cash etc. This would, however, not apply to all elderly persons above 55 years of age.
- (v) Possibility of utilising some of the senior hands against vacancies in the Divisional Office would be considered".
(vide pages 83 of the Paper Book)

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10. The learned counsel of the applicants relied upon the judgment of the Supreme Court in Kumari Shrilekha Vidyarthi etc. etc. Vs. State of U.P. & Others dated 20.9.1990, JT 1990(4) SC 211 and contended that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law. The question whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. The Supreme Court has observed that "an obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness".

11. The learned counsel of the respondents stated that the aforesaid principle is unexceptionable. He, however, contended that there was nothing arbitrary or unreasonable in the action taken by the respondents culminating in the passing of the impugned order dated 6.9.1990.

12. The learned counsel of the applicants urged that the applicants have been working as Goods Clerks at CCB^{for} about 25 to 30 years, that they had opted for Goods category and were sent for training in that category, that there have never been transfers outside the CCB except on mutual arrangement or by way of punishment,

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that the promotion of the employees at CCB are also within the same Depot on the sanctioned staff pattern, that their transfer outside the CCB to various stations is illegal as it amounts to changing their cadre without their consent and that most of the applicants are above the age of 55 and they will have to undergo initial training in the Coaching category if the impugned order is implemented. The applicants have also referred to a proposal which was considered in 1981 for closing the CCB Depot by reducing the work and to the orders passed by the Supreme Court restraining the respondents move towards this end. A copy of the order of the Supreme Court has not, however, been placed on the record. They have also referred to a similar situation in Wadi Bunder Depot of the Central Railway. Employees of the Central Railway had been given an entirely different treatment and every care was taken to accommodate the employees and to ^{accede} to their demands by creating additional work and by transferring only the juniors to Coaching category.

13. The respondents have denied the aforesaid allegations and contentions. According to them, the traffic at CCB has decreased and as a result of works study conducted, it was decided to retain only 105 Class III employees at the CCB, thereby rendering 98 persons surplus. The respondents have also relied upon the minutes of the meetings held on 2.2.1990 and 3.9.1990 which were held

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under the auspices of the DRM in which the representatives of the recognised Railway Unions were also associated.

14. We see force and merit in the contention of the respondents. The decision was taken after a high powered committee has considered the staffing pattern at the CCB. This is the basis for declaring 98 persons in the category of Goods Clerks as surplus to the requirements at the CCB. In our opinion, the decision to deploy them as Booking Clerks at the suburban stations cannot be said to be arbitrary or unreasonable. During the arguments, we have been told that the implementation of the impugned order will not cause disruption of the family life of the persons concerned as they will continue to reside at the same place where they are presently staying and that their terms and conditions of service would also will not undergo any change adverse to their interests. We are not impressed by the contention of the applicants that the implementation of the impugned order will have the effect of transferring the applicants from one cadre to another as the applicants along with 105 Goods Clerks who have been retained at CCB Depot will to borne on a combined cadre with a common seniority list for the purpose of promotion.

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15. The respondents have stated that there is no scheme for giving any further intensive training to the applicants as they are experienced hands. They will only be imparted 2 weeks training which will enable them to pick up the Coaching work. They have also stated that the junior-most employees have been rendered surplus strictly as per their inter se seniority.

16. We see merit in the aforesaid contentions of the respondents.

17. The applicants have argued that the surplus staff of the Western Railway might be transferred to Wadi Bunder^{Depot} which is in the Central Railway. The respondents have stated that this is not feasible.

18. It would appear from the material on record that the respondents have passed the impugned order on the basis of the recommendation of a high powered committee and on policy considerations. Consequently, we do not see any legal infirmity in the impugned order dated 6.9.1990.

19. There is, however, another aspect of the matter. By the impugned order, the applicants have been directed to be relieved with effect from 10.9.1990. Some of the employees concerned are reported to have been served with the transfer orders while some others had not been served with such orders before the application was filed in the Tribunal on 14.9.1990. The Tribunal has also passed an interim order that the impugned order dated 6.9.1990 shall not be given effect to in respect of those

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employees who had not been actually served with the transfer orders. In the interest of justice and equity, the applicants who have not joined duty at the stations indicated in the impugned order dated 6.9.1990 should be given reasonable time to join duty and that the period till they join duty at the new stations should be treated as duty.

19. In the conspectus of the facts and circumstances of the case, we partly allow the application and order and direct as follows:-

(i) The applicants who have not been actually served with the transfer orders pursuant to the impugned order dated 6.9.1990 shall be given a reasonable time to join duty at the new stations to which they have been transferred. Such period should not be less than one month from the date of communication of this order. In case they have any personal problems or difficulties arising out of the order of transfer, they will be at liberty to make a representation to the respondents within a period of one week from the date of receipt of this order and the respondents shall dispose of the representations within a period of 2 weeks from the date of receipt of the representations.

(ii) The period from the date of issue of the transfer orders till the date the applicants join duty, excluding the period of any leave granted, will count

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as duty for all purposes ^a including [✓] their pay and allowances.

(iii) Subject to (i) and (ii) above, we uphold the validity of the impugned order dated 6.9.1990.

The application is disposed of with the above directions at the admission stage itself. There will be no order as to costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 9-11-1990.

P.K. Kartha
9/11/90
(P.K. KARTHA)
VICE CHAIRMAN (J)