

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 140/ 1987

DATE OF DECISION 13-7-1989

Shri R.V.Pande, Petitioner

Mr. G.A.Pandit Advocate for the Petitioner(s)

Versus

Union of India &amp; Others Respondent

Mr. R.M.Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi Vice Chairman

The Hon'ble Mr.

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?

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1. Shri R.V.Pande,  
Train Examiner, C.W.F.O  
Western Railway, Bulsar.  
(Advocate: Mr.G.A.Pandit)

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Petitioner

Versus

1. Union of India, through  
General Manager, Western Railway  
Churchgate, Bombay.

2. Divisional Railway  
Manager, Western Railway  
Bombay Central

3. Senior Divisional Mechanical  
Engineer (E) Bombay Central.

4- Chief Wagon Foreman, Western  
Railway, Bulsar.

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Respondents.

(Advocate: Mr. R.M.Vin)

J U D G M E N T

O.A./ 140 / 87

Date:- 13-7-89

Per : Hon'ble Mr. P.H.Trivedi : Vice Chairman

The petitioner who is working as Train Examiner at Valsad has challenged the order dated 17-10-1986 at Annexure-A transferring him from Valsad to Nandarbadi. He challenges this order on several grounds. Firstly, he has been active in Trade Union activity and was Chairman of the Trade Union, and was, therefore, transferred because he has the protection for such activities to be conducted at his present place of posting according to policy of the respondent authorities. Secondly, the respondents had earlier passed an order and thereafter revised it by which certain other persons named by him who were transferred to Nandarbar have been retained and he has been instead transferred, thus involving discriminations. Thirdly, that he is senior being permanent while others who are adhoc and junior to him have been retained and

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he has a superior claim for being retained. Fourthly he has certain personal difficulties . His wife requires medical treatment and his children are school going and his family life will be disrupted if he is made to go to Nandarbar.

2. The respondents have denied these contentions. It has been stated that on the due date the petitioner was neither the Chairman nor the Office bearer and the respondents have produced letters of W/R Majdur Sangh Dtd.25-5-87 and 30-1-87. These letters show that the petitioner was not elected as a Chairman for 1986-87 and in the letter of 13th January the respondents have given a list of the office bearers in which the petitioner's name does not figure. So far as the claim of the petitioner to be retained in preference to others is concerned, the respondents have stated that there is no Rule that transfer has to be effected in the order of seniority. The respondents claim that the transfer has been effected for administrative considerations, which is beyond challenge. The petitioner has made one more plea namely that due to certain disciplinary proceedings which were taken against him there is mala fide on the part of the respondents. No malafide actuating the transfer has been established. Nor has it been shown that the disciplinary proceedings has been sought to be short circuited and transfer has been resorted as a substitute for such disciplinary proceedings. Therefore, the respondents rightly contend that there is no substance in these allegations because the charges in the disciplinary proceedings are quite distinct and have not influenced in any manner this transfer. During the hearing learned advocate for the petitioner took the plea that there are rules stating that transfer has to be effected

in which seniority becomes an important consideration but no such rules have been produced.

3. On a perusal of the records and pleadings and the documents in support thereof we do not find any constraint or restraint placed upon the respondent authorities in effecting transfers. Administrative considerations govern the orders of transfer. If malafide is alleged malafide has to be proved strictly and for that the onus is on the party alleging it. In this case we do not find that the malafide on the part of the respondents has been proved. We also do not find that the petitioner is entitled to be retained in Bulsar on the ground that he has a superior claim to others. Regarding plea on the basis of compassion and the problems of the petitioner regarding his wife's medical treatment or regarding his childrens education all matters which are better taken up by representation to the superior authorities for their consideration. They have been so taken up and if the respondents have failed to accommodate the petitioner we cannot draw any inference regarding any title on the part of the petitioner to be retained at Bulsar to have been established.

4. We do not find, therefore, that the petition has any merit and we do not find any justification to interfere with the orders of the respondents. Interim relief earlier granted not to continue. The petition has accordingly no merit and fails. Parties to bear their own cost.

  
(P.H. Trivedi)  
Vice Chairman

MA/642/87  
~~with~~ in  
OA/140/87

CORAM : HON'BLE MR. P.H. TRIVEDI : VICE CHAIRMAN

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8/1/1988

Mr. G.A. Pandit learned counsel for the respondent has given a sick note which is taken on record. Mr. R.M.Vin learned counsel for the applicant present. Mr. Vin has no objection for the adjournment sought. The case is adjourned to March, 11, 1988 for final hearing.

  
( P.H. TRIVEDI )  
VICE CHAIRMAN

rajini.


MA/642/87  
with  
OA/140/87

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CORAM : HON'BLE MR. P.H. TRIVEDI : VICE CHAIRMAN

11/3/1988

Heard Mr. R.M. Vin and Mr. G.A. Pandit learned counsel for the applicant and the respondent respectively. Mr. Vin seeks an adjournment to which Mr. Pandit has no objection. Allowed, the case is adjourned to 29-4-1988 for final hearing.

  
( P.H. TRIVEDI )  
VICE CHAIRMAN

rajini.

MA/642/87

in

OA/140/87

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Coram : Hon'ble Mr. P.H. Trivedi : Vice Chairman

17/6/1988

Learned advocate for the applicant states that he was misunderstanding of the application of the interim relief to be vacated. Accordingly the case be fixed on 8th July, 1988 for final hearing. Mr.G.A.Pandit learned advocate for the respondent present. With this order, MA/642/87 stands disposed of.

  
(P.H.Trivedi)  
Vice Chairman

a.a.bhatt