

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 353/87

Exxxxxxx

198

DATE OF DECISION 13.3.91

Ashok Narayan Toke Petitioner

Mr. G. S. Walia Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mr. A. I. Bhatkar for Mr. M. I. Sethna Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M. Y. Priolkar, Member (A)

The Hon'ble Mr. T. Chandrasekhara Reddy, Member (J)

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 ?

T. C. Reddy
Member (J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.353/87

Ashok Narayan Toke,
C/o. Shri G.S.Walia,
89/10, Western Railway
Employees' Colony,
Matunga Road,
Bombay - 400 019.

.. Applicant

vs.

1. Union of India
through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
2. The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
3. Chief Signal and Telecommuni-
cation,
Western Railway,
Churchgate,
Bombay - 400 020.
4. Divisional Railway Manager,
Bombay Division,
Bombay Central,
Bombay - 400 008.

.. Respondents

Coram: Hon'ble Member(A)Shri M.Y.Priolkar

Hon'ble Member(J)Shri T.Chandrasekhara Reddy

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.
2. Mr.A.I.Bhatkar
Advocate for
Mr.M.I.Sethna
for the respondents.

JUDGMENT: Date: 13-3-91
(Per T.Chandrasekhara Reddy, Member(J))

This Original Application is filed by the applicant herein under Section 19 of the Central Administrative Tribunals Act,1985 with the main prayers to quash his transfer order dated 12.8.86, and after quashing the said transfer order of the applicant to direct the concerned authorities in the Railways to post the applicant in Bombay.

2. The facts give ~~s~~ rise to this application in brief may be stated as follows:

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3. The applicant was working as Safety Counsellor(Signals) in Bombay. The first respondent to the application is the Union of India, the second respondent the General Manager, Western Railway, Bombay, the third respondent the Chief Signal Telecommunication Western Railway, Bombay and 4th respondent the Divisional Manager, Bombay Division, Bombay Central, Bombay.

4. While the applicant was so working as Safety Counsellor in Bombay he was deputed to Iraq on secondment on or about 12.9.1985 for a period of about 9 months. After the applicant completed the said secondment, he was repatriated to Bombay Division on or about 1-7-1986. After the completion of the deputation period the applicant was transferred vide order dated 12-8-1986 by the railway authorities from Bombay to Kota. However, the applicant did not report to duty either after 1-7-1986 or after the said transfer order dated 12-8-1986. The applicant sent representations dated 4-8-86, 6-8-86 and 14-8-86 to his superiors to cancel the said transfer order from Bombay to Kota and for reposting him in Bombay. The representations of the applicant were negatived. So the applicant approached this Tribunal on 1-4-1987 and filed the present application on 1-4-1987 questioning his transfer from Bombay to Kota and for the other main relief as earlier indicated.

5. During the pendency of this proceedings the applicant joined duty at Kota on 6-5-1987. From then onwards the applicant is continuing in his capacity as Safety Counsellor(Signals) at Kota.

6. On 1-5-1987 this Tribunal had directed the concerned authorities that the applicant should be permitted to occupy the quarter in his possession on normal rent until further orders. Under the cover of said orders dated 1-5-1987 the applicant continues to be

in the occupation of the said quarters even today.

7. The respondents in their reply have maintained that the said transfer order from Bombay to Kota was ordered as the applicant was an experienced officer in colour light signalling and so his services were availed by the railways on sections of Kota Division that were being provided with colour light signal as part of railway electrification and as such the applicant soon after his transfer should have joined his post at the transferred place. It is further maintained on behalf of the respondents that the said transfer of the applicant is caused by the competent authority in public interest and in the exigency of service on administrative grounds.

8. When the application came up for hearing the learned counsel appearing for the applicant submitted before us that he was not attributing any motives or malafides to the railway administration responsible for the said transfer order passed against the applicant. So with this background made by the learned counsel for the applicant, this applicant is to be decided.

9. The applicant seems to have joined Territorial Army Unit for a period of one month from 1-7-1986. Obviously pending transfer orders the applicant seems to have joined the Territorial Army Unit. Certain instructions with regards to be benefits to the Territorial Army personnel ~~are~~ found in Ex.B page 19 and Ex.C page 20, in the paper book. The said instructions contain some guidelines with regard to the facilities that are to be provided

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to the railway territorial army personnel. Ex.B at page 19 of the paper book is issued by the Deputy General Manager. The said instructions contained in Ex.B are published in Western Railway Gazette No.2 dtd. 1-2-1985. One of the benefits mentioned in Ex.B is that the staff who have joined Territorial Army Units are to be given on transfer a station of choice for posting. Ex.C at page 20 is dated 29-9-1986 and the same is issued by the Western Railway. At para 4 of Ex.'C' as per the said guidelines, it is mentioned the territorial army personnel are to be given reposting at the same station. Relying on the said instructions and guidelines Mr.Walia, counsel for the applicant, vehemently contended before us that the applicant should be given posting in Bombay only as per his choice and not giving the station of the choice of the applicant, which is Bombay, the department had done harm to the applicant as the applicant is put to a lot of inconvenience in looking after his aged mother, besides by ~~be~~ having away from his wife who is working in a private school in Bombay and his only daughter studying SSC in Bombay. It is needless to point out that transfer is a normal feature and incident of Government service. No doubt the said transfer might have resulted in loss of some advantages to the applicant. But one has to remember that the railway has the power to transfer its servants within the range of transferability even if such a transfer results in loss of some advantages to its servants concerned. But it is only by way of an exception to this rule that it can be shown that the said transfer order was by way of a camouflage with the real intention to punish the government servant.

Admittedly in this case it is not by way of punishment that the transfer of the applicant is effected but the said transfer seems to have been brought, as seen from the material placed before us, on behalf of the respondents, in public interest and in the exigency of service on administrative grounds. No doubt as already pointed out the learned counsel very much relied on the said guidelines, in Ex.B and C to which a reference is already made. If the guidelines as laid down in Ex.B & C are implemented by the railway authorities with regard to the personnel of the Territorial Army then it gives room for belief that the said railway servants who belong to the territorial army can perpetually stay at stations of their choice which cannot be the case. So the contention that transfer of the applicant against the said guidelines is bad cannot be accepted. Authorities have vast discretion in the matter of transfer and if the transfer is in public interest, mere violation of guidelines is immaterial. Hence the said transfer of the applicant is valid and is liable to be upheld.

10. The learned counsel appearing for the applicant relied on ATR 1986 CAT 304 (K.K.Jindal v. General Manager, Northern Railway & Ors.) in support of his contention that the applicant is liable to be transferred from Kota to Bombay. But the Bench in the said case was dealing with transfer for reasons other than merely administrative. So the said decision does not apply to the facts of this case as we are satisfied in this case that the said transfer of the applicant had been effected purely for administrative convenience. The learned counsel also relied on

another decision of the C.A.T.Bench reported in 1987(2)(CAT)SLJ 308 (Avadh Bihari Singh v. Union of India and others) wherein it is laid down that the headquarter of the employee does not change by a mere order of transfer which has never been carried out. It is the contention of the learned counsel that after approaching this Tribunal the applicant has joined duty at Kota and for all purposes it has to be understood that the applicant had not joined at Kota so the applicant must be deemed to be working in Bombay itself. We do not see any force in the contention of the learned counsel for the applicant as we have held that the transfer of the applicant in this case is legal and valid. So the said decision does not apply to the facts of this case. Hence this application is liable to be dismissed.

11. One of the prayers of the applicant is that a direction is to be given to the respondents to pay his salary due to the applicant for the period from 1-7-1986 till he is again reposted in Bombay. Admittedly from 1-7-1986 to 5-5-1987 the applicant does not appear to have reported for duty. Whether any salary has got to be paid for the period from 1-7-1986 till 5-5-1987 is a matter left to the respondents. We refrain ourselves from entering into the merits with regard to the absence of the applicant from duty from 1-7-1986 to 5-5-1987 as we are not expected to give finding on this aspect. As already indicated it is for the department to take a decision for the said absence of the applicant whether to pay him the salary or not.

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12. As already pointed out the applicant is in the occupation of quarter that had been allotted to him while he was working in Bombay till today in pursuance of the orders of this Tribunal dtd. 1-5-1987. As we have held that this application is liable to be dismissed the applicant cannot be further permitted to continue his possession of the said quarter. It will be open for the respondents to take action to seek eviction of the applicant from the said quarter.

13. In the result the original application is dismissed but without costs. The respondents will be at liberty to take steps to evict the applicant from the railway quarters he is in occupation. The dismissal of this application will not come in the way of respondents in considering the request of the applicant to transfer him from Kota to Bombay.

T.C.R.J
(T.CHANDRASEKHARA REDDY)
Member(J)

M.Y.P
(M.Y.PRIOLKAR)
Member(A)