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CAT/J/12

Transferred
Jud.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 345 OF 1988
~~CAT No.~~

DATE OF DECISION 4.7.1991

Shri Brijendrakumar Sharma Petitioner

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

Versus

Union of India and Others Respondent

Shri 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Shri Brijendrakumar Sharma,
Senior Train Clerk,
Western Railway,
Surat.

: Petitioner

(Advocate: Shri G.A.Pandit)

Versus

1. Union of India
through The General
Manager, Western Railway
Churchgate, Bombay-400020.

2. Divisional Railway Manager,
Bombay Central Western Railway
Bombay-400020.

3. Station Superintendent,
Western Railway,
Surat.

: Respondents

(Advocate: Shri R.M.Vin)

O.A.345/88

J U D G M E N T

Date: 4.7.1991

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

: Vice Chairman

Applicant Shri Brijendrakumar Sharma in OA/345/88 impugns the order dated 21-3-88 transferring him from Surat to Kota division and order dated 14-3-88 in which the petitioner has been left out of the list of persons who have been given postings in the scale of 1200-2040 for which he has undergone training along with the persons in that list are junior to him. According to the petitioner he was appointed as Senior Train Clerk as a direct recruit and posted at Bulsar from 26-2-81. He was transferred to Surat in October, 1985. He has undergone promotion training course for the post of Guard during 8-2-88 to 21-3-88 and has been successful in the result. While respondent No.2 approved 44 persons for the goods guard scale in Rs.1200-2040 by the impugned order dated 18-4-88 the petitioner was not given any posting as goods guard although he stood first

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in the examination. He has been transferred to another division when others who had scored lower rank than him have been posted as goods guards. in the same or near divisions. He therefore challenges the order on account of their being malafide and discriminatory.

2. In their counter the respondents have merely averred that the impugned order of transfer to Kota is in the interest of service. They have not disputed that he has passed the Goods Guard Promotion Course and that he has stood first. They have merely said that in terms of para 226 of the Indian Railway Establishment Code Vol.I reproduced below they are empowered to make transfer.

"Rule 226: Transfer : Ordinarily, a railway servant shall be employed through his service on the Railways or Railway Establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another Railway or another Establishment, in the exigencies of service. However, it shall be open to the President to transfer the Railway Servant to any other department or railway or railway Establishment including a project in or out of India. In regard to Group 'D' railway servants the **power of** the President under this rule in respect of transfer within India, may be exercised by the General Manager or by a lower Authority to whom the power may be redelegated.

Railway Ministry's Decision

Requests from Railway servants in Group 'C' and 'D' for transfer from one railway to another on grounds of special cases of hardships may be considered favourably by the Railway Administration. Such staff transferred at their request from one Railway to another shall be placed below all existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment, irrespective of date of confirmation or length of officiating service of the transfer employee".



3. Transfer from one Railway to another or from one division to another in the interest of Administration needs to be supported by some bonafide reasons. After

all how interest of administration is served by transferring a Goods Clerk from Surat or Bulsar to Kota? Even if such a transfer is required knowing that it causes inconvenience and hardship why single out a man who had stood first? In their counter in para-4 and 6 the respondents have cited certain letters and claimed confidentiality of the letter dated 25-1-88 to show that it was in the interest of service. It was ordered that these documents be produced but they have not been produced nor has any application for privilege been made and the respondents have stated that the court may come to such a conclusion as is merited from the records of the case.

4. In matters of transfer the Courts are reluctant to interfere but when there is a challenge to the order on the ground of arbitrariness the function of judiciary review cannot be performed. Unless the courts are satisfied that the orders have a bonafide reason, the averment of the respondent that the transfers are in public interest and there are certain documents which might go to show that they are in public interest and that they are satisfied therefore that the transfer is in public interest is not enough for this purpose. The Court's satisfaction and the respondents' satisfaction are distinct and that the Courts have also to satisfy themselves that there were reasons for showing that public interest was served by transfers. The onus therefore has to be carefully placed. The petitioner has stood first in the relevant test for the promotion of Goods Guard. 14 persons who are placed lower than him in merit in that test have been given posting in Surat Division or near about. The petitioner has been asked to go to Kota. Rule 26 which gives powers to the respondents to do so, but why such

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unusual exceptional or out of the ordinary transfer to another division is made is a question we ask of the respondent to which they give no reply and do not produce the documents which they themselves have referred to in their reply. When asked to do so they state that the Court may make such inference and draw such a conclusion as the record shows. If they referred to certain documents and rely upon them as they have done in their reply they are obliged to show them to find out whether the documents are rightly relied upon for the stand that they have taken. If they had not referred to such documents their reluctance to produce them might not have been based on as weak a ground as it has become. These documents could have been compelled by us to be produced by an order, but the purpose is of the case can be equally served by drawing a conclusion that if produced the documents would not support the stand of the respondents or that conclusion of the public interest could not have been established thereby. The onus of establishing the conclusion at the stage at which the respondents were asked to produce the documents is clearly found to be on the respondents and in absence of their supporting their stand by these documents that onus is not discharged. It is legitimate to conclude that the respondents have not established that a transfer of the petitioner is free from the taint of arbitrariness or that the ground of public interest is taken bona fide.

4. The impugned order dated 24-2-88 transferring the petitioner to Kota division is quashed and set aside. It is directed that petitioner be given a post alongwith those included in the order dated 18-4-88 making such amendment thereto as the respondents authorities deem necessary. It is further directed that this be done within one month from the date of this order. In view

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of the observations made above this is a fit case in which costs be awarded, it is directed that the cost of Rs. 500/- be paid to the petitioner within three months from the date of this order.

The judgment in this case was not pronounced earlier because of the decision of the Supreme Court of India in the case of Amulya Chandra Kalita v. Union of India & Ors. in Civil Appeal No. 1 212/90 (JT 1990(1) S.C. 558). However, thereafter, in Civil Appeal No. 2381/91 Dr. Mahabal Ram V. Indian Council of Agriculture Research & Ors. the Supreme Court has held that a Single Member Bench is competent to decide the cases when so authorised in terms of sub section (6) of Section 5 of the Administrative Tribunals Act, 1985. Accordingly, this judgment is now being pronounced.

P. H. Trivedi
(P. H. Trivedi)
Vice Chairman 4/1/91