

Transferred

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 346 OF 1988
~~Tax No.~~

(Signature)

DATE OF DECISION 5-3-1992

Kasam Ali. M & Ors. Petitioners

Mr. H.J. Acharya, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

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

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

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?

1. Kasam Ali. M.
Mahatma Gandhi Road No.5
Dhabhel Wala Juna Bunglows,
Udhna - 394 210.
2. Ishvarlal Tribhovandas
Koliwad, Ward No.2,
House No. 103, Udhna,
Dist: Surat.
3. Vishrambhai Nathubhai
Mora Bhagol,
Opp: Madrasa,
Rander, Dist: Surat.
4. Jaganbhai Devabhai
Pirufalia,
P.O. Atgaom
Dist: Valsad.
5. Basirahmed Fakir Ahmed
Jalawad, Navsari.
6. Chimanlal Nanubhai
Mahyavanshi Road
Adajan, Dist: Surat.

..... Applicants.

(Advocate: Mr. H.J.Acharya)

Versus.

1. Divisional Railway Manager,
Bombay Division,
Bombay Central,
Bombay.
2. Divisional Mechanical Engineer
Bombay Division,
Divisional Rly. Manager's office,
Bombay Central,
Bombay.
3. Union of India, through
The General Manager,
Western Railway,
Churchgate, Bombay.

..... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL JUDGMENT

O.A.No. 346 OF 1988

Date: 5-3-1992.

per
Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Neither the applicants nor their learned
advocate is present today. Mr. R.M. Vin, has argued

for the respondents resisting the application.

This application under section 19 of the Administrative Tribunals Act, 1985, is filed by six applicants against the impugned order Annexure-7 dated 25th April, 1988 passed by the Divisional Railway Manager (E) BCT by which the earlier order of transfer of the applicants dated 24th March, 1988 was cancelled and by which they were sent back to LF/UDN. The matter is being disposed of on merits after going through the record of the case and after hearing learned advocate Mr. R.M. Vin for the respondents. The case of the applicant as pleaded in the application is that they are working as Khalasi/Helper under CWS(ROH) and CTXR at Udhna. It is alleged that in the year 1980 the respondents started a new department of Rational Over-hauling (ROH) and willingness to join the new department was sought by the respondents from the serving staff and the applicants gave their consent to it, but the respondents without following any policy transferred the employees to ROH department by pick and choose method by selecting some juniors and hence the applicants made joint representation, Annexure-I dated 23rd July, 1983 that they were senior and had passed the examination for B.T. Fitter they were over looked. The respondents have contended in the reply that four applicants out of six were

transferred from Loco Foreman Udhna to Chief Wagon Supervisor (ROH) Udhna vide order dated 24th March 1988 which is at Annexure-5 produced by the applicant and these employees were transferred within Mechanical Department ~~from~~ one unit to the another unit and at the same station. The case of the applicants is that they made another representation, Annexure-2 and they reproduced the letter dated 21st April, 1987 written by Western Railway Mazdoor Sangh to Senior Divisional Mechanical Engineer Bombay to which the Senior D.M.E.(E) BCT gave reply dated 6th May, 1987. The main grievance of the applicants is that by the order Annexure -5 dated 24th March, 1988 the applicants were transferred and posted under CTXR Udhna and in compliance of the said order they were relieved and they joined their duties accordingly. It is their case that another union was exerting pressure on the administration to change the said order by letter dated 15th April, 1988 vide Annexure-6. ~~though~~ The case of the applicants is that ~~the~~ administration had decided the issue as policy issue that senior most willing employees should be transferred, their apprehensions came true because by the impugned order dated 25th April, 1988 the earlier order of transfer was cancelled and therefore, they have come to this Tribunal ~~paying~~ that the

respondents should adopt and follow up the policy decision with recognised union and whenever the question of absorption of surplus staffs comes only the senior most willing staff should be given preference and the respondents be directed that the applicants willingness obtained in 1980 be considered and the applicants should be deemed to have been transferred in their turn according to their respective seniority and the respondents be directed to give the benefit of deemed ^{ed} promotion.

2. The respondents in their reply ~~have~~ contended that some of these staffs who were passed the trade test of B.T. Fitter earlier could not be promoted as such at that time due to reduction in cadre consequent upon this dieselisation and electrification on railways and they have denied their transfer from one unit to another unit passed by the pick and choose method. They have contended that those who have given option for transfer from ROH Udhna were considered first as per accepted policy with both recognized union and the administration.

According to the respondents, the applicants had shown their willingness for transfer only on 23rd July, 1983 and they were at that time either not surplus in the category in which they were working or there were no vacancies in ROH Udhna to accommodate them in the post they are requested

for. The respondents have asserted that the WRMS which is the recognized union had also represented their case and WRMS was replied vide letter dated 6th May, 1987 that the applicants were working in the higher grade and were not rendered surplus. It is the case of the respondents that there was a joint decision taken by the railway administration in consultation with both the recognized union i.e. WRMS & WREU that when the staff is rendered surplus senior most willing staff is to be transferred first and if no willing staff is available then junior most is to be chance. The applicants were working in scale Rs. 200-250 & 210-290 as Khalasi/Helper and in this category they were not notified as surplus in 1987 whereas the employees working in scale Rs. 196-232 were rendered surplus and they were transferred to ROH units.

3. The learned advocate Mr. Vin submitted that the applicants were transferred from LF Udhna to CWS(ROH) Udhna vide letter dated 24th March, 1988, Annexure-5, from one unit to another under same station to the same department as they were considered surplus due to some misunderstanding which was pin pointed by the WREU. He submitted that since the said transfer order Annexure-5 was issued ignoring the settled policy decision taken

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(No)

by the railway administration in consultation with both the recognized union. It was observed that the applicants were not surplus as such the said order Annexure-5 dated 24th March, 1988 was cancelled vide the impugned letter dated 25th March, 1988 vide Annexure-7. Therefore, the action of the respondents in cancelling their first order Annexure-5 was according to the settled railway policy and not contrary to railway policy. The previous order Annexure-5 was on the erroneous assumption that the applicants were surplus, but on verification it was found that they were not surplus and therefore they were transferred back by the impugned order cancelling the earlier memorandum. In my opinion, this submission of the learned advocate Mr. Vin has ~~have~~ much substance. The respondents in reply ~~/~~ also clarified in this position in detail. Therefore, ~~by~~ there is no illegality committed ~~by~~ the respondents in passing the correct order cancelling their erroneous order. Hence, there is no substance in attacking the impugned order Annexure 7 dated 25th April, 1988 regarding transfer back to the original station.

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4. The applicants have claimed benefits of deem promotion and about the ~~daem~~ transfer from 1980 onwards, but the same cannot be granted

because the order under challenge is the order Annexure 7 dated 25th April, 1988. Reading the impugned order dated 25th April, 1988 the respondents have cancelled their previous erroneous order dated 25th March, 1988. The said impugned order Annexure 7 is ^{not} illegal nor unjust or against the policy of railway. The applicants have only ^{ed} attack the said order in para 3 of their application and hence no question of considering relief for any other point ^{can} be entertained. The result is that the application shall fail.

O R D E R

The application is dismissed with no order as to costs.

Renu

(R.C. Bhatt)
Member (J)

(9)

illegal appointment of Shri N.Vishwambaram to the one and only available post at N.R.C.G. Rights lost permanently can not be restored. Therefore the judgement is contradictory.

P R A Y E R

On the basis of the averments made above, the Petitioner most respectfully prays that this Hon'ble Tribunal may be pleased :

- A) To grant interim injunction or direction to respondent to keep the rider as such till the outcome of the review application against the impugned judgement and order dated 10.10.91, in the O.A. 10/88.
- B) To hear and allow.
- C) To quash the promotion of Shri N.Vishwambaram as Superintendent as contained in order No. Reatt.2(7)/88-Estt/57, dated 7.4.88, being a illegal permises, and issue direction of promotion as per rules.
- D) To pass any other order of orders as this Hon'ble Tribunal may deem fit in the circumstances of the case.

For this act of grace kindness and judicious order the Petitioner as in duty bound shall ever pray.

Jagdish
Applicant. 4/11

(Party in person)

Dated: - 4.11.1991.

V E R I F I C A T I O N

I, Jagdish Ramani, working as Assistant in N.R.C.G. Junagadh do hereby verify that the contents of application are true to my personal knowledge and believed to be true on legal advice and that I have not suppressed any material fact.

Jagdish
Applicant. 4/11