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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 438 of 1988.

DATE OF DECISION 13-07-1989.

Shri Govind D. & Another

Petitioner

Mr. Ghanshyam Pandit

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Mr. 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?

(7)

1. Shri Govind D.

2. Shri Gobar D.

both IInd Firemen,
Loco Shed, W.Rly.,
Rajkot.....

..... Petitioners

(Adv. : Mr. Ghanshyam Pandit)

Versus

1. Union of India,
Notice to be served through,
General Manager, W.Rly.,
Churchgate, Bombay.

2. Divisional Railway Manager,
W.Rly.,
Rajkot.

3. Loco Foreman,
Loco Shed, W.Rly.,
Rajkot.....

..... Respondents

(Adv. : Mr. B. R. Kyada)

J U D G M E N T

OA/438/88

Date : 13-07-1989.

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

The applicants challenge the order of Divisional Office, Rajkot dated 23-5-1988 transferring them from Rajkot to Mehsana. They have been serving in the cadre of the running staff of the Second Firemen. They belong to the Scheduled Castes and they were originally working at Surendranagar from which they have been transferred to Rajkot Loco Shed on promotion. The impugned orders have been challenged because they claim that they have the protection of the Railway Board's instructions of not being liable to transfer and in violation of these instructions this transfer orders cannot be upheld. They have also stated that there are vacancies in Rajkot and it is possible to

....2/-

(8)

retain them there and if they are required to be transferred they should be sent to Surendranagar from where they have been transferred to Rajkot. The respondents have unfortunately not filed any reply inspite of plenty of opportunity. They have also stated during the hearing that as the orders show the petitioners have to be transferred because they have been rendered surplus and in the interest of continuing them in service the transfers have been effected.

2. During the hearing, learned advocate for the petitioners has shown us the relevant provision~~s~~ in the brochure for reservation for Scheduled Castes & Scheduled Tribes in Railway services in which the instructions pertaining to transfer are as follows :

"Transfer - Subject to the exigencies of service, transfer of Scheduled Castes and Scheduled Tribes employees should be confined to their native districts or adjoining districts or the places where the Administration can provide quarters. They should be transferred very rarely and for very strong reasons only."

(Letter Nos. (i) E(SCT)70CM15/15/3 dated 19th November 1970 and

(ii) E(SCT)74CM15/58 dated 14th January 1975.

Learned advocate for the petitioners has referred to certain decisions regarding the protection of transfer and also to circulars that if they have to be transferred they have a right to be transferred to the original district from where they have been sent to Rajkot but not produced them.

3. As the respondent has not given a reply we have decided to discuss the merits of the case on the basis of

the arguments for which the learned advocate for the respondents has also heard. It is clear that it is not denied that the petitioners belong to the Scheduled Castes and that the transfer policy of the respondents for S.C. and S.T. is that these transfers are to be confined to the district or adjoining districts of places where the administration can provide quarters. It is further ~~enjoined~~ enjoined upon the respondents that the S.C. & S.T. personnel should be transferred very rarely and for very strong reasons only. We can assume for the purpose of this case that this policy is mandatory insofar as the instructions are of policy nature and must govern the actions of the respondents whether such instructions have the force of statutory rules and, therefore, of law or not. The petitioners have not established that at Rajkot there are vacancies in which they can be accommodated. The statement that has been attached at Annexure - 1 which shows the vacancy does not say that there are any vacancy in the category of Fireman in Rajkot. The statement states that against 13 posts there are 21 ~~available~~ available and, therefore, it is not possible to agree with the contention of the petitioners that the petitioners can be accommodated at Rajkot. However, it is not clear whether any other transfer could have served the purpose. In short whether the 13 persons who have been ~~retained~~ retained at Rajkot are persons all belonging to Scheduled Castes and whether such people as are belonging to the Scheduled Castes are junior to the petitioners. Only in the event of such circumstances would it be possible to state that in accordance with the policy of Railway it does not admit of the retention of the petitioners at Rajkot. We find that the orders of the

respondents cannot be upheld and that the policy of the Railways shows that the petitioners have a claim to be retained at Rajkot. However, if in future the respondents find it possible to give legal orders regarding the transfer transfers of the petitioners they should be in no way constrained by this judgment. In other words while we do not uphold the orders which are impugned we would say that the respondents can pass legally valid orders confirming to the policy of the respondents governing S.C. & S.T. personnel.

4. With these observations we find that the petition has merit and quash and set aside the impugned orders. Rule made absolute.

P. H. Trivedi
(P. H. Trivedi)
Vice Chairman