

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Transfer

O.A. No. 340/91 with M.As. 181/92, 182/92 & 86/93.
~~Ex No~~

DATE OF DECISION 8-4-1993

Western Railway Mazdoor Sangh, Petitioner_s
and ors.

Mr. K.K. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent_s

Mr. N.S. Shevde, 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. Western Railway Mazdoor Sangh,
represented by their Additional
Chairman, G.B. Kansara, Ahmedabad
Branch, Baroda Division.

2. K.U. Baria
3. N.K. Ramkrishan
4. G.N. Rathwa,
5. A.G. Sheikh
6. R.S. Panwar
7. P.C. Meena
8. M.D. Vankar
9. M.S. Keswani
10. A.K. Elhanee
11. M.N. Chauhan
12. S.K. Kamal
13. A.S. Panwar
14. B.M. Sheikh
15. J.C. Modi
16. S.P. Rajput
17. J.M. Varma
18. N.R. Pandya
19. V.R. Patel

..... Applicants.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India,
notice to be served through
The General Manager,
Western Railway, Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager (E)
Western Railway,
Divisional Office,
Pratapnagar, Baroda.

3. Sr. Divisional Commercial Supdt.,
Western Railway,
Divisional Office,
Pratapnagar, Baroda.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

ORAL ORDER

O.A.No. 340/1991

with

M.A. 181/92 & 182/92

and

M.A. 86/93

Date: 8-4-1993.

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

Heard Mr. K.K. Shah, learned advocate for the
applicants and Mr. N.S. Shevde, learned advocate for
the respondents.

2. The applicant No.1, Western Railway Mazdoor Sangh along with other 18 applicants have filed this application under section 19 of the Administrative Tribunals Act, 1985, seeking the relief to quash and set aside the impugned orders passed collectively at Annexure A, as it is illegal and penal in nature and respondents be directed to continue the applicants at Baroda.

3. The applicants in the application have alleged that the applicant No.1 is a Registered and recognised Union that the applicants No. 2 to 19 are members of the said Union and they have filed this application challenging the orders dated 17th September, 1991 bearing No. EC/839/4/11 PT, order dated 4th July, 1991 and 23rd August, 1991 by transferring the applicants from Baroda to different places. It is alleged by the applicants in the application that the alleged transfer of the applicants in the interest of service is just an eye wash. It is alleged that the applicants are working as Head Booking Clerk, Commercial Clerk at Baroda Railway Station since last 6 to 13 years, that the applicants are not at all in fault about ~~to~~ one alleged incident of fraud which took place between December 1990 to 25th December, 1990. It is alleged that because of some investigation in the said fraud and because of some news item in the Newspaper Annexure A-1 and though the said matter is under

investigation, all of a sudden this order is made which is not legal. The applicants have mentioned several grounds in the application attacking the alleged transfer orders.

4. The respondent No.2 has filed reply contending that the impugned transfer order of the applicants is in the interest of service and has not an eye wash. The respondent No.2 ~~have~~ ^{may} contended that there is ^{no} violation of provision of Constitution of India ~~or~~ ^{that} the order in question is penal one as alleged.

5. At the time of hearing of this application, the learned advocate Mr. K.K. Shah for the applicants submitted that because of some alleged incident of fraud case, the respondents have passed an impugned order of transfer against the applicants and though ^{it is styled as order of transfer} it is ~~time as~~ ^{in fact} in the interest of justice, it is a penal order. It is also not in dispute before me that the representation is already made by the applicants at Annexure A-3 collectively and the said representation is not disposed of till today. The learned advocate for the applicants submitted that the respondents should legally dispose of the said representation. He submitted that the applicant No.12 is under suspension because of the investigation ^{in a case} having been made against him and is charge sheeted. He submitted that so far applicant No.7 is concerned, he has asked for his request transfer which could be considered by the respondents and he does not want to

challenge the impugned order of transfer. He submitted that though the representation is a collective representation of all the applicants, the applicants who are affected by the transfer order now are applicants 2,3,4,5,6,8,11,16 & 17 and about the request transfer made by applicant No.7. Mr. Shevde, learned advocate for the respondents submitted that though the representation Ann. A-3 is pending before the competent authority, the transfer order should not be considered as illegal.

6. I have heard the learned advocates for the parties and I hold that as the representation of the applicants collectively made vide Annexure A -3 is pending the impugned order of transfer should not have been passed before deciding the representation according to rules by the competent authority of the respondents. More over, now as observed about the question of transfer of some of the ^{mentioned above} applicants only remain. ^{to be considered}

7. The learned advocate Mr. Shevde for the respondents submits that the respondents will not implement and enforce the impugned order of transfer and he also submitted that the respondents competent authority will pass fresh order on the disposal of the representation if it is necessary in the interest of justice and if it is necessary according to rules. Hence this application is disposed of with the following directions.

i) The application is partly allowed. The respondents are directed not to implement and enforce the impugned order of transfer.

ii) The respondents competent authority is directed to dispose of the representation made collectively by the applicants vide Annexure A-3 according to rules within three months from the receipt of the order of this Tribunal.

iii) The respondents competent authority to decide the representation of applicant No.2,3,4,5,6,8,11,16 and 17 and also to consider the request transfer of the applicant No.7 made to the respondents. If the respondents competent authority is satisfied about the representation made vide Annexure A-3 then they should pass order accordingly but in case the respondents authority pass any order adverse to any of the ^{above} applicants, then it shall not be implemented for two weeks from the date of receipt of the said order by ^{concerned} the applicants ~~concerned~~ to enable them to approach the Tribunal according to law.

iv) The respondents competent authority should consider the representation sympathetically because the applicants are class III servants.

8. In view of this order the M.As 181/92, 182/92 ^{also} and 86/93 are not pressed and are disposed of as not ^{ed O.A.M} press. The application is disposed of with no order ^L as to costs.

vtc.

R.C. Bhatt
(R.C. Bhatt)
Member (J)