

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR

Date of order : 02.02.1998.

O.A. No. 359 OF 1996.

Jhumar Lal S/o Shri Birda Ramji, R/o Near Banar
Railway Station, Bilara Road, Jodhpur, presently
working as Mazdoor in the office of the Commandant
19 F.A.D., Jodhpur C/o 56 A.P.O.

..... Applicant

VS.

1. Union of India through the Secretary, Ministry
of Defence, New Delhi.
2. The Commandant, 19 F.A.D., C/o 56 A.P.O.

..... Respondents

Present :

Mr. S.K. Malik, counsel for the Applicant.

Mr. R.K. Purehit, for and on behalf of Mr. J.P. Joshi,
counsel for the respondents.

CORAM :

HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER

O R D E R

BY THE COURT :

The applicant who is working as Mazdoor in
the office of the Commandant, 19 F.A.D., Jodhpur, had

.2.

filed this O.A. with the prayer that the impugned order of transfer dated 5th October, 1996 at Annex.A/1 be quashed and the applicant be awarded exemplary cost from the respondents.

2. Notice of this O.A. was given to the respondents who have filed their reply in which it is mentioned that due to declaration of 26 Mazdeors as surplus applicant alongwith 25 others, who are the junior most Mazdeors, were transferred under the directions of Army Headquarters, New Delhi. The applicant has all India transfer liability, therefore, the O.A. deserves to be dismissed.

3. While the O.A. was pending to be decided on merits, the matter of interim relief was taken up and decided by the Tribunal on 15th Nov., 1996. After hearing the parties it was concluded that no case of interim relief is made out by the applicant, therefore, request for interim relief was rejected.

4. During the pendency of this O.A. at the behest of the learned counsel for the applicant I directed the respondents to place on record a statement relating to 26 Mazdeors who were transferred by impugned order Annex.A/1 to show as to how many of them were relieved and how many of them were not relieved and grounds thereof. In compliance thereof, the respondents have placed on record a statement which shows that 15 of the Mazdeors were relieved on different dates upto 23rd of December, 1997. Rest of them ~~were~~ have not been relieved.

Out of 11 Mazdeers not so relieved, 2 are women. Therefore, their case stands on different footing but rest of the 9 Mazdeers have not been relieved. It is said that under the orders of higher authorities, they have been adjusted in the nearby areas under the control of 19 F.A.D.

5. During the course of arguments it was submitted that after rejection of prayer relating to interim relief, the applicant has joined at the new place of posting. Learned counsel for the applicant submitted that irrespective of the above fact, the O.A. should be heard on merits and appropriate directions to the respondents be given because they have discriminated the applicant vis-a-vis other Mazdeers who were transferred by the respondents by the impugned order. He has argued that while applicant and 14 others were relieved and were asked to proceed to their new place of posting, remaining 11 Mazdeers who were transferred by the same order have not been so relieved and they are still continuing at their old place of posting or have been adjusted in neighbouring area which is under the control of 19 F.A.D. Therefore, the applicant also deserves to be adjusted near his home-village or in the nearby area controlled by 19 F.A.D. He has also argued that the transfer of the applicant is mid-term transfer and his school going children were disturbed and due to language problem in Maharashtra region, they are suffering in respect of their education.

6. On the other hand learned counsel for the respondents has argued that under the orders of the

Army Headquarters, surplus Mazdoors were transferred to other places where there was short fall of such Mazdoors. While transferring surplus Mazdoors, the junior most Mazdoors were asked to go on transfer. The applicant is also one of such 26 Mazdoors. He has also argued that everywhere in India Central Schools are functioning where children of such transferred employees can be admitted and adjusted. If, however, the applicant does not want to take his children to his new place of posting he can retain his children at his old place of posting and claim education allowance for his children as per rules. He has also argued that Mazdoors who were adjusted in 19 F.A.D. were adjusted under the order of Army Headquarters. Therefore, the applicant is not entitled to any relief.

7. I have considered the rival arguments. The applicant was transferred way back in October, 1996, thereafter, this is the second educational session which is going to conclude. Therefore, the ground that because of applicant's transfer, education of his children would suffer, does not survive at all.

8. From the above facts it appears that the Mazdoors who were sincere in collecting their relieving orders have to move to a place ^{away} far from their native village and the Mazdoors who avoided the service of relieving orders or somehow managed not to be relieved, have been adjusted in the neighbouring area under the F.A.D. inspite of the transfer order. This situation is dis-heartening. When authorities had decided to

(14)

transfer some of the Mazdoors because they were rendered surplus then there was no justification with them to adjust few of them in nearby area and ask the remaining few to go away. This, in my opinion is a clear case of hostile discrimination. Therefore, the applicant deserves to be adjusted somewhere in the area under the control of 19 F.A.D. nearer Jodhpur in near future. With this observation, the O.A. deserves to be accepted.

9. The Original Application is, therefore, partly accepted and respondents are directed to adjust the applicant in an area under their command of 19 F.A.D. nearer to Jodhpur within a period of four months. With these observations the O.A. is disposed of at the admission stage with no order as to costs.

(A.K.MISRA)
Judicial Member

• • •

mehta