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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2677/90
T.A. No. ~~XXXX~~

198

DATE OF DECISION 23.1.1992.

Shri R.K. Gupta, Applicant (s)

Shri R.K. Relan Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri P.S. Mahendru, Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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 ? *X*
4. To be circulated to all Benches of the Tribunal ? *X*

I.K. Rasgotra
(I.K. Rasgotra)
Member(A)

T.S. Oberoi
(T.S. Oberoi)
Member(J)

23.1.92.

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PRINCIPAL BENCH: NEW DELHI

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DATE OF DECISION: 23.1.1992.

SHRI R.K. GUPTA

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI R.K. RELAN, COUNSEL

FOR THE RESPONDENTS

SHRI P.S. MAHENDRU, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri R.K. Gupta, working as Goods Supervisor Northern Railway, New Delhi in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 has challenged the respondent No.3's order dated 4.4.1990, transferring him to the post of Return Checker in his office. The implementation of the said order is stated to have been pended on 1.7.1990 consequent to the initiation of the conciliation proceedings initiated by the Regional Commissioner (Central) Delhi under Section 22 of the Industrial Disputes Act. Despite the above, he is said to have been abruptly relieved from his post vide impugned order dated 22.9.1990 during the pendency of the conciliation proceedings.

2. The brief facts of the case are that the applicant was transferred from Goods Shed Shakur Basti on promotion as Goods Supervisor to New Delhi over four years ago, i.e., sometime in 1986 and he was employed on duties which had no public dealing. The applicant, however, submits

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that the Railway Board, respondent No.1 had issued instructions on 27.9.1989 enjoining the periodical transfers of the Railway Employees who are holding sensitive posts and who came in frequent contact with public/contractors/suppliers are required to be transferred at intervals of every four years. According to the applicant the post held by him did not come under the purview of the Railway Board's said orders, as he was holding a non-sensitive post. He further alleges that the respondents have been operating a pick and choose policy in the matter of periodical transfers and states that Shri Tirlok Chand Gupta was allowed to continue at Delhi Station Goods office on the basis of non-public dealing seat on the ground that he was holding a non-public dealing post whereas the applicant who falls in the same category has been picked up for transfer. He further alleges that he has been transferred with a view to accommodate Shri P.P. Chopra, Goods Supervisor, Shakur Basti. The applicant is stated to be the President of the Uttariya Railway Karamchari Union (URKU) and claims to be a protected workman and contends that his transfer has been made in a mala fide manner to hamper as a trade union activist. The respondents have further compromised his status as they have posted him as Return Checker in the D.R.M office, New Delhi from the post of Goods Supervisor. He further states that the office bearers of the other unions have been allowed to remain on the same seats for a period of 10 to 15 years. In support of his argument he has listed the names of 16 persons who have been at the same stations for long periods in the Commercial Department. He claims that being a protected workman he is prohibited by the statutory provisions of Section 33 (3) of the Industrial Disputes Act, 1947 read with Rules 61(2) and 61(4) of the Industrial Disputes Central Rules, 1957. He further states that an industrial dispute was

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raised in regard to his transfer and conciliation proceedings were initiated by the Regional Labour Commissioner (Central) resulting in pending of his transfer vide order dated 31.7.1990. He resumed duty on 21.7.1990 as Goods Supervisor after having remained on medical leave from 18.6.90 to 20.7.90. The respondent No.3, however, did not attend the conciliation proceedings initiated under Section 22 of the Industrial Disputes Act, 1947 despite being summoned on six occasions nor have the respondents responded to the notice issued by the Regional Labour Commissioner (Central) on 20.8.1990. In the meanwhile, the respondents have gone ahead with the implementation of the transfer order dated 4.4.1990 vide sparing memo dated 22.9.1990 (Annexure A-2) sent to him at his residential address. In the meanwhile the applicant is continuing on the sick leave. The main grounds on which the applicant has assailed the respondents order, transferring him from the post of Goods Supervisor, New Delhi to Return Checker are:-

- a) He being a protected workman could not be transferred particularly when the conciliation proceedings were in progress with the Regional Labour Commissioner (Central);
- b) His transfer is illegal as it affects and compromises his status, as no supervisory duties are attached to the post of Return Checker.

To fortify his case he has cited the Full Bench Judgement of the Tribunal in **Kamlesh Trivedi v. ICAR 1989 (1) SLJ CAT 642**. He further contends that his transfer is violative of Articles 14 and 16 of the Constitution, as other personnel working in the commercial department have been allowed to continue on his post from 10 to 15 years. In support he has cited the case of **B.S.Vijay Kumar vs. Regional Provident Fund Commissioner & Ors. 1981 (1) ATLT CAT 240**. He, therefore, prays that the order is liable to be quashed as it is vindictive in nature in accordance with **L.H. Sugar Factories & Oil Mills (P) Ltd. v. State of**

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U.P. 1961 (a) LLJ 686.

By way of relief he has prayed that impugned order at Annexure A-1 dated 4.4.1990, issued by D.R.M, Delhi transferring him from New Delhi Station to the post of Return Checker in D.R.M. office New Delhi and order dated 22.9.90, sparing him with the direction to report for duty as Return Checker (A-2) be quashed being void, ab initio, arbitrary and discriminatory. He has further prayed that he be deemed to continue in the post of Goods Supervisor Goods Shed, New Delhi on and from 22.9.1990 - the date on which the applicant was compelled to proceed on medical leave and the period from 3.10.1990 till the date the applicant is allowed to resume his duties as Goods Supervisor be treated as waiting for orders.

3. The respondents in their counter-affidavit have taken the stand that the application is not maintainable since the issues involving industrial disputes under the Industrial Disputes Act, 1947 are to be adjudicated by the said authorities. They submit that having raised the dispute for adjudication before the Regional Labour Commissioner (Central) if the applicant felt that the order dated 22.2.1990 sparing him from New Delhi Station was violative of the mandatory provisions of Section 33 (3) (a) of the Industrial Disputes Act, 1947 he should have sought remedy for the same from the Regional Labour Commissioner (Central) where the industrial dispute is pending adjudication. They further submit that since the conciliation proceedings are already pending before the Regional Labour Commissioner (Central) the applicant cannot file application in the Tribunal and seek multiple remedy. On merits they affirm that the applicant was performing supervisory duties dealing with public and was not assigned exclusively to non-public duties. The applicant is a Goods Supervisor and is subject to the periodical transfer in accordance with the Railway Board's

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orders, as the post of Goods Supervisor is categorised as a sensitive post. They admit that Shri Tirlok Chand Gupta was allowed to continue at his present station of posting as his posting was on non-public dealing seat and the said policy was not applied to him. Further the URKU is not a recognised union and as such its office bearers, if any, are not recognised by the Railway Administration nor are they declared as protected workmen. In the circumstances, the office bearers of an un-recognised union are to be transferred without following the procedure stipulated in the case of office bearers of the recognised union. The retention of the office bearers of the recognised unions ^{is} at certain stations/in accordance with the recognised policy of the Railway Board and in conformity with the union bye-laws as such persons are protected workmen. It is further averred that the representation of the applicant was duly considered and a decision was taken to transfer him from the sensitive post of Goods Supervisor. The respondents deny that the applicant's transfer from Goods Supervisor to the post of Return Checker involves any change of the seats of the applicant. They affirm that the post of Return Checker is a Supervisory post of commercial cadre and carries the same scale and emoluments as that of the Goods Supervisor and that both have the same status. They also deny that the transfer of the applicant in any way would affect his union activities. On the other hand, his posting as Return Checker would facilitate and enlarge his field activities. They further urge that in case the applicant is aggrieved by the action of the respondents in transferring him, he should approach the relevant authority under the Industrial Disputes Act, 1947. In case the said order is violative of Section 33(3) of the Industrial Disputes Act, 1947 read with Rule 61(2) and 61(4) of the Industrial Disputes (Central) Rules, 1957 the applicant may approach the appropriate authority under

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the Industrial Disputes Act, 1947 for redressal of his grievance. They, therefore, aver that the present application is pre-mature, as the conciliation proceedings relating to the transfer of the applicant are already pending adjudication with the Regional Labour Commissioner (Central). They further submit that the applicant is not attending his duties and, therefore, he shall not be entitled to his salary etc. until he resumes duties at the post to which he has been transferred. They have cited the case of **Jagdish Hare Nigam v. UOI in OA No.1259 of 1989** decided on 20th July, 1989 in support of their contention that a public servant holding a transferable post has no legal right for being posted at a particular station.

4. The applicant has filed a rejoinder.

The learned counsel for the applicant drew our attention to the channel of promotion and submitted that the post of Return Checker does not fall in the line of promotion for the Goods Clerks. He further submitted that the conciliation proceedings are no longer pending before the Regional Labour Commissioner (Central) and in fact an order has been passed and the proceedings have been concluded vide order dated 22.3.1991, copy annexed at Annexure AA-1 to the rejoinder. The RLC(C) in his order dated 22.3.91 has observed that:

"The President, Utter Railwlay Karamchari Union (Regd.), New Delhi has submitted an application vide letter dated 30.7.90 under Rule 61(4) of the Industrial Dispute Central Rules, 1957 before the Asstt. Labour Commissioner (C) New Delhi for declaration of protected workmen of the office bearers mentioned in the list enclosed with their letter.....

The Union representative on the final date submitted a revised list of 50 workmen. The union also produced the annual return submitted to the

Registrar of trade union Delhi.....

Analysing the contention of the union, I come to the conclusion that the union is a registered union and has applied to the management for declaration of the members of the union mentioned in the list enclosed with their letter dated 30.7.90 as protected workmen.....

Therefore, I exercise all the power vested vide Rule 61(4) of the Industrial Dispute Central Rules 1957. I hereby order that 39 office bearers of this union (mentioned below) are declared as protected workmen for the purpose of Section 33 (3) of the I.D. Act, 1947 for period of 12 months commencing from 25.4.90."

The name of the applicant appears at srl. No.21. A copy of the order of the RLC (C) has been sent to the General Manager, Norther Railway and to the President of URKU.

In view of the above orders of the RLC it is for the respondents to take further action, if any, as advised, in terms of Section 33 of the Industrial Disputes Act, 1947.


The only issue, therefore, which needs adjudication is whether the order of transfer of the applicant dated 20.2.1990 and subsequent order dated 4.4.1990 are in any way illegal, arbitrary or discriminatory?

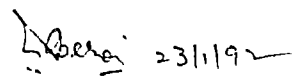
5. We have heard the learned counsel for both the parties and considered the matter in depth based on the material placed before us. The applicant has been transferred from New Delhi Station to the office of D.R.M as Return Checker in the equivalent grade. The respondents have also affirmed that the said post is a

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supervisory post. Further, admittedly the applicant was working at New Delhi Station as a Goods Supervisor. The said post is listed as a sensitive post in the enclosure attached with the Railway Board's letter No.ENG(1)/87/TR-/34/NFIR/JCM/DC dated 27.9.1989. Accordingly, the persons holding these posts are required to be transferred every four years. The extent of public dealing and non-public dealing in a post which is categorised as a sensitive post is a matter that the respondents are best equipped to decide. It is not possible for the Tribunal to categorise a post as non-public dealing post which is listed by the Railway Board as a sensitive post. We are, therefore, not inclined to accept the submission that the post of Goods Supervisor occupied by the applicant is a non-public dealing post. As far as his transfer is concerned, it does not involve any change of station, in fact it gives him a wider area of operation. In our view his transfer from New Delhi Station to commercial branch of the DRM office, New Delhi does not offend the provisions of Section 33 of the Industrial Disputes Act, 1947. The channel of promotion of the applicant also is not germane to the issue as he is not being promoted to a higher grade post but he has been given another post in the commercial department of equivalent grade. There is no doubt that when he becomes due for promotion to next grade, he would be considered by the respondents in his seniority unit.

In the circumstances, the application is devoid of merit and is accordingly dismissed with no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)


(T.S. OBEROI)
MEMBER(J)

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