

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD.

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Date of order 18.7.94

O.A.No.808/94

Kamta Prasad &
6 others

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Applicants

(By Shri S.S.Sharma,
Counsel)

Vs.

1. Union of India,
through Chief Admn.
Officer/Constrn.,
N.Rly., Kashmere
Gate, Delhi-6.

2. The Deputy Chief
Engineer/Constrn.,
N.Rly.,
Allahabad.

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Respondents

(None)

HON'ble MR. JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

J U D G M E N T .

(By Hon. Mr. Justice B.C. Saksena, V.C.)

The application is directed against the order transferring 7 applicants out of their division i.e. Allahabad Division to Ambala Division, by order dated 4-5-1994 passed by Deputy Chief Engineer (Construction), N. Railway, Allahabad.

2. The brief facts averred in the petition are that the applicants were initially appointed as Highly Skilled Mistry in Class III Supervisory post in the grade of Rs.330-560 on daily wage basis. It is averred that as per the judgment of the Hon'ble Supreme Court in the case of Indrapal Yadav 1985 (2) S.C.C. 648 and Railway Board's letter in compliance thereof dated 11-9-86, the applicants were subjected to a trade test/suitability test, for appointment to the post of highly skilled mistry.

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The applicants allege that after the prescribed test ~~of~~ ⁺ medical fitness the applicants were regularised and confirmed as temporary highly skilled mistry in the scale of Rs.380-560/- (R.S.) with effect from various dates.

3. The applicants had earlier filed O.A.No.572/93 which is alleged to have been admitted and was pending. The main relief in the said O.A. was for a direction to the respondents to regularise the applicants as Sub-Overseer Mistry grade Rs.1400-2300. It is the case of the applicants that the respondents, with malafide motive on account of the aforesaid O.A. having been filed, transferred the 7 applicants by order dated 4-5-94 to Jammu Udhanpur Railway Line Project.

4. The impugned order has been annexed as Annexure A-1. which states that in terms of order dated 29-4-94, of CAO(C), New Delhi, and due to reduction in scope of work in this unit and keeping in view the urgency of in Jammu Udhanpur Railway Line Project (JURL), the applicants, temporary highly skilled mistries, are temporarily shifted to work for 6 months in the same capacity and grade.

5. The learned counsel for the applicant urged that in the Allahabad construction unit, about 520 staff of different categories are working. Out of them 67 are office and field Class-III staff. The learned counsel contended that the reasons set out in the impugned order is clearly an excuse and a pretext to get the applicants transferred out of the division as they have approached the Tribunal for regularisation of their services.

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6. Before dealing with these questions it would be appropriate to first determine the status which the applicants hold. As noted herein above, though it has been alleged that the applicants, in the light the decision of the Hon'ble Supreme Court in the case case of Indrapal Yadav and Railway Board's letter issued to implement the said decision, have been regularised and confirmed as temporary highly skilled mistry in the grade of Rs.380-560, this averment does not inspire the precedence. At the same time it is alleged that in the O.A.No.572/93, which is pending for consideration, these very applicants have claimed/for relief a direction for their regularisation/absorption as Sub-Overseer Mistry in Class III posts. In the present petition also, ~~on~~^{in one of} the ground it has been pleaded that the impugned order of transfer is against the 'service conditions of the applicants' as their service is not transferrable till they are regularised and confirmed on their posts i.e. H.S.Mistry/Sub-Overseer Mistry grade Rs.1400-2300 (RPS)". The relief sought for is also to the same effect. It has been prayed that the operation of transfer order be stayed "till the services of the applicants are regularised/confirmed as Sub-overseer mistry grade Rs.1400-2300 (R.P.S)."

7. Evidently, therefore, in view of the relief sought and the ground raised, the averment in paragraph 4.3, that the applicants have been regularised and confirmed as temporary highly skilled mistry is palpably false. The applicants were only declared suitable for the purpose of conferring temporary status

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upon them. They have not so far been regularised or absorbed.

8. The next question, therefore, is whether merely by reason of a claim that the applicants' petition seeking for their regularisation being pending, their transfer order becomes illegal. Similar question had arisen before me in Hriday Mahto & Others Vs. Union of India and Others in O.A. No.372/93 (C.A.T., Patna Bench). The said case was decided on 4-2-1994. In the said decision it was held, after considering the provisions of rule in para 2501 of the Indian Railway Establishment Manual, which defines 'casual labour' and also considering the paragraph 2511 of the manual, will provide for all rights and privilèges admissible to casual labourer who have attained temporary status. It was noted that paragraph 2511 of the Manual provide that such casual labourer who have attained temporary status would be entitled to all the rights and privileges admissible to temporary Railway servants as laid down in Chapter XXIII of the said Manual. Rule 246 of the Indian Railway Establishment Code have also noted and it was held that it would apply to such a casual labourer who have attained temporary status and thus they can be transferred by the administration in the exigencies of service. The said decision applies, in full force, to the facts of the present case also. The applicants have been conferred with temporary status and thus, by reasons of Rule 246 of the Indian Railway Establishment Code, Vol.I, they can be transferred in the exigencies of service.

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9. The next question which still needs to be considered is whether, even if the applicants can be transferred, the order of transfer, in view of the facts indicated in the O.A., can be said to have been passed for collateral purpose.

10. The learned counsel for the applicant, in support of his submission, cited a decision reported in A.T.R. 1986 CAT page 304, K.K. Jindal Vs. General Manager, Northern Railway and others. It is a decision by C.A.T., Principal Bench, New Delhi.

11. The proposition of law enunciated in the said decision is that transfer is an exigency of service and may be made for administrative reasons and the employer is the best judge in this regard. After noting that a transfer order can uproot the family or bring destruction to harmony of the family set up, it was observed that it is on account of these facts the transfer orders which have been made by way of punishment are quashed by Courts. It was further observed that the plea of exigency of administration and public interest must take precedence over individual inconvenience or hardship.

12. The proposition of law enunciated in the said decision is ~~an~~ ^{an} exceptional. The scope of judicial review against orders of transfer, by now, is finally settled through decisions of the Apex Court. The scope for judicial review is confined to the order being malafide or violative of any statutory provision. In K.K. Jindal's case, in view of the averments in the C.A., wherein it was stated that the petitioner was

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indulging in undesirable activities and because there is cloud over his integrity and, therefore, it was held that the transfer was punitive in nature and was set aside.

13. In the present case it has been pleaded that the applicants have been picked out for discriminatory treatment by reason of their having approached the Tribunal for regularisation of their service.

There is no allegation of malafide against anyone nor anyone has been impleaded in the personal capacity. On the basis of the said facts alone, it is not possible to hold that the impugned order has been passed by way of punishment or for collateral purpose. It does not violate any legal rights of the applicants.

14. In view of the discussions herein above, the O.A. lacks merit and the same is accordingly dismissed summarily.

B. Saksena

VICE-CHAIRMAN.

Dated: 18/7/94, Allahabad.

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