

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
XXXXXXDDDDXXXXO.A. No. 347
Ex-Acc No.

1988

(6)

DATE OF DECISION 17-08-1989

SHRI PARSOATHAM R. & OTHERS Petitioner

SHRI M.K. PAUL Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ANOTHER Respondent

SHRI R.P.BHATT 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?

1. Sri Parsotham R.
2. Sri Jyeshtharam C.
3. Sri Dalpat U.
4. Sri Keshav R.
5. Sri Ravindra M.
6. Sri Manji K.
7. Sri Maheshkumar J.
8. Sri Jagdishchandra B.
9. Sri Pravinchandra B.
10. Sri Ramji P.
11. Sri Suryashankar N.
12. Sri Nur Shah A.

All No.1 to 11 Hindu Adults & No.12 Muslim Adult, working as Khalasi-Helper Railway Workshop(Elec.Department), Gondal, Bhavnagar Division and

13. Sri Devdan V.
Hindu Adult, working as Electrical Fitter HSK-1, Gondal Workshop (Elect. Department) Bhavnagar Division. : Petitioners
(Advocate: Mr. M.K.Paul)

Versus

1. The Works Manager,
Western Railway,
Bhavnagar Para.
2. The Union of India,
through: the General
Manager, Western Railway,
Churchgate, Bombay-400 020. : Respondents
(Advocate: Mr. R.P.Bhatt)

J U D G M E N T

O.A./347/88

Date: 17-8-1989

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

: Vice Chairman

1. In this application filed under Section 19 of the Administrative Tribunals Act petitioners No.1 to 12 who are promoted as Khalasi-Helper in Gondal Workshop in electrical department and applicant No.13 working as Electrical Fitter HSK-1 in Railway Workshop in Electrical Department, Gondal are transferred by the impugned order dtd.5.5.1988 passed by Works Manager, Western Railway, Bhavnagar Para. The closure of the workshop at Gondal according to the respondents has caused the impugned transfer. Applicant No.1 to 12 have been transferred

to the Carriage and Wagon department in Rajkot Division. Applicants have impugned this transfer on the ground that the work of carriage and wagon department is quite different in nature. The avenue of promotion is also different. The petitioners claim that they have worked in electrical department and their consent has not been taken. They mentioned that the common seniority is maintained in the five workshops at Gondal, Bhavnagar, Junagadh, Hapa and Morbi. The eighteen persons named by the petitioners in sub-para-3 at page-4 have not been transferred although the petitioners have been disturbed. Besides, a lot of other people whose names are not known to the petitioners were also not disturbed. Applicant No.13 is working as ELF Grade-I in Electrical Department in Gondal workshop in Bhavnagar division. He is transferred to Rajkot Division while his five juniors are not disturbed. The petitioners, therefore, have impugned the order dtd. 5.5.1988 transferring them as illegal and asked for quashing and setting aside the same. They have also asked for the relief that forcing a change of department on applicant No.1 to 12 without their consent and transferring them without following the principle of last come first go is illegal and null and void. In their additional counter dtd. 12.7.88 the respondents have reported that by their order dtd. 4.6.88 as at Annexure-A the petitioners No.1 to 12 have been posted in the Electrical Department and have been retransferred to Bhavnagar Para Division for posting in Electrical department in the same scale and pay. With this order the challenge in so far as petitioners No.1 to 12 regarding their transfer from Electrical department to Carriage and Wagon Department now does not hold. The respondents have also stated that their options were invited for selecting any place in Western Railway. Effort of the respondents

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was to accommodate the petitioners in other posts in other divisions. When the whole workshop is closed the workers have to be transferred elsewhere as it is impossible to retain them there. In following mechanically principle of 'last come first go' if the junior most people in other works are transferred thereby other such junior most persons are disturbed elsewhere. According to the respondents the decision that the Gondal workshop was required to be closed with effect from 31-5-1988, and this is, therefore, a normal transfer. The judgment relied upon by the respondent is SLR 1987(1) 824 in S.N. Misra & Others Vs. B.L. Patogi & Others.

2. When the case was called out the petitioners' learned was not learned advocate for advocate present and the respondent stated that as now the petitioners 1 to 12 have been transferred in the Electrical department and petitioner No.13 had earlier been transferred in the same department the case becomes infructuous.

3. Admittedly a combined seniority list for all the workshops is maintained. This combined seniority is for the purpose of promotion. It is also reasonable to interpret the combined seniority list with the principle of 'last come first go' but this principle has application when there is any retrenchment. In this case it is not a question of reducing the strength of the employees to be maintained in Gondal workshop but it is of closure of the entire workshop. Accordingly the employees were offered the choice of showing their option of stations or of retirement or of accepting the transfer in the adjoining Rajkot division in carriage and wagon department. The respondent appreciated the contentions of the applicants in so far as the impugned orders involved a change of department and by their subsequent orders referred to, they have now transferred the petitioners only in the Electrical Department in which they worked. In the circumstances if the contention of the petitioners were accepted and the junior most persons in the combined seniority list had to be transferred not only would it

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mean that several persons in the workshops in which there is no closure or no reduction of work would have to be disturbed but also that even thereafter the petitioners in any case would have to be transferred from Gondal workshop. This would offer no relief to the petitioners and would cause inconvenience to others in other workshops. Such a decision cannot be justified on the basis of public interest or administrative exigencies. It has also no warrant in the rules applicable to transfers because the principle of last come first go applies only in the limited context of regularisation or retrenchment but not in the circumstances as are found in present case. There is much substance in the plea of the learned advocate for the respondent that the case has been rendered as infructuous by reasons of their revised orders dated 4.6.88. Even on merits, the revised orders do not leave the petitioners with any cause.

4. Accordingly the petition has no merits and is rejected. No order as to costs.


(P.H.Trivedi)
Vice Chairman