

A3
1

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 1660 of 1987 (C.Misc.Writ Petition
No.990 of 1985)

A.A.Siddiqui ... Applicant

Vs.

1. Union of India
2.Dy.Chief Mechanical Engineer(W),
Northern Railway, Loco Shop
Charbagh, Lucknow ... Respondents.

CONNECTED WITH

1. Registration T.A.No.1661 of 1987 (W.P.No.991 of 1985)

K.S.Shukla ... Applicant

Vs.

Union of India and another ... Respondents.

2.Registration T.A.No.1662 of 1987(W.P.No.992 of 1985)

Ram U.Advani ... Applicant

Vs.

Union of India and another ... Respondents.

3. Registration T.A.No.1663 of 1987 (W.P.No.993 of 1985)

Gajraj Singh ... Applicant

Vs.

Union of India and another Respondents.

4.Registration T.A.No.50 of 1987 (W.P.No.1337 of 1985)

R.K.Misra and 5 others ... Applicants.

Vs.

Union of India and another ... Respondents.

AND

5. Registration O.A.No. 608 of 1987

K.D.Dubey ... Applicant

Vs.

Union of India and another ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

The ~~first~~ ^{first} above mentioned five transferred applications are writ petitions under Article 226 of the

A3
2

.2.

Constitution of India and have been received by transfer from the Lucknow Bench of the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985. The sixth case is an application under Section 19 of the Administrative Tribunals Act. The applicants in all these cases are posted in the Time Office of the Locomotive Workshop Charbagh as Head Clerks and have challenged the validity of their transfer orders from the Time Office to other offices of the Northern Railway at Lucknow. As common questions of facts and law arise in these cases, they were heard together on the request of learned counsel for the parties and shall be governed by this judgment.

2. The applicants in these cases with the exception of K.S.Shukla applicant in T.A.No.1661 of 1987 were initially appointed on the post of Clerk/Time Keeper in the Time Office of the Additional Chief Mechanical Engineer (W) Northern Railway, Charbagh Lucknow and later on promoted as Senior Clerk/Sr.Time Keeper in the said office from time to time. Some of them were later on promoted as Head Clerk in the Time Office. There was a restructuring of the existing cadres of categories 'C' and 'D' in the Railways under letter dated 16.11.1984 of the Railway Board and thereafter, vide staff order no.51 dated 19.1.1985, the respondent no.2 Dy.Chief Mechanical Engineer (W) transferred the applicants A.A.Siddiqui, Gajraj Singh, Ram U.Advani and R.K.Misra and 5 others (applicants in T.A.Nos.1660 of 1987, 1662 of 1987 1663 of 1987 and 50 of 1987) from the post of Head Clerk in Time Office to General Section, Black Smith Shop Office or to an office in other workshops in the same capacity. The applicant K.S.Shukla (applicant in T.A.No.1661 of 1987)

was initially appointed as a Clerk in the office of District Controller of Stores, Alambagh Lucknow and later on was transferred to Time Office Charbagh on the post of Clerk/Time Keeper and was thereafter promoted as Sr.Clerk/Sr. Time Keeper there. On restructuring of the cadres, he was promoted as Assistant Superintendent by staff order no.51 dated 19.1.1985 and under staff order no.138 dated 23.2.1985 he was ordered to be transferred to the System Technical School Office in the same grade at Lucknow by the respondent no.2. The applicant K.D.Dubey (in O.A.No. 608 of 1987) was initially appointed as a Clerk in the Time Office at Lucknow and later on he too was promoted as Head Clerk w.e.f.1.1.1984 and by his staff order no.462 dated 22.6.1987 the respondent no.2 ordered his transfer in Erecting Shop out side the Time Office in the same capacity.

3. The case of the applicants is that in accordance with the directions of the Hon'ble Supreme Court in the case of Works Manager Central Railway Jhansi Vs. Vishwanath and others (A.I.R.1970 S.C.-488) the Railway Board vide its letter no. E(II)70-80/OAT/FAC/1-2 dated 25.7.1970 directed all the General Managers of the Indian Railways that the Time Keepers employed in the workshops are entitled to the benefits of the provisions of the Factories Act. Prior to the implementation of the decision of the Hon'ble Supreme Court, the applicants were governed by the Hours of Employment Regulation and had to work between 9.30 A.M. and 5 P.M. i.e. for 39 hours while in the Time Office, the working hours are from 7.30 A.M. to 5 P.M. i.e. 45 hours per week. Time Keepers employed in the workshops of the Railways are treated as essential staff and are entitled to priority in the matter of grant of railway accommodation in comparison to Clerks in other Sections of the workshops.

Under the provisions of the Factories Act, a worker is entitled to overtime and night duty allowance which benefits are not available to other clerical staff who are not workers within the meaning of the said Act. Under para 410 of the Indian Railways Establishment Code, Time Keepers are under the administrative control of the senior subordinate designated as Head Time Keeper and they work under the administrative control of the Sr. Accounts Officer. Thus, the Sr. Accounts Officer alone was competent to transfer the applicants from one office to another and the respondent no.2 has no power or authority to transfer the applicants from Time Office to any other office. The clerks in shop 'A' of the C&W and Loco shops of the Railways are not treated as workers under the Factories Act while the applicants are being treated as workers under the law. They are, therefore, a distinct category and are not subject to the provisions applicable to the railway employees under Chapter VI-A of the Indian Railways Act. The applicants are thus, not transferable from Time Office to any other office of the Railway. It has also been alleged that some persons junior to the applicants have been retained in Time Office while the applicants have been picked up for transfer which is discriminatory and illegal. It may be mentioned here that the orders of transfer of the applicants from Time Office to other Sections passed by the respondent no.2 could not be implemented so far due to the interim orders passed by the High Court or this Bench.

4. The respondents have contested the case. A proper counter affidavit was however filed only in T.A. No.50 of 1987 in the High Court. That too was not received here with the record of the case and the respondents, therefore, filed a copy of the said counter affidavit here with the leave of the Bench. It was stated therein that the applicants were initially appointed as Clerks and promoted on the basis of seniority position in non-personnel seniority group comprising of Time Office Clerical staff too. They were never appointed as Time Keepers nor promoted

#3
5

.5.

as Sr. Time Keepers or Head Time Keepers. They admitted the fact that the Clerks working in the Time Office have been treated as workers for the purposes of overtime but stated further that it does not confer on them any right of permanent retention in Time Office as there is a combined seniority of whole clerical staff working in various Sections/Offices including the Time Office called non-personnel group. The benefits and the facilities are not part of the emoluments and cannot be claimed as of right.

On the basis of the benefits derived by the applicants as workers, the applicants cannot challenge the validity of their transfer order. The transfer of the applicants from one Section to another in the same office premises is without any loss of seniority or pay or rank and orders of transfer being administrative are not discriminatory as alleged by the applicants. The decision to transfer the applicants was arrived at between the administration and both the Trade Unions in order to distribute the benefits equitably to the staff in each office/section with maximum stay in the Time Office so that the officials working in other branches could have the benefits of their transfer ~~from~~ the Time Office. The night duty allowance is admissible to all staff in terms of the Railway Board's letter dated 9.3.1973. The grant of over time allowance is not a matter of right as over time is granted only on the basis of extra work. Time Office does not consist of separate seniority group but a part of non-personnel seniority group which consists of several sections, shops, offices, etc. The applicants belong to clerical cadre of non-personnel seniority group and their posting in the Time Office was a matter of chance and not as of right. Transfer is a part of service and the Clerks working in the Time Office can be transferred and posted anywhere in that group in the Railway. The administrative control of Sr.Accounts Officer in Time Office is in respect of day to day working but the executive control vests in Additional Chief Mechanical Engineer (for short ACME). The orders of transfer issued by the ACME are, therefore, perfectly in order. The loss or diminution or increase in

allowances is not relevant in the matter of transfer as the applicants are not being deprived of their chance of future promotion or they have not been subjected to any loss in their pay thereby. The clerks in the Time Office have no separate seniority over the clerks working in other sections. The applicants, therefore, cannot challenge the validity of their transfer, which has been made in accordance with rules.

5. In other cases, the replies/counters have been filed by Sri G.P. Agarwal Advocate, appearing on behalf of the respondents. They neither bear any verification nor any affidavit in support thereof has been filed. According to rule 12 of the Central Administrative Tribunal (Procedure) Rules, 1987, a reply has to be signed and verified as a written statement by the respondents or any other person duly authorised by him in writing in the same manner as provided under order VI Rule 15 of the Code of Civil Procedure. The replies filed by Sri Agarwal are not in accordance with the rules and, therefore, cannot be treated as replies in the eye of law. The applicants have filed rejoinders in two cases reiterating their allegations made in the petitions.

6. It is not in dispute in these cases that at present all the applicants are working in clerical cadre in the Time Office of the Locomotive Workshop Charbagh Lucknow and they all enjoy the status and privileges of workers under the Factories Act. It has not been disputed on behalf of the respondents that in their capacity as workers, the applicant are ~~not~~ entitled to the privilege of getting over-time allowance which is not permissible to other clerical staff employed by the Indian Railways. The respondents have, however, ~~disputed the fact~~ ^{stated} that the night allowance payable to the applicants as workers has also been granted by the Railway Board to certain other categories of the staff working

in the Railways vide their circular letter no. 39-C/4/VIII(Eiv) dated 16.3.1973. According to the applicants, they are further entitled to certain more privileges on account of their working as workers under the provisions of Industrial Disputes Act, Payment of Wages Act etc., and as such, the clerical staff working in the Time Office of the Railways is a separate class and is entitled to a treatment distinct from other class of the Railways. Their main contention in these petitions, therefore, is that the applicants, who come under the definition of workers cannot be transferred by the respondents to any post so as to lose their status and privileges enjoyed by them as workers. In support of this contention, they have placed their reliance on a decision of a Division Bench of the Rajasthan High Court in State of Rajasthan Vs. Kailash Chandra Jain and another (1973(1) S.L.R.-183), in which the Rajasthan High Court had quashed the transfer of a conductor made by the State of Rajasthan to Malaria Department as a surveillance worker on the ground that the transfer had converted a workman under the Industrial Disputes Act into a non-workman. The main question arising for determination in these cases, therefore, is whether the applicants working on the post of workers within the meaning of Factories Act can be transferred to the posts of non-workmen in other Sections of the Railways? Rule 226 of the Indian Railway Establishment Code Vol.I provides that ordinarily a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and it shall be open to the President and in the case of group 'C' and group 'D' railway servants to the General Manager or a lower authority to whom the powers are redelegated, to transfer the railway servant to any other Department or railway or railway establishment including a project in or out of India. Rule 227 further provides that a competent

.8.

authority may transfer a railway servant from one post to another but shall not change his lien unless the transfer is made on account of any inefficiency or misbehaviour or on the request of the railway servant himself. These rules, thus, give wide powers to the railway administration to transfer a railway servant from one railway to another railway or from one establishment to another establishment or department of the railway including a Project in or outside India.

7. The respondents have further stated in paras 4, 7 and 10 of their counter affidavit in Registration T.A. No. 50 of 1987 that the applicants were initially appointed as Clerks and later on promoted as Senior Clerks and thereafter as Head Clerks on the basis of their seniority position in non-personnel seniority group and they were never appointed as Time Keepers or promoted as Senior Time Keepers or Head Time Keepers. It has been further alleged that all the clerical staff working in Time Office, Shop Offices and various other Sections of non-personnel seniority group are borne on a combined seniority list for the purposes of confirmation and promotion to higher grade. The benefits and facilities claimed by the applicants as workers are not part of their emoluments and cannot be claimed as of right and it is merely a chance that on account of being posted in the Time Office they receive such benefits. In the rejoinder filed in that case, the applicants did not dispute the fact that there is a combined seniority list of the entire clerical staff working in Time Office and other Sections of the Northern Railway and the applicants had ^{obtained} ~~opted~~ their promotions on the basis of this combined seniority. This being the position, the claim of

the applicants regarding their belonging to a separate category of the clerical staff is, therefore, not tenable and, in our opinion, their services are liable to be transferred to other Sections on equivalent post.

8. In the case of B.S.Barera Vs. Union of India (A.I.R. 1969 S.C.-118), the Hon'ble Supreme Court had held that the Railway Establishment Code has been issued by the President in the exercise of his power under the proviso to Article 309. Under rule 157, the President has directed the Railway Board to make rules of general application to non-gazetted railway servants under their control. The rules, which are embodied in the schemes framed by the Board, have full effect of law. The status of workers was conferred on the clerical staff working in the Time Office of the railway workshops by the Railway Board under their letter dated 21.10.1970 in the light of the decision of the Hon'ble Supreme Court in the case of Works Manager, Central Railway Vs. Vishwanath (A.I.R. 1970 S.C.-488). There is nothing in the said letter or in the decision of the Hon'ble Supreme Court ^{to suggest} that the clerical staff enjoying the status of workers in the Time Office cannot be transferred to any other office. Thus, in view of specific provisions of transfer of the railway employees from one railway to another and from one railway establishment to another railway establishment, as pointed out above, the applicants cannot complain against their impugned transfer orders merely because they will lose their status and benefits enjoyed by them as workers in the Time Office on account of their chance posting in the said office.

9. In B.Baradharao Vs. State of Karnataka (A.I.R. 1986 S.C.-1955), it was observed that it is well understood that transfer of a Government servant, who is appointed to

43
6

.10.

a particular cadre of transferable post from one place to another is an ordinary incident of service and, therefore, does not result in any alteration of any of the conditions of service to his disadvantage. A Government servant is liable to be transferred to a similar post in the same cadre as a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post. It has neither been alleged nor brought to our notice that the applicants will in any way suffer the loss of their pay or any other allowances usually admissible to the incumbents of the equivalent posts in the offices of the Railway other than Time Office on their transfer. We are further of the view that over-time allowance is paid merely to compensate a worker for the extra service and labour put in by him and it cannot be claimed as of right if he is not required to do any work beyond his prescribed working hours. Further, there being a common cadre of non-personnel staff of the Railway, the staff is liable to be transferred from one Section to another till some posts are declared non-transferable by the competent authority. The decision of the Rajasthan High Court relied upon by the applicants is distinguishable as the rules of their service are different than the rules on which the said decision is based. We are, therefore, unable to give any benefit of this decision to the applicants.

10.

We do not find any force even in the contention of the applicants that under para 410 of the Indian Railway Establishment Code, they being under the

42
11

.11.

supervisory control of the Senior Accounts Officer, the respondent no.2 was not competent to transfer them from Time Office to other offices. The powers of the respondent no.2 are much wider than the powers of the Senior Accounts Officer under whose supervisory control the applicants are working in Time Office and in our opinion, there is no lack of jurisdiction or competence on the part of the respondent no.2 in making the impugned transfers in these cases. There is also no question of any discrimination against the applicants on the ground that the persons junior to them are being retained in the Time Office as the impugned transfers have not been made on the ground of seniority but have been made mainly on the ground of the long stay of the applicants in Time Office in order to give similar benefits of workers to other members of the non-personnel staff working in the Railway who could not derive the same earlier. Thus, having carefully considered all the aspects of the case of the applicants, we have not been able to convince ourselves that the impugned transfer orders suffer from any illegality, lack of jurisdiction or there has been any discrimination against the applicants.

11. All the petitions are accordingly dismissed without any order as to costs. The interim stay orders granted in these cases are hereby vacated.

[Signature]
10.3.80

MEMBER (A)

[Signature]
10/3/88
MEMBER (J)

Dated: 10.3.1988
kkb.