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O.A. No. 49/86; 53/86; 108/86; 217/86; 232/86;
238/86; 245/86; 299/86; 356/86 & 376/86

CORAM : Hon'ble Mr. P.H Trivedi, Vice Chairman
Hon'ble Mr. P.M Joshi, Judicial Member

8.12.1986

The short common point at the stage of admission of the applications is whether an association can claim to be aggrieved and be an applicant for relief. The Administrative Tribunals Act has no definition for 'person', but it specifically excludes certain persons from the application of this Act, as stated under section 2 thereof. Under section 14 of the Act, all the jurisdiction of the powers and authority exercisable by all courts (except the Supreme Court) in relation to specified matters are brought within the jurisdiction of the Tribunal. The question arises whether any association can have any grievance on account of any order of the Government or any competent authority, except as it affects individual members thereof, in their capacity as servants of the Government or of the organisations to which the jurisdiction of the Tribunal is extended. If such an association can apply for relief, it is contended that this Tribunal can grant such relief only in respect of specific individuals in their capacity as employees of the Government or such organisations. It is, therefore, contended that associations as such cannot be aggrieved and cannot seek or obtain relief in the name of associations. We decided that as this matter was one of common interest and is likely to arise in a number of cases, it would be desirable to hear the learned advocates before any decision in the matter is taken. Accordingly, some learned advocates, Mr. K.K. Shah, Mr. Vyas, Mr. Xavier, Mr. T.N. Shah, Mr.

J.D. Ajmera, Mr. P.M. Ajmera, Mr. V.S. Mehta, gave us their views and Mr. N.J. Mehta furnished a detailed note citing law, and decisions in some cases and views of reputed authors for our guidance. We are grateful to them for this assistance.

2. Further we have been much assisted by the Supreme Court judgment in Bar Council of Maharashtra vs. M.V. Dabholkar in A.I.R. 1975 S.C. 2092, and by a judgment of the Jodhpur bench of Central Administrative Tribunal, Rajasthan Anushakti Karamchari Union and Another vs. Union of India and Ors. in A.T.R. 1986(2) C.A.T. 59, which deal with this question.

3. As the Administrative Tribunals Act, 1985, has no provision containing the definition of 'person' we have to refer to the General Clauses Act, in which the word 'person' is said to include company or association or body of individuals, whether incorporated or not. This definition is not confined only to natural persons. This definition would govern the Central Administrative Tribunals Act, in interpreting 'a person aggrieved' in section 19 of the Act.

4. Section 14 of the Administrative Tribunals Act, transfers the jurisdiction of the High Court in specified service matters to Administrative Tribunals constituted under the Act. Now the jurisdiction of the High Court extends to associations if they bring up any service matter by which they feel aggrieved before it. If the view is taken that service associations cannot come up before the Tribunal, they would then have to go to the High Court, and to that the transfer of the entirety of the jurisdiction of service matters sought to be done under section 14 of the Administrative Tribunals Act, would be

and modified. This is contrary to the expressed purpose and meaning of that section of the Act.

5. In a large number of cases, the balance of convenience would lie in allowing the associations to bring up matters on which either the whole class of the relevant category of Government or other servants is aggrieved to be brought through the application of the associations for relief before the Tribunal. No doubt relief can be given by the decisions of the Tribunal, eventually only to individuals, who compose or constitute the association, but if a grievance arises in respect of the whole class and if a point involving all of them is raised in the application of the association, it would hardly be conducive to appropriate and speedy disposal, if the applications only by individual members of the association are entertained by the Tribunal.

6. It has been noticed that in many cases, the course of action followed has been to join the association as an applicant along with an individual, employee who, on the facts of the case, is directly affected by the impugned order. This is a wholesome practice and may be adopted wherever possible, for the reason that it enables the Tribunal to look at both the common questions involved regarding the relevant class of the Government servants, and also the specific grievance of an individual Government servant, the latter serving as an illustration or giving factually a focus to the general question involved.

7. While conceding that there is no bar against associations coming up before the Tribunal as legal persons aggrieved for seeking appropriate relief on service matters to which the jurisdiction of the Tri-

bunal extends, a word of caution may be necessary, so that in fit cases the Tribunal's discretion in allowing associations to make such applications is not entirely excluded. There may be cases in which Government servants or servants of organisations to which the jurisdiction of the Tribunal has been extended, might have more than one associations and individual members of that service might belong to different associations. It may also sometimes be the case that individual members of the service might change their affiliations to different associations. In such cases, the possibility of conflicts of interests and difficulty of identifying which individual belongs to which organisation and which association speaks for which members in any matter coming up before the Tribunal, may not be excluded. As things are, too often service associations break up and coalesce and again break up. This, therefore, is not an academic point or hypothetical contingency only. In such cases, we consider that the Tribunal has a right to look into the question of whether the applicant association actually has common interests and the representative capacity which gives it the status of a legal person aggrieved and which is in the facts of the case is not rendered ambiguous, doubtful or controversial. If the Tribunal comes to the finding that in such cases, the needs of justice and of expeditious disposal are not likely to be served, the Tribunal could well refuse to entertain such an application from such an association and require applications individually from persons or employees aggrieved by the impugned order.

8. To conclude it is held that the word 'person aggrieved' should be widely interpreted so as to include associations or unions. The Tribunal could consider the entertainment of their applications if common questions

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are involved and the balance of convenience may be found to lie in disposing off the applications by such associations instead of having them from individual members thereof. In cases in which either the representative capacity is doubtful or the membership of the associations is controversial, or there is any ambiguity in common questions involved, or common relief to be provided or the representative status, the Tribunal may require that the applications is made by aggrieved individual employees. On this abasis, individual petition will be heard on merits.

P.H. Trivedi
(P.H. TRIVEDI)
Vice Chairman

S.M.J.
(P.M. JOSHI)
Judicial Member

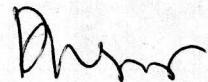
O.A./49/86

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CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. P.M. Joshi .. Judicial Member

28/10/1988

Neither party nor its advocate present. The petition be admitted. As the reply has been filed and the case is ready for hearing, the case be posted on 22nd December, 1988 for final hearing.



(P H Trivedi)
Vice Chairman


(P M Joshi)
Judicial Member

*Mogera

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O.A./49/86

CORAM : Hon'ble Mr. P.M. Joshi : Judicial Member

Hon'ble Mr. D.K. Chakravorty: Administrative Member

02/05/1989

Mr. D.M. Thakkar, the learned counsel for the petitioner requests for time, Mr. B.R. Kyada for the respondent has no objection. Allowed. Registry to fix the case for hearing after vacation.


(D K Chakravorty)
Administrative Member
(P M Joshi)
Judicial Member

*Mogera

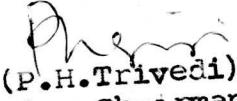
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O.A./49/86

Coram : Hon'ble Mr. P.H. Trivedi : Vice Chairman
Hon'ble Mr. P.M. Joshi : Judicial Member

20/6/1989

Mr.P.M.Thakkar learned advocate for the applicant not present. Mr.B.R.Kyada, the learned advocate for the respondent present. The applicant to make alternative arrangement if his advocate is unable to attend in the next time, otherwise the case liable to be dismissed for default. The case be posted on 29/6/1989 for hearing.


(P.H.Trivedi)
Vice Chairman


(P.M.Joshi)
Judicial Member

a.a.bhatt

1. All India Station Masters' Association, a registered Trade Union, being Regn. No. 1359, having its Divisional Office at Talod, Dist. Himmatnagar.
2. Shri B.K. Sharma, Divisional Secretary, All India Station Masters' Association, working as Assistant Station Master at Talod, Dist : Himmatnagar.

...Applicants

Versus

Union of India
 (Notice to be served through the
 General Manager,
 Western Railway,
 Churchgate,
 Bombay.)

...Respondent

Coram :	Hon'ble Mr. P.H. Trivedi	:	Vice Chairman
	Hon'ble Mr. P.M. Joshi	:	Judicial Member

ORAL - ORDER17/07/1989

Per :	Hon'ble Mr. P.H. Trivedi	:	Vice Chairman
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Heard learned advocate Mr. B.R. Kyada for the respondents. Neither petitioner nor his advocate present.

Mr. Y.M. Thakkar stated on behalf of Mr. P.M. Thakkar that Mr. Thakkar for the petitioner wanted to file written submission. As the case is fixed for final hearing and learned advocate for the respondent wanted to be heard we need not delay as there is no reason why the learned advocate for the petitioner is not ready to argue the case and on hearing from the learned advocate for the respondents it was decided to dispose it of on merits and on the pleadings on record. The petitioner is an association which the respondents have not recognised. They have detailed in para 15, 37 persons who have been continued in the category of "good" stations for a period

varying from 15 to 20 years. The petitioners have merely asked for an appropriate order or direction in terms of implementation of the policy at Annexure A dated 14.8.1973 and in fact, the Hon'ble Gujarat High Court had already issued the rule for the implementation of the aforesaid policy. The said policy states as under :

It has come to the notice of the Office that SMS/ASMs on good stations either become office bearer of recognised unions to get protection from transfer or after working at a station for a few years take mutual exchange with their counter part of other good stations. Thus avoiding transfer to bad stations, also transfers from bad stations to good station are causing only on account of vacancy at good station.

In implication of instruction referred to in para above, it is further clarified that :-

- (i) It is not necessary to wait for occurrence of vacancies at good stations to effect transfers of Sms/ASMs from bad stations after completion of prescribed period of at bad station.
- (ii) Transfer of Sms/ASMs from bad station is a MUST after prescribed period unless they are not willing.
- (iii) Of vacancies at good stations are not available SMs/ASMs with the longest service on good station should be transferred to bad stations particularly those who have never worked at bad station and the SMs/ASMs on bad station taken away.
- (iv) Longest service should be taken to mean the total service in the areas and not separately in different posts in the area on transfer or on promotion.
- (v) In terms of para III of this office letter of even No. dated 25/10/1972 Ifc Singr or Tele Sigr due promotion as ASM, as all ASMs who have not done the stipulated period of stay at bad station should be posted promoted as LR ASMs, RG ASMs or ASM(WP) at bad station and then shifted after they have completed the period of stay laid down.

2. The respondents' reply is that as and when the vacancy occurs, this policy be kept in mind but for last 2 years, no transfer has taken place and learned advocate for the respondents referred to certain injunctions which have come in the way of filling up the vacancies for which adequate numbers are available only after recruitment and training. He has further taken the ground that out of 550 ASMs, and SMs, the petitioners have named only 37 persons who have been continuously in good stations and even out of them, there are 8 employees who are not working as ASM or SM. The petitioner have not made the 37 persons as parties nor are they seeking orders directed against these persons.

3. After hearing the learned advocate for the respondents, it is clear that if the policy of transfer between good stations and bad stations is to be implemented in terms of the letter and spirit of the instructions at Annexure A dated 14.8.1973, obviously those who are in a good station for a considerable time will need to be transferred without which no vacancy in good stations would arise. In fact it is stated in the said policy that it is not necessary to wait for vacancies in good station to effect the transfer to ASM or SM from bad station after the prescribed time. It is necessary that if the respondents - railway administration is required to demonstrate their earnestness for implementation the said policy effectively, it will be necessary for them to take in to consideration the transfer of incumbent in good stations although no relief directed in terms against 37 persons is required to be given. It is appropriate in the facts and circumstances of this case that the respondents should be called upon to pass a speaking order indicating their programme for transferring persons from good station and inter alia to refer to the 37 names

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in para 15 of the petition explaining the cases to whom such a transfer would not apply because of some of them not being ASM or SM as stated by the respondents in their reply. We direct that such a speaking order indicating the programme of transfer in terms of Annexure A dated 14.8.1973 be brought out within a period of 4 months with a copy to the learned advocate for the petitioners.

With the aforesaid direction and observations, the case is disposed of. No order as to costs.

Phir
(P.H. Trivedi)

Vice Chairman

Jingre
(P.M. Joshi)
Judicial Member

Mogera