

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

(1) O.A. No. 195/91

R.C. Gupta and others

Applicants

versus

Union of India & others

Respondents

(2) O.A. No. 137/91

Om Prakash Sharma and others

Applicants

versus

Union of India & others

Respondents.

Hon. Mr. A.B. Gorthi, Adm. Member.

Both the above mentioned applicants are based ^{now} on identical facts and questions of law raised therein are common. Accordingly, this judgment governs both the cases. Pleadings are complete in O.A. No. 137/91 whereas in O.A. No. 195/91 Rejoinder Affidavit has not been filed. However, with the consent of the parties, both the cases have been finally heard today.

2. The applicants are aggrieved by a policy decision taken by the respondents on 15.4.91 to the effect that henceforth Assistant Leave Reserve/Station Masters who are posted under Sectional Traffic Inspectors, will also be subjected to periodical transfer after every 4 years. The applicants' prayer is that the said policy decision be set aside and the consequential transfer orders issued on 8.5.91 and the order of the respondents dated 23.4.91 rejected ^{by} their representation be also set aside.

2. The applicants are Leave Reserve Assistant Station Masters (L.R.A.S.M for short) posted under various Sectional Traffic Inspectors. The L.R.A.S.Ms constitute a pool under the Sectional Traffic Inspectors and are assigned duties in various sections where the Station Masters go on leave. They constitute the cadre of ASMs alongwith rest giver ASMs. Prior to 1988 Leave Reserve ASMs and rest giver ASMs were subjected to periodical transfer after every 4 years. However, in 1988 L.R.A.S.Ms and rest givers ASMs were exempted from periodical transfer vide Northern Railway, Divisional Officer letter dated 12.2.88 (Annexure -2). The said policy letter states interalia that "as a general principle applicable to all categories of staff the total stay of an employee on a seat irrespective of grade is to be counted for the purpose of periodical transfer. As regards period of working as Leave Reserve and rest giver that should not normally be counted as they do not normally work at a particular city/station continuously". In other words, the period of working as rest giver/Leave Reserve was not to be counted for assessing 4 years stay at a particular station. This policy continued to hold ^{ground} and was reiterated in 1989 and 1990. Even the respondents' letter dated 6.2.91 stated that as a general principle applicable to all category ^{is} of staff, period of working as rest ^{is} giver/Leave Reserve Station Master, shall not be counted

for assessing four years stay at a particular station. Notwithstanding such continued and consistent policy, the respondents, vide impugned order dated 15.4.91 reversed the earlier policy, ^{and} ~~as~~ laid down that henceforth L.R.A.SMs posted under Sectional Traffic Inspectors would also be subjected to ~~periodical~~ transfer after every 4 years. Representations made by some of the affected individuals was turned down and finally the transfer orders were issued vide order dated 8.5.1991.

3. The respondents have admitted most of the essential facts of the case. They, however, refuted the contention of the applicants on the plea that the revised policy decision was taken after ^{the} careful ~~all~~ ^a subject consideration of the aspects of the matter and in consultation with the recognized trade Unions. They also contended that the post of Traffic Inspector is a sensitive post and it was therefore, desirable that L.R.A.SMs working under Traffic Inspectors/should also be subjected to ~~periodical~~ transfers.

4. Both the learned counsel for the parties have been heard at length. Shri L.P.Shukla learned counsel for the applicant assailed the revised policy decision on several counts. The main contention raised by him was that the revised policy decision smacks of discrimination and is thus violative of Articles 14 and 16 of the Constitution of India. While L.R.A.SMs working under ASMs have not been affected by the revised

policy, ~~it~~ has been made applicable only to LRASMS working under Traffic Inspectors. The learned counsel for the applicant further asserted that there was no rationale behind the revised policy as Leave Reserve ASMs keep moving from place to place and hence there was no scope for them to ~~make~~ give any permanent contact with any section of the general public. There is, therefore no question of treating them as holding sensitive posts for the purpose of transfer. ~~While~~ In respect of other employees, they were given an opportunity to suggest their preference for posting by 25.2.91, whereas ~~the~~ ^a similarly benefit was denied to the applicants. Last but not the least, ~~which~~ was vehemently argued on behalf of the applicants that the respondents succumbed to the pressure from the Trade Unions and ~~issued~~ ^{passed} the impugned revised policy decision.

5. The learned counsel for the respondents denied that there was ^{any} ~~no~~ pressure from the Trade Unions. The respondents took a decision in consultation with the Trade Unions and hence the said decision cannot be said to be arbitrary. It cannot ~~be~~ also be said to be discriminatory because the revised policy has been made applicable to all the LRASMS working under the Traffic Inspectors. The post of Traffic Inspector is a sensitive post and the respondents took a decision that LRASMS working under such Traffic Inspectors also

should be treated as at par with those holding sensitive posts. In view of this, the respondents' contention is that ^{the} revised policy is based on exigencies of service and cannot be said to be without any ~~rationale~~.

6. The learned counsel for the applicant has drawn our attention to the decision of the Supreme Court in the case of Col. Avtar Singh Sekhon vs. Union of India and others (1981) SCC(L&S) 381. The relevant extract from the judgment may be reproduced below:

"A policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it, and readjust it according to the compulsions of circumstances and the imperatives of national considerations. We cannot, as court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India, because it functions under the Constitution and not over it.".....

"It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Article 14 is that if it does change its policy it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily.

7. Accordingly it was argued by the learned counsel for the applicant that although the executive has the



authority to make a policy or to change it, it cannot do so, either arbitrarily or in a discriminatory way; such change of policy must be done fairly and it should not give the impression that the executive is acting by any ulterior criteria. The observation of the Hon'ble Supreme Court in this case do not really help the case of the applicants. It clearly shows that the executive has the power and competence to change or re-change or adjust or readjust its policy decision. In fact, that is what has been done by the respondents in this case. It cannot, therefore, be said that the respondents' decision, *per se*, is illegal.

8. On the question of discrimination, it is seen that the policy decision, applicable to all the L.R.A.SMs working under the Traffic Inspectors, ^{Merely} ~~which is~~ because of LRASMs working under the ASMS have not been brought within the purview of the revised policy, ^{it} cannot by itself amount to discrimination. The respondents have explained that it was decided to treat the LRASMs working under Traffic Inspectors as holding sensitive posts, and accordingly subjected them to periodical transfers. The said decision was taken after consultations with the ^{Trade} recognized Unions. It cannot, therefore, be said that ~~it~~ is

revised policy decision was taken behind ^{the} back of the applicants. In the circumstances, ~~we~~ ^I find no merit in the applications.

9. In the result, the applications are hereby dismissed. There, shall, however, be no order as to costs.

Shankar
Adm. Member

Lucknow Dated: 29.5.92.

This judgment has been pronounced ^{in open} Court by me ~~on~~ ^{on} 6 days on her order of Hon'ble V.C. and as per initiation by Mr. A.B. Gorai Member (A),
Shankar
2.6.92
Member Judicial