

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 502 of 96

corrected vide order
dt. 27.9.94. Sub 4/10/94

Present : Hon'ble Mr.D.C.Verma, Vice-Chairman
Hon'ble Mr.M.K.Mishra, Administrative Member

RATUL CHARAN CHAKRABORTY

VS

UNION OF INDIA & ORS.

For the applicant : Mr.S.K.Dutta, counsel
* Mr. P. Mukherjee, counsel.
For the respondents: Mr.P.Chatterjee, counsel

10/9/94

O R D E R

M.K.Mishra. A.M.

This OA has been filed by Shri Ratul Charan Chakraborty who was a Railway employee since 11.4.63. The applicant got various promotions as per rules and by way of restructuring as Sr.Foreman he was transferred and posted at Steam Loco Shed at Santragachi, Howrah. With the passage of time the Steam Loco Shed was transformed into Diesel Loco Shed by the Railway and the applicant was absorbed in the Diesel Loco Shed, Santragachi as Foreman Gr.'B'. Subsequently the Railway Board upgraded 17% of the cadre strength of Foreman Gr.'B' by way of restructuring to the post of Foreman Gr.'A' w.e.f. 1.3.93 vide circular dated 27.1.93. In this context the Chief Personnel Officer, S.E.Rly., Garden Reach issued a circular dated 28.10.94 whereby the applicant was promoted as Foreman Gr.'A'(Mechanical) and was posted at Kharagpur. The grievance of the applicant is that the vacancy was available at Santragachi in the grade of Foreman 'A', even then he was posted at Kharagpur. Since it was an upgradation of the post due to restructuring, therefore he was entitled to be posted as Foreman Gr.'A' at Santragachi. With this grievance, the applicant filed this OA with the following prayers :

a) to cancel, withdraw and/or rescind the purported order being Memo dated 1/9th December, 1994 contained in Annexure 'B' in so far as it purport to post the applicant from DLS/Santragachi to DLS/Kharagpur against an additional post of Foreman 'A' (Mechanical) and the purported memo dated 13.12.95 contained in Annexure 'D' hereof.

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- b) to direct the respondents to give the applicant posting at DLS/Santragachi as Foreman 'A" (Mechanical) on his upgradation and/or promotion by way of restructuring where the post of Foreman 'A' (Mechanical) is vacant and available.
- c) to direct the respondents to produce entire records of the case to this Hon'ble Tribunal for conscientable justice.
- d) to deal with and dispose of the representations contained in Annexure 'C' and 'E' hereof.
- e) to pass such further or other order or orders as to your Lordships may seem fit and proper.

2. Briefly the facts of the case are that against the transfer order dated 28.10.94 (Annexure 'A') the applicant made several representations before the competent authority but no response was ever communicated to him at all. The applicant did not join at Kharagpur and worked as Foreman Gr.'B' in the Diesel Loco Shed at Santragachi. He also challenged the order dated 1/9.12.94 (Annexure 'B') in the above prayer. The 1d.counsel for the applicant also stated that other person was posted in Santragachi and in the same manner the applicant should have been posted there. The 1d.counsel also submitted that the applicant should be allowed the benefit of Foreman Gr.'A' w.e.f. 1/9.12.94. The applicant was released from the post of Foreman Gr.'B' at Santragachi vide order dated 13.12.95 (Annexure 'D'). Even then the applicant did not join at Kharagpur. The applicant stands now retired on 31.12.2000.

3. The 1d.counsel for the respondents in their reply submitted that at Santragachi there was no post of Foreman Gr.'A'. Therefore the applicant was posted at Kharagpur. The transfer is the incidence of service and the applicant has no right to claim the posting at a particular place. The restructuring was done with sole intention of providing benefit of promotion to the cadre of Foreman Gr.'B'. Since the applicant did not work as Foreman Gr.'A' because he did not join at Kharagpur, therefore by following the principle of 'no work no pay' in that grade, the applicant is not entitled for any benefit available to Foreman Gr.'A'.

4. We have anxiously considered the averments made by the 1d.counsel for both the parties and also perused the materials on

record. It is a fact that the transfer was made as a result of promotion as per policy of restructuring of the cadre. It is also a fact that the transfer was not made on account of punishment. It is also an admitted fact that the consent of the employee is not necessary in the case of transfer. It is also an admitted fact that there are no statutory provisions governing transfer of the Railway servants in this case. As per the respondents there does not exist vacancies of Foreman Gr.'A' in the Diesel Loco Shed, Santragachi. From the record it is also observed that the power of transfer was exercised in a bonafide manner and there was no malafide intention in transferring the applicant from Santragachi to Kharagpur. The transfer was made as a matter of exigency of the administration as was held by the Hon'ble Supreme Court in the case of K.B.Sukla -vs- Union of India & Ors. reported in 1979(2) LSR 58 SC. The Hon'ble Supreme Court in the case of Shilpi Bose & Ors. -vs- State of Bihar reported in 1992 SCC (L&S) 127 held that the Court should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory, statutory rules or on the ground of malafide. A Govt. servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to the other. If the Courts continue to interfere the day-to-day transfer orders issued by the Govt. and its sub-ordinate authorities there would be complete chaos in the administration which would not be conducive to public interest. In the case of Union of India & Ors. -vs- H.N.Kirtania reported in 1989 SCSLJ (13) page 359 the Apex Court held as under :

"After hearing learned counsel for the parties we find that the Tribunal acted in excess of its jurisdiction in issuing impugned direction. The Tribunal recorded positive findings that the transfer order was legal and valid and it was not vitiated by any unfairness or mala fide, thereupon it should have dismissed the writ petition. It had no jurisdiction to issue further directions regarding the release order and the payment of emoluments. The Tribunal lost sight of the fact that the respondent had already been released from the Calcutta Office w.e.f. 15.3.885, therefore, there was no question of

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issuing any fresh release order. We accordingly allow the appeal and set aside the impugned directions of the Tribunal. There will be no order as to costs."

5. The upshot of the above discussion is that the Tribunal should not interfere in this case as the transfer order was made on account of granting promotion to the applicant and since the applicant did not join in the grade of Foreman Gr.'A' and he continued to work as Foreman Gr.'B', therefore he is not entitled to any benefit available to Foreman Gr.'A'. Thus the OA stands dismissed. No order as to costs.


MEMBER(A)

in


VICE-CHASIRMAN