

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 87 of 1986
T.A. No.

DATE OF DECISION 6.10.'86

SHRI KRISHNAKUMAR R. BRAHMIN & Petitioner
ORS.

SHRI N. J. MEHTA Advocate for the Petitioner(s)

Versus

DIVISIONAL ENGINEER, TELEGRAPHS & Respondent
ORS.

SHRI J. D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI (Vice-Chairman)

The Hon'ble Mr. P. M. JOSHI (Judicial Member)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

Per: Hon'ble Shri P.H.Trivedi, Vice-Chairman

JUDGMENT

The applicants are telephone operators, at Junagadh, who have been transferred by orders dated 9.4.'86, due to the telephone exchange at Junagadh having been closed on 29.3.'86, and made as automatic exchange. The case of the applicants is that the relevant policy and instructions require that when adjustment has to be carried out as a result of automisation, the transfers should be so effected that the applicants who have spent less time at Junagadh should be transferred only after exhausting the list of those who have finished their tenure or who have been at Junagadh longer than the applicants. This not having been done, the transfer orders are challenged on the ground of being arbitrary and unreasonable and violative of policy and instructions laid down in this regard. Both the applicants and the respondent have relied upon the communications dated 15.9.'70 & 28.8.'75, in order to interpret the opposite conclusions regarding the policy to be followed regarding transfer. No malafide regarding individual transfer orders have been alleged. It has not been denied by the respondent that the applicants have spent less period in Junagadh than others who have been retained there.

Normally, in matters of transfers it has been well-settled in many decisions of the Courts that in the interest of smooth administration, Courts should be reluctant to intervene, unless there are grounds based on malafide or proved arbitrariness. In this case, it has been noticed that the principles and policy regarding transfer of the relevant category of employees have been laid down and have been referred to, by both the applicants and the

respondent, as a basis of their opposing contention. We have, therefore, thought it fit to examine the relevant instructions in order to satisfy ourselves, whether the decisions regarding transfer follow from the agreed set of instructions and whether such instructions are correctly interpreted and are, by and large, fair and equitable.

The learned advocate for the respondent has conceded that the seniority of telephone operators are maintained division-wise, but for the purpose of transfers, especially on account of automation, the basis is the period spent by the operators in a particular station, which has been closed due to automation. The relevant instructions dated 15.9.'70 state that:

"whenever transfers are to be ordered within the same unit of recruitment due to re-adjustments of staff or opening of new offices etc., in telegraph branch engineering wireless and Telegraph Traffic the transfers should be regulated in the following order.

- (i) Volunteers who are willing to be transferred at their own expense.
- (ii) Volunteers who are willing to be transferred of ordered in the interest of service.
- (iii) Officials who have completed their tenure or who are due to complete their tenure shortly in the order of their length of tenure.
- (iv) Officials with the longest stay in the station."

Subsequently in the instructions dated 28.8.'75, it has been laid down as follows:

"Sub: Transfer of staff consequent upon reduction of Esst. case of closure of Manual exchanges on Automisation of the system.

I am directed to state that a question has been raised as to how to regulate the transfer of staff rendered surplus consequent on the conversion of a manual system into an automated one.

2. In this connection it may be mentioned that orders exist vide letter No. 70/67/69/SPBI dated 12-59 regulating the transfer and retrenchment of staff due to reduction of establishment. Order also exists vide 208/43/69-STBI dated 15.9.'70 regulating transfer of staff at the time of re-adjustment of establishment or opening of new offices etc.

3. The question has been examined in the light of the above two orders and it has been decided that the transfer of staff rendered surplus consequent on the closure of the manual exchange due to automation of the system be regulated as under:

- a) Volunteers who are willing to be transferred in the interest of service to the extent vacancies are available in other station in the same recruiting unit.
- b) Officials strictly in the order of their length of stay in the station (from which they are to be transferred) to other places in the same recruiting unit where vacancies exist."

The learned advocate for the respondent has made out that after automation, the number of posts required has been reduced from 142 to 107, and that 18 volunteers were found accepting the transfer. Out of the remaining 19, the number of applicants in this case are 12 and their case would be attracted by Class 'B' of the circular dated 28.8.'85, which he interprets as "Last come, first go."

The applicants, on the other hand, has pleaded that for determining the telephone operators to be transferred, resort has to be taken to those officials who have completed their tenure or are due to complete their tenure in order of the length of the tenure, and thereafter, for the balance of the posts, officials with the longest stay in the station, as derived from the sub-para (iii) & (iv) of the instructions dated 15.9.'70, which he considers, are quite consistent with the instructions dated 28.8.'75. The learned advocate for the applicant has interpreted the instructions "Officials strictly in the order of their length of stay in the station" as "First come, first go."

We have observed that in matters of transfer there are usually instructions that subject to administrative exigencies or public interest or other special circumstances, Government employees should not be subjected to frequent transfers, especially at very short intervals, as this causes not only considerable

inconvenience and expenditure, but is also not in public interest as they are unable to settle down and perform useful and satisfactory service. Often the instructions or policy explicitly state that such employees should not be transferred before a period of three years or so. We would, therefore, regard it as a curious novelty in personnel management that in matters of transfer, Government departments should be guided by shifting employees on the basis of "Last come, first go." Such a practice or policy might be justified in the case of retrenchment, but not for transfer on the basis of either rotational transfer or transfer by way of adjustment.

We note that it is not the case of respondent that the applicants are being retrenched and are being offered employment in other stations as an alternative to retrenchment. If this had been so, it would be unjust to proceed on the basis of station-wise tenure and it would be in order only if the respondent had worked out a policy of automation for a specified period, with reference to which the number of posts which would have been rendered surplus were ascertained and in that context, on the basis of division-wise seniority the individuals who were to be rendered surplus had been worked out. Obviously, for the purpose of retrenchment, it is the division-wise seniority and not station-wise seniority which could be the basis. We, therefore, do not accept that the transfers of the telephone operators in question is in the context of their being offered employment as an alternative to facing retrenchment. Such a stand has not been taken by the respondent in communications which have been relied upon or produced.

The question, therefore, boils down to interpreting the term length of stay used in para 3(b) in the instructions dated 28.8.'75 read with para (iv) in instructions dated 15.9.'70.

Neither the bare reading of the language employed in the circular nor the general background of the instructions governing transfer warrants any construction other than that adopted by the learned advocate, Shri Mehta, for the applicants. This means that after exhausting the category of those who have completed the tenure or are due to complete their tenure, officials with the longest stay in the station have to go, before those who have been in the station for lesser period than them, are called upon to be shifted. This interpretation is consistent with the language employed in both the instructions and policy in regard to transfers due to adjustment on automation, and also in line with the general policy and principles governing transfers in most cases.

As stated earlier, we generally are reluctant to intervene in matters of transfer, but in this case, we find that the decision regarding transfer of the applicant is based on a curious interpretation of the policy and instructions of the department and is not borne out either by the language or by the objective of the policy in the context, of which the instructions have been issued. We, therefore, feel that the decisions regarding the transfer of the applicants are based upon a wrong interpretation and a wrong conception of what is required for orderly administration or management of personnel due to automation of the telephone exchange. We have thought it fit to intervene in this case, as otherwise, there is a danger that this wrong interpretation and misconception would govern future decisions regarding other operators when their stations are automated. We therefore, hold that the application has merit, and quash and set aside the impugned order with further directions that the authorities evolve decisions consistent with the instructions as interpreted in this order. No order as to costs.

P. H. Trivedi
(P. H. TRIVEDI)
Vice - Chairman
P. M. Joshi
(P. M. JOSHI)
Judicial Member