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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

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O.N. Nos. 674/95, 672/95 & 673/95

DATE OF DECISION 04/05/1998

HON'BLE SHRI JUSTICE K.M. AGARWAL, CHAIRMAN
HON'BLE SHRI SOM NATH SOM, VICE-CHAIRMAN(A)
HON'BLE SHRI S.K. AGARWAL, MEMBER(J)

Shri Shyamsundar Patra & Others

.. APPLICANT(S)

VERSUS

UNION OF INDIA & OTHERS.

.. RESPONDENTS

Advocates:

S/Shri A.K. Mishra, P.K. Padhi, for Applicants
K.P. Mishra, M.R. Kar, S. Rath, J.K. Khandayatray
and B.S. Mishra

S/Shri U.B. Mohatara
and Akhaya Mishra

for Respondents

- ✓ 1. Whether to be referred to Reporter ? *Yes*
2. Whether to be circulated to other Benches ? —



K.M. Agarwal
(K.M. Agarwal)
Chairman

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

CUTTACK, THIS THE 4th DAY OF MAY, 1998.

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR. SOMNATH SOM, VICE CHAIRMAN (A)
HON'BLE MR. S.K.AGARWAL, MEMBER (J)

1. O.A. No.674/95.

Shyamsundar Patra
son of Bhagaban Patra
presently residing at Hadagodia Sahi
Puri Town, Puri.

2. O.A. No.672/95.

Bishnu Prasad Das
son of late Kasinath Das
at present residing at Baseli Sahi
Puri Town, Puri.

3. O.A.No.673/95.

Ashok Das
son of late Chandrasekhar Das
At Postal Colony,
Puri-II, Puri.

...Applicants.

(By Advocates S/Shri A.K.Mishra, P.K.Padhi, K.P.Mishra,
M.R.Kar, S.Rath, J.K.Khandayatray and B.S.Mishra)

Versus

In all the cases

1. Union of India, represented through
the Chief Post Master General,
Bhubaneswar Circle,
Bhubaneswar-751 001, Distt. Khurda.

2. Director of Postal Services,
Orissa,
Bhubaneswar.

3. Senior Superintendent of Post Offices,
Puri Division, Puri.

4. Sri S.K.Dalai,
Sr. Supdt. of Post Offices,
Cuttack City Division, Cuttack.

.....Respondents.

(By Advocates S/Shri U.B. Mohapatra, Akhaya Mishra)

O R D E R

JUSTICE K.M. AGARWAL:

On a reference made by the learned
Administrative Member, who singly heard the aforesaid



three cases, this Full Bench was constituted for deciding the following four common questions of law:

- (i) "Which of the two decisions: Whether the Ahmedabad Bench in **B.M.Parmar & Ors. V. Union of India & Ors.**, (1996 (1)ATJ 200) or the Division Bench decision in **Krushna Chandra Rout V. Union of India & Ors.**, (OA No.629 of 1994) can be said to have laid down the law correctly?
- (ii) "Whether the Director General of Posts' letter dated 23.8.1990 which only withdraws the transfer liability anywhere in the country impliedly also restricts the power of a Head of Department or Head of a Circle like C.P.M.G. to transfer a Group 'C' or Group 'D' official from one Division to another Division within his own Circle if in the course of transfer his seniority is going to be affected? Can such a power be exercised if his seniority is protected in the Division?
- (iii) "Whether a transfer can be resorted to remove suspected officials causing indiscipline and in doing so, is not transfer resorted to as a mode of punishment?
- (iv) "It is generally perceived that group 'C' and Group 'D' officials are not usually transferred from a particular unit of administration because of their lower pay and inability to adjust to distant places and the attendant difficulties of family and education. Is such a protection inherent or can be read into Director General of Posts' letter dated 23.8.1990 for the Group 'C' or Group 'D' staff?"




2. As the order of reference mentions, common questions are involved in these applications on the basis of common facts. The applicants are in class III Postal Assistant Cadre in Puri Division. They have been

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transferred from Puri Division to Koraput Division, both Divisions being in Orissa Circle of the Postal Department, by order dated 18.11.1995, (Annexure A-4), passed by the 3rd respondent, the Senior Superintendent of Post Offices, Puri Division. This order is being challenged on the ground of mala fide and on that of breach of rule 37 of Chapter II of the Posts & Telegraphs Manual, Vol. IV, read with circular dated 23.8.1990, (Annexure R-7). The allegations of mala fide were made against the 4th respondent and based on two incidents: first, initiation of disciplinary proceedings by the 4th respondent, which had resulted in punishment of censure on 17.11.1995. Second, on 1.9.1995 there was an incident of acid throwing on the 4th respondent, which was suspected to be by the applicants, though as per police investigation on the basis of an F.I.R., there was no evidence to connect any of the applicants with that incident. The other ground of attack is based on interpretation of rule 37 of Chapter II of the Posts & Telegraphs Manual, Vol. IV, read with circular No.20-12/90-SPB-I, dated 23.8.1990, (Annexure R-7), Government of India, Ministry of Communications, Department of Posts, New Delhi.

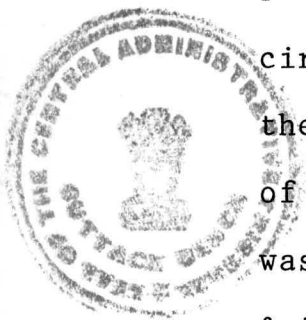


3. After considering the rival arguments and the cases cited before him, the learned Administrative Member was of the view that "the decision in Rout's case is opposed to the decision in Parmar's case" and, therefore, in "view of the conflict of decisions", it was a fit case for reference to the Full Bench for decision on the aforesaid 4 points formulated by him. This is how this Full Bench came to be constituted for deciding the said points.

4. Out of the two decisions mentioned in the order of reference as taking contrary views, one is an unreported

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Division Bench decision of the Cuttack Bench of the Tribunal in Sri Krushna Chandra Rout v. Union of India & others, O.A. No.629 of 1994, decided on 26.5.1995; whereas the other is a reported Single Bench decision of the Ahmedabad Bench of the Tribunal in Mr. B.M.Parmar and others v. Union of India and others, reported in 1996 (1) ATJ 200 (CAT), referred as Rout's case and Parmar's case respectively in paragraph 3 of this order. Rout's case deals with an employee of the Telecommunications (in short, the "Telecom."), wing of the Ministry of Communications and considers the meaning and implications of rule 37 of the P & T Manual without referring to circular dated 23.8.1990, (Annexure R-7). In Parmar's case, the employees belonged to the Post and Telegraph, (in short, the "P & T"), wing of the same Ministry of Communications, as do the applicants in the present applications belong, and the provisions of rule 37 of the P & T Manual, as also the import and implications of circular dated 23.8.1990 were considered. In this context, the learned counsel for the applicants argued that in view of the fact that after 1984, the Ministry of Communications was divided into two separate Departments of Telecom. and P & T and that the said circular dated 23.8.1990 was issued by the Department of P & T, the circular was applicable to the employees of the P & T Department and not applicable to those of Telecom. Department. For this reason, the circular was not considered, or relied on by the parties in Rout's case; whereas it was relied on by one of the parties and also considered in Parmar's case. In the light of these facts, it was further argued that there was no conflict between the Rout's case and the Parmar's case and, therefore, the first question referred to the Full Bench does not arise for consideration.



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5. Prima facie, the argument is fascinating, but before accepting or rejecting the argument, let us see the provisions of rule 37 of the P & T Manual and then to the contents of the circular dated 23.8.1990. Rule 37 reads as follows:

"37. All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen, village postmen and Class IV servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22."

The circular dated 23.8.1990, issued by the Department of Posts, Ministry of Communications, mentions:

"As per long standing practice and convention, there is a clause in the initial appointment letters of the employees of the department of Posts to the effect that they can be transferred anywhere in the country under special circumstances.

"2. Since in actual fact a vast majority of Group C and Group D employees is never subjected to the transfer liability implied in this clause, it is felt that such a condition is not necessary in the appointment orders.

"3. The matter has been considered carefully in consultation with the Ministry of Law. It is hereby ordered that no clause or condition relating to transferability anywhere in the country, under special or general circumstances, should from now on be mentioned in the appointment order issued to Group C and Group D employees of the Department of Posts. Such a clause existing in the case of employees already in service also is hereby cancelled with immediate effect and their appointment order would also stand so modified with effect from the date of issue of this letter."

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Fundamental Rule 15 referred to in rule 37 of the P & T Manual may also be reproduced hereinbelow:

"F.R.15. (a) The President may transfer a Government servant from one post to another; provided that except-

- (1) on account of inefficiency or misbehaviour, or
- (2) on his written request,

a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in Clause (a) of this rule or in Clause (13) of rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of Clause (a) of Rule 14."



F.R.-22 referred to in rule 37 deals with initial pay of a Government servant and his pay on appointment to a new post. It has, therefore, no relevance for our purposes and, therefore, it is not reproduced.

6. It appears that in Parmar's case (supra), the learned Administrative Member of Ahmedabad Bench took it that after the circular dated 23.8.1990, rule 37 of the P&T Manual remained no more in operation. To quote:

"with the specific direction to delete the transfer liability clause in the appointment order itself, there is considerable merit in the contention of the applicants that Rule 37 is no more in operation. At the same time, it is also true that no formal action has been taken to delete Rule 37 from the Manual.....It is quite understandable that the department has not chosen to formally delete Rule 37 as yet, since it might be necessary to resort to Rule 37 in cases of emergency as temporary shifting of staff for a purely limited period might become necessary. The need for such a power to meet such a contingency in the public interest can be understood.

But, at the same (time) it is also clear in view of the decision referred to by the department in the

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above letter dated 23rd August, 1990, that such a transfer under Rule 37 cannot be resorted to as a long term measure." (Emphasis supplied)

Further it was held by the learned Member that:

"In view of the reasoning above, it has to be held that Rule 37 is no more in operation when the department had decided to delete transfer liability clause from appointment letter."

The said conclusion is based on the interpretation of circular dated 23.8.1990 and its implication on the provisions of rule 37. Let us, therefore, see if the conclusion is correct.

7. The extract from the circular given in paragraph 5 of this order gives no indication that the Government wanted to delete the provisions of rule 37 of the P & T Manual. The sentences emphasised in the passage from Parmar's case (supra) reproduced hereinbefore would indicate that even the learned Member did not think that the effect of the circular was to delete rule 37 because according to him, "it might be necessary to resort to Rule 37 in cases of emergency as temporary shifting of staff for a purely limited period might become necessary." Accordingly the further view taken by the learned Member of the Ahmedabad Bench that "Rule 37 is no more in operation when the department had decided to delete transfer liability clause from Appointment letter" appears to be self contradictory. In this context, when we scrutinised the provisions of rule 37 and the contents of the circular dated 23.8.1990, we came to the following conclusions:

- (i) Rule says and everyone knows that transfer is an incident of government service, unless the appointment is shown to be against a specified, non-transferable post. Ordinarily it is not mentioned in any appointment letter that the appointment is subject to transfer, because as

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pointed out by the Supreme Court in B. Vardha Rao v. State of Karnataka, (1986) 4 SCC 131= (1986) 1 ATC 558 (SC), unless the appointment is to a specified non-transferable post, transfer is an incident of service of a government servant, who is appointed to a particular cadre. But it appears, as per practice and convention of the postal department, it used to be mentioned in the initial appointment letters of the employees that they could be transferred anywhere in the country under special circumstances.

- (ii) Why the said practice was adopted, may now be considered. All officials of the Department "are liable to be transferred to any part of India" under rule 37 of the P & T Manual. Rule also cautions that the transfers should be in the public interest. In so far as postmen, village postmen and Class IV servants are concerned, it says, except for very special reasons, they should not be transferred from one district to another. In other words, the rule makes an exception in cases of postmen and Class IV servants and by implication, prohibits their country-wide transfers. The rule permits their transfers within the district and for very special reasons, their transfers from one district to another district is also permitted. However, there is no sanction for their transfers from one part of the country to another part of the country. Yet in their appointment letters also it used to be mentioned that they could be transferred anywhere in the country. In this



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background and in view of the fact mentioned in paragraph 2 of the circular that "in actual fact a vast majority of Group C and Group D employees is never subjected to the transfer liability implied" in the clause used to be inserted in the initial appointment letters, it was decided that "such a condition is not necessary in the appointment orders." (Emphasis supplied).

For these reasons we hold that Parmar's case (supra), was not correctly decided by the Ahmedabad Bench of the Tribunal and, therefore, it is hereby over-ruled.

8. The learned counsel for the applicants himself contended that the Cuttack Bench of the Tribunal correctly decided Rout's case (supra); but for the circular dated 23.8.1990 issued by the P & T Department and the decision of the Ahmedabad Bench in Parmar's case (supra), holding that rule 37 of the P & T Manual became inoperative after the date of the circular, the decision of the Cuttack Bench in Rout's case could not be applied to the present applicants. Accordingly by implication, he did not dispute that the applicants could be transferred under rule 37, if the Parmar's case did not exist, or was over-ruled. Since we have over-ruled the Parmar's case, the transfer orders cannot be impugned on that basis. Accordingly our answer to the first question is as follows:

"The Division Bench decision in **Krushna Chandra Rout v. Union of India & ors.**, (O.A. No.629 of 1994), lays down the law correctly."

9. Our answer to the first question also covers our answer to the second question referred to the Full Bench. Even after the circular dated 23.8.1990, the power under rule 37 survives and, therefore, transfer under rule 37 is permissible, provided that the seniority of the transferred

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officer is not affected pursuant to the transfer order. Accordingly our answer to the second question is as follows:

"The letter dated 23.8.1990 of the Director General of Posts does not restrict the power of the Head of Department or Head of a Circle like C.P.M.G. to transfer a Group 'C' or Group 'D' official from one Division to another Division within his own Circle, provided his seniority is protected by the order of transfer."

10. It was argued by the learned counsel for the applicants that the Senior Superintendent of Post Offices, Puri Division, i.e., the 3rd respondent was not competent to issue the impugned transfer orders from his Division to Koraput Division. The competent authority in this regard was the Chief Post Master General, Orissa Circle, Bhubaneswar. Accordingly the transfer orders were liable to be quashed on this ground.

11.. We find no substance in the aforesaid contention of the learned counsel for the applicants. At the outset, the transfer order mentions "In pursuance with C.O. letter No.INv/Misc-31/95 dated 17.11.95", the transfer orders were issued. Copy of the order was also endorsed to the Chief Post Master General, Orissa Circle, Bhubaneswar with reference to his said C.O. letter dated 17.11.95. Accordingly we are of the view that the transfers made by the 3rd respondent from Puri Division to Koraput Division were pursuant to the approval given by the competent authority and, therefore, the decision of the Orissa High Court in Prafulla Kumar Samal v. Chairman, S.T.A., (1977) Vol XLIV, THE CUTTACK LAW TIMES 181 is not applicable in the present case. Accordingly the aforesaid contention is hereby rejected.

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12. The argument of the learned counsel for the applicants that the transfer order was not in public interest, or that it was mala fide and punitive in nature deserves to be rejected. If it was difficult to maintain the discipline of the Circle because of such activities as were alleged against the applicants and if it was not possible or even if possible to initiate disciplinary proceedings or criminal proceedings against them, they could be transferred from one Division to another Division in the larger interest of the administration. Merely because the Police did not find any evidence against the applicants about acid-throwing incident or that they were earlier subjected to penalty of censure it could not be said that the transfer order was punitive in nature or that transfer could not be resorted to by the competent authority. The view we are taking is supported by a Full Bench decision of the Principal Bench of the Tribunal in Kamlesh Trivedi v. Indian Council of Agricultural Research & Anr., ATR 1988 (2) CAT 116 (FB), as also supported by a decision of 3rd Member of the Principal Bench on a difference of opinion between the learned Members constituting the Division Bench in Dr. V.P. Bansal v. U.O.I. & Ors, O.A. No.2602/97 decided on 24.3.1998. In the present cases, there was basis to believe that the applicants had a hand in the acid-throwing incident of 1.9.1995, though there was no evidence for prosecuting them in criminal court, and according to us, this could form a basis for transferring the applicants from one Division to another as per rule 37 of the P & T Manual. Accordingly our answer to the 3rd question is as follows:

"A transfer can be resorted to to remove officials suspected of creating indiscipline and such transfer on such basis cannot be said to be punitive in nature."

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13. We are of the view that the last question referred to the Full Bench does not arise in the light of rule 37 which empowers the competent authority to transfer Postmen, Village Postmen and Class IV servants from one district (or division) to another for very special reasons. In the peculiar facts and circumstances of the case, we are of the view that such very special reasons did exist in the present cases and, therefore, the transfer orders cannot be impugned. For this reason, we are of the view that it does not appear necessary to answer the last question referred to the Full Bench.

14. In the light of our discussions aforesaid, our answers to the various questions referred to the Full Bench are as follows:

(i) The Division Bench decision in **Krushna Chandra Rout v. Union of India & Ors.**, (O.A. No.629 of 1994), lays down the law correctly.

(ii) The letter dated 23.8.1990 of the Director General of Posts does not restrict the power of the Head of Department or Head of a Circle like C.P.M.G. to transfer a Group 'C' or Group 'D' official from one Division to another Division within his own Circle, provided his seniority is protected by the order of transfer.

(iii) A transfer can be resorted to to remove officials suspected of creating indiscipline and such transfer on such basis cannot be said to be punitive in nature.

AND

(iv) Does not arise for the reasons stated in paragraph 13 of this order.

15. Since the learned Single Member Shri N.Sahu, who

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had initially heard the cases and made the reference, is no longer available at Cuttack and no other point survives, we propose to finally dispose of the applications. Accordingly we hold that for reasons aforesaid, all the applications fail and, therefore, they are hereby dismissed, but without any order as to costs.

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M. Agarwal

(K.M. AGARWAL)
CHAIRMAN



Somnath Soni
(SOMNATH SONI)
VICE CHAIRMAN (A) 4/5/98

S. K. Agarwal
(S.K. AGARWAL)
MEMBER (J) 4/5/98