

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 163 of 1988

DATE OF DECISION 7-4-1989

Shri Bharubha A. & Others Petitioner

Shri G.A. Pandit, Advocate for the Petitioner(s)

Versus

Union of India, Respondent

Shri B.R. Kyada, 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?

- Versus

- J U D G E M E N T

Date:- 7- 4-1989

The three petitioners in this case have challenged a common order dtd.24-2-1988 transferring them and posting them at Loco Shed Surendranagar on the basis of different grounds applicable to their individual case. The impugned orders in terms state that they are rendered surplus at Surendranagar and are transferred on that ground. The petitioner No.1 has claimed that he is to retire within a period of one year and has relied on the Railway's policy

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that such transfer should not be made on the eve of retirement and has pleaded that at Bhrangadhra Shed where he is working, he cannot be rendered surplus because the shed is not closed. The petitioner No.2 had been transferred to Hapa Road in 1980 and he was transferred to Rajkot from where again he was transferred in 1987 to Surendranagar from where by the impugned orders he is sought to be transferred to Sabarmati. He states that he is retiring on 31-5-1989 and is entitled to remain at his Station or near his native place. He has also pleaded that his wife is serving in the Welfare Board which is a semi-Govt. body in Surendranagar and that the education of his daughter is likely to be disrupted. He has also pleaded that the impugned orders are malafide as in 1980 he was declared surplus and transferred to Hapa Road and he is again sought to be rendered surplus at Surendranagar. The applicant No.3 states that he is a Scheduled Cast employee and claims that the benefit applicable to Class III and Class IV Schedule Cast employees that they should not be transferred as they face difficulties in getting accommodation. He has also challenged the transfer order on the ground of his being rendered surplus and stated that SK Fitters have been allowed to work even though they are juniors to him. In reply, the respondents have stated that as the train services between SYX-JVN section have been stopped with effect from 1-11-1987, the petitioners have been rendered surplus and have therefore been transferred to Loco Shed Sabarmati and that such transfer is within the competence of the railway authorities under Rule 226 of Indian Railway

Establishment Code Vol.I. The respondent states that while normally no transfer of an employee who is to retire within a period of one year should be made, there is no alternative in the present case as the petitioners have been rendered surplus and there is no bar against such transfer in such circumstances. They deny that the transfer is as a measure of punishment and that the juniors of the petitioner are retained as contended by them. They deny that any junior to the petitioner No.2 has been continued at Surendranagar. They also state that as a result of introduction of Broad Gauge Section on VG-OKO Section the petitioner No.3 has been rendered surplus and therefore he was transferred to HXP Section by the order dtd. 21-9-1980 and that the petitioners are junior most skilled Fitter at Surendranagar and as a result of curtailment of cadre caused due to closure of SYK-JVN section for train service they have been correctly transferred.

2. During the hearing, learned advocate for the petitioner drew support from the extract of the Railway circular furnished by the respondents. The Railway circular regarding policy of transfer within one year of the date of retirement, states that no such transfer should ordinarily be made except on promotion. While the petitioners No.2 and 3 claim that they are not junior most and that they cannot be rendered surplus and that the plea of rendering surplus can be inferred to be malafide because previously, the petitioners were transferred on that ground. We are not persuaded in their favour. There is no reason to doubt the fact as stated by the respondents that the train services

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between SYX-JVN section have been stopped with effect from 1-11-1987 rendering the petitioners No.1 and 3 surplus and that in 1980 the petitioner No.3 was transferred to HXP section by order dtd.21-9-1980 on his being rendered surplus as a result of introduction of Broad Gauge Section on VG-OKO Section at any rate. After the reply of the respondents, the petitioner has not adduced any further evidence or fact in support of his allegation of malafide and therefore his plea has no substance so far as malafide is concerned. No junior ~~they~~ has ~~not~~ been retained and the petitioners have not stated any names and in the circumstances the respondents' denial in terms has to be given due weight. Accordingly, the respondents' plea that the Railway's policy of not disturbing their employees in the last year of service to be transferred having to be departed from on the count of the petitioners being rendered surplus has to be accepted. No doubt, the railways have a policy of transfer of first the junior most employees as stated in Annexure R-2 but beyond averring, there is no proof adduced that any junior has been retained and in the face of the denial in terms by the respondents this plea of the petitioner cannot be sustained. So far as the policy regarding transfer of S.C. and S.T employees is concerned, learned advocate for the respondents pleaded that in terms of the letter dtd.5-3-1977, there is no absolute bar against transfer if the administration can provide quarters and even when no quarters are available, exigency of service would permit such a transfer. We have perused the circular and find that while it emphasises that such transfers

ought to be resorted to rarely, they can be allowed in the exigencies of service even when no quarters are possible to be provided for S.C and S.T.employees. There is no absolute prohibition against such transfer. In the circumstances of this case,as the petitioner has been rendered surplus the railway had to be resorted to such a transfer.

Accordingly, we find that the petitioners have not been successful in making out their case and the application fails. There is no justification to interfere with the orders of the respondents. Rule discharged.

*P.H. Trivedi*

(P.H.Trivedi)  
Vice Chairman