

6

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. OA 384 of 1991

Date of decision: 21.8.91

Amar Singh

Applicant

Union of India & Others

Vs.

Respondents

PRESENT

Shri R.K. Kamal, counsel for the applicant.

Shri Romesh Gautam, counsel for the respondents.

CORAM

Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

The applicant, who is a railway employee and working as Chief Personnel Inspector in the Delhi Division on the Northern Railway, has by this Application under Section 19 of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act') prays for setting aside his transfer order dated 11.2.91 (Annexure A-1).

2. The applicant was working as Chief Personnel Inspector in the DRM's Office of Northern Railway, New Delhi, when he was transferred from the cadre of Delhi Division to the cadre of Ambala <sup>the</sup> Division on 11.2.91 by impugned order (Annexure A-1). According to the applicant, he was not yet relieved when he filed this O.A. challenging his transfer and, *inter alia*, praying for *ad interim* stay of that order. Shri Romesh Gautam, counsel for the respondents, in anticipation of a notice, accepted the notice on behalf of the respondents on 13.2.91 and he was heard on the interim relief as prayed for in the O.A. This Bench directed the same day that the operation of the impugned order dated 11.2.91 be stayed till further orders.

3. The main thrust of the applicant in his application is that the transfer order passed was arbitrary and contravened the constitutional provisions of Articles 14 and 16. The second contention

*Leave 26th*

is that the order passed by the DRM contravenes the transfer policy laid down in Annexure A-5. The third ground urged is that the DRM was not competent to pass the transfer order. Needless to say that the O.A. was filed in the Principal Bench on 12.2.91, without availing any departmental remedy. In para 6 of the O.A., the applicant contended that there is no time available for submitting any representation because the execution of the transfer order is likely to result in irreparable damage to his status.

4. Respondents No. 1 and 2 through their counsel, Shri Romesh Gautam, filed their returns and also M.P. No. 1014/91 praying therein for vacating the interim order of stay passed by this Tribunal on 13.2.91. As the pleadings were complete, the counsel for both the parties were heard finally on 13.5.91 on the merits of the O.A. as well as on M.P. No. 1014/91.

5. The preliminary objection raised by the respondents is that the provisions contained in Section 20 of the Act are mandatory and the applicant has not exhausted the departmental remedy available to him under the Service rules. Hence, this O.A. is premature. They further contended in the counter that the DRM was competent to pass the order of transfer with regard to Class III employees to which category the applicant belongs. They have filed Annexures R-1, R-2 and R-3 by which they contend that the powers were delegated to the DRM. Hence, the order of transfer is in accordance with the rules.

6. It would be relevant to observe that prior to filing of this O.A., the applicant had filed O.A. No. 1131/86 which was decided on 12.9.89. The judgment went in favour of the applicant and this Tribunal by its order directed with regard to promotion in the grade to which the applicant belongs. From these facts the applicant contends that this order of transfer is also malafide because the respondents were not happy with him for having filed the previous O.A. No. 1131/86.

*Parashuram*

7. It has also to be observed that the respondents in their reply nowhere controverted the fact with regard to Annexure A-5 filed by the applicant. This document pertains to cadre balancing of various cadres between Ambala Division and Delhi Division as per the prescribed percentage of Railway Board.

This document also deals with the fact that to avoid transfer of unwilling staff from Delhi Division to Ambala Division and vice versa and to balance the cadre position of different categories, some steps have to be taken and one of them is that the unwilling staff will not be transferred from one Division to another with a view to balancing the cadre position. Complete silence of the respondents with regard to Annexure A-5 is a bit surprising.

8. The preliminary objection raised by the respondents is that without availing the departmental remedy of filing the representation, this O.A. is premature and this Tribunal shall not interfere ordinarily with the departmental orders which are always made keeping in view the interest of the Department. In Gujarat Electricity Board vs. Atmaram Sungomal Poshani (AIR 1989 S.C. 1433) the Hon'ble Supreme Court observed:

"Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer."

This cardinal rule has been laid down with a view that though the relationship of the servant with the employer is of the status and not contractual, yet the employer always transfers his servants keeping in view the administrative convenience and efficiency of a Department. If the transferred servant is in difficulty - personal, legal, financial and other conveniences - then the Government servant is required to place his difficulty before his employer who shall sympathetically and impartially consider these difficulties and decide whether the servant should be transferred or not. In Gujarat Electricity Board (supra), stress has been laid upon the representation to be filed by the Government servant on getting the transfer order, if he is in any way feeling any difficulty. At the first instance,

it is by way of representation that he should inform his superiors with regard to his difficulty and if he is not satisfied then and only then, he can knock the doors of the law courts which are always open for him. This matter also came for adjudication before the Full Bench of this Tribunal in the case of B. Parameshwara Rao vs. The Divisional Engineer, Telecommunications, Eluru and another (Vol. II (1990) ATLT (CAT) 257). The Full Bench after considering all the case laws and all the aspects, arrived at the conclusion that ordinarily the Tribunal shall not entertain any O.A. under Section 19 unless the departmental remedies as provided in Section 20 of the Act have been exhausted. Shri B.S. Maine in his book "Railway Establishment Rules and Labour Laws" observes at page 104 that genuine difficulties of a Government servant can certainly be brought to the notice of the administration. The sole intention of the Legislature appears, while enacting Section 20 of the Act, that the Government servant who is aggrieved by any order of his superiors must approach his own employers first and then if he is still aggrieved after exhausting all the available departmental remedies, then he can come to the Tribunal under Section 19 of the Act.

9. The grievances of the applicant have been mentioned hereinabove. If these grievances were brought to the notice of his immediate superiors by way of representation, then they were bound to consider these difficulties of its employee and could have granted the remedy to him. The scope of Section 20 of the Act was also considered in the case S.S. Rathore vs. State of Madhya Pradesh (AIR 1990 S.C. p.10). In paras 20 and 22 of their judgment, the Supreme Court considered the provisions of Section 20 of the Act and had finally opined that where an appeal or representation has been preferred, then the applicant has to wait for the decision and then come to the Tribunal for redressal.

10. The points raised in this O.A. by the applicant can well be considered departmentally and if the applicant does not get justice from that venue, then he can approach the Tribunal for redressal under Section 19 of the Act.

21/1

10

11. Shri R.K. Kamal, learned counsel for the applicant, has contended that as the application was admitted by this Bench on 13.2.91, the objection under Section 20 at this stage cannot be taken because Section 20 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him. By this, Shri Kamal wants to convey that because the O.A. has been admitted by this Bench, this Bench is precluded from considering objections raised with regard to Section 20 of the Act. This argument of Kamal is not tenable because an application is admitted only when a *prima facie* case is brought to the notice of the Tribunal, but so far as the provisions of Section 20 are concerned, they are mandatory and the applicant is bound to follow them before he files an application under Section 19 of the Act. Merely because this Bench has admitted the O.A. for consideration for finally hearing, the respondents are not debarred from raising the objection under Section 20 of the Act. The use of the word "ordinarily" in Section 20 of the Act indicates that in extraordinary circumstances, the judicial discretion of the Tribunal is unfettered in the interest of justice to do away with the provisions of Section 20 of the Act. No extraordinary circumstances have been brought to our notice either in the pleadings of the applicant or during the arguments of the learned counsel at the bar. We are therefore, of the opinion that the adjudication of this O.A. would not be just and proper before the applicant avails of the departmental remedies as he is required/<sup>to</sup>do under Section 20 of the Act. We are, therefore, of the view that the matters raised in this O.A. by the applicant should first be brought to the notice of his departmental superiors and if he is still aggrieved by their decision, then he can file an application under Section 19 of the Act. The present O.A. is, thus, in our view, premature and is, therefore, dismissed. Parties to bear their own costs. Stay order passed on 13.2.91 also stands vacated.

(P.C. JAIN) 21/9/91

MEMBER (A)

Ranking 21.8.91  
(RAM PAL SINGH)

VICE-CHAIRMAN (J)