

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Contempt Appl. No. 29 of 1989

with

O.A. No. 24 of 1989

DATE OF DECISION 13-07-1989.Shri Bhupendra M. Daudia PetitionerShri P. H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Another RespondentShri 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?

Shri Bhupendra M. Daudia,
Behind Subhash Market,
Bhoiwada,
Jamnagar....

.... Petitioner

(Adv. : Mr. P. H. Pathak)

Versus

1. Union of India, through
The Deputy Chief Engineer(C),
Railway Station,
Ahmedabad
2. Executive Engineer(C),
Western Railway,
Near Irvin Hospital,
Jamnagar....

.... Respondents

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

JUDGMENT

Cont. Appli. No.
29 of 1989

with

Date : 13-07-1989

OA No. 24 of 1989

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

The petitioner has made an application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 24th December, 1988 of respondent No. 2 transferring him on deputation to the Chief Executive Engineer, Survey & Construction, Bombay. The question raised by the rival contentions of the parties require a decision on whether on the applicant's having a lien he is obliged to accept deputation in Survey & Construction in divisions other than those for which he has opted and whether he has a right to be repatriated to the post on which he holds lien, when other servants are so allowed such repatriation. The petitioner was appointed in response to an advertisement and gave his option for posting in two divisions according to him

viz. Rajkot and Bhavnagar. He has given a copy of the option form but not of the option he filled up. He was given an appointment dated 17th April, 1980 in which it was stated that he was allotted to Rajkot Division. The respondents contend that in terms of that letter dated 17th April, 1980 he was right from the beginning appointed in the Survey & Construction division. Thereafter the petitioner gave his option to go back to his parent department in response to the letter of 15th May 1982 at Annexure-2 whereby an option by 25th May 1982 was to be exercised by the staff who joined the Survey & Construction department after 19th June, 1987 in relation to the preparation of the combined seniority of the Works Engineer Branch Open Line in the Head Quarter office and Survey & Construction department clerical staff. The petitioner claims that he exercised this option to go back to his parent department on which post his lien was maintained but no copy of the option has been furnished. Only the pro-forma has been produced at page-12. The respondents contend that he was only given paper position in the parent department, that is, on Open Line Division in their event of release from the Survey & Construction department and that the petitioner was appointed with the express condition that he has to work at any place in the Western Railway Administration irrespective of the department and staff, and that he is liable to be transferred at any place and also at any time and that being a condition of service it is mandatory for him to do so. Maintenance of the lien on Rajkot division has nothing to do with his continuance in the Survey & Construction department and he has no right to ask for his repatriation in his parent division. He is not deputed for a particular work or

project but deputed to Survey & Construction department for its entire working system, and because one work is completed he cannot demand his release to Open Line. The respondents admit that the petitioner was declared surplus under Executive Engineer, Construction, Jamnagar according to A/9 but he did not request the Railway Administration them to repatriate him back to his parent division but as he was required to be transferred out-side, he has now chosen to do so. The respondents have not changed any condition of service because his lien will be maintained in the Open Line but, Survey & Construction department being a wing of the engineering department of the Western Railway in the permanent department also has its own staff for execution of work, the applicant is liable to serve in Survey & Construction department according to the decision of the competent authority. The applicant's contention is that because he has maintained his lien in the Open Line and has opted to go back to it, instead of allowing himself to be in the combined seniority list of the Survey & Construction department he retains the right of repatriation. The respondents consider that they have a right to use the service of the petitioner in Survey & Construction division and have no obligation to transfer him to his parent department.

2. We cannot accept that lien on the Open Line is only showing a paper position which is devoid of any significance or substance or meaning. That would be a contradiction in terms. Lien has been defined under paragraph 2003(14) R-11 as a title of a Railway servant to hold substantively either immediately or on termination of a period or periods of his absence, a permanent including a tenure post to which

he has been appointed substantively. Unless it is suspended or transferred a Railway servant holding substantively a permanent post retains lien on that post. Even on transfer to another post unless his lien is transferred to the new post, his lien cannot be terminated even with his consent if the result will be to leave him without lien or suspended lien upon a permanent post under Rule 2009. These positions clearly show that the right of lien is a substantial right. When an employee is absorbed in Open Line after screening he will not be entitled to count his service in construction division but his inter se seniority will be maintained whenever he is released for the Open Line unless he is retained in the project at his own request. The respondent has urged that under Rule 146 a railway employee has no claim as a matter of right to resist transfer but in the exigency of service he could be transferred to any other department of Railways. This Rule is clearly not applicable to this case because it is an extreme power reserved by the Government which in terms shows the emergent circumstance on which it is exercised which do not apply in this case and even for such exercise there are special safeguards for low paid employees. The petitioner has relied upon AIR 1986 SC 1955 B. Varadha Rao V/s. State of Karnataka & Others from which the respondents also tries to draw support because it confirms the right of transfer along with a caution against its exercise which is made subject to equality of treatment and places Class-III and Class-IV employees at a different footing.

3. In this case the petitioner has urged that some of his colleagues who were similarly situated have been allowed to be repatriated and he has cited the case of one Mr. Joshi.

In this case the transfer order from Bombay has been cancelled posting him at the place of the petitioner at Jamnagar. The petitioner, therefore, alleges malafide from the circumstance that he has not been allowed to be repatriated to his parent department and while there is ~~no~~ work at his present post as shown by the transfer of Mr.Joshi, he still has been asked for transfer at Bombay putting him to harassment.

4. In the circumstances of this case we find no difficulty in upholding the petitioner's right to be repatriated to his parent department and state that the paper position he holds has a substantial significance of his right to hold it. The respondents, we find, have no right to transfer the petitioner out-side the division for which ~~he~~ he has opted to serve in the Survey & Construction department unless he signifies his willingness or seeks such a transfer at his own request. On the other hand the petitioner has no right to be repatriated to his parent department and by virtue of his initial posting also being in Survey & Construction department he can be obliged to serve in Survey & Construction division provided the employment given to him is in the divisions for which he has opted unless as stated earlier he requests for a transfer to another division or signifies his willingness to go there. We have no proof of the option given by the petitioner, but there is no clear denial of it from the respondents and it will be therefore, a fair presumption that the petitioner has a right of repatriation to his parent department in these circumstances.

5. For the above reasons the impugned order dated 24th December, 1988 is quashed and set aside. The respondents

are directed to repatriate the petitioner to the Rajkot division even if they find there is no work in it but, if the respondents have work in that division or in Bhavnagar division they have a right to post the petitioner therein without repatriating him. It is directed that the petitioner be given leave for the period from January 1989 in terms of our order dated 11-1-1989. In view of the circumstances of this case it is just to award the cost of Rs.500/- to the petitioner to be paid by the respondents. We direct that the leave salary and the cost be paid within a period of 3 months from the date of this order and that if there is any delay beyond the said period of 3 months the petitioner be paid interest at the rate of 9% on the dues stated in terms of the above direction from the date of the expiry of the period of 3 months. With these directions OA/24/89 and Contempt Petition No.29/89 are disposed of.

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

16
C.A./63/89

in

O.A./24/89

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. N. Dharmadan .. Judicial Member

24.4.1990

Neither petitioner nor his advocate present.

Mr. B.R. Kyada, learned advocate for the respondents states that the order dt. 11.1.1989 referred to in the contempt petition has been complied with. The contempt petition however, refers to the order dt. 13.7.1989 by which the leave in January, was to be given to the petitioner in terms of the order dt. 11.1.1989. Therefore, this case be adjourned. The respondents to file a statement regarding compliance in terms of our orders dt. 13.7.1989 and 11.1.1989 within 15 days of the date of this order.


(N Dharmadan)
Judicial Member


(P H Trivedi)
Vice Chairman

*Mogera