

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXExWxxDxExxHx
NEW BOMBAY BENCHO.A. No. 533/87
RxxAxxNx

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DATE OF DECISION 21-1-1988Murli P. Chandiramani

Petitioner

Mr. G. K. Masand

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Mr. A. L. Kasturey

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J. G. RAJADHYAKSHA, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

6
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.533/87

Murli P.Chandiramani,
C/o.Shri G.K.Masand,
Advocate,
24-B,Rajabahadur Compound,
3rd Floor, Hamam Street,
Fort, Bombay - 400 023. ... Applicant

vs.

1. Union of India,
through
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Bombay - 400 008.
3. Shri Arun Dube,
Sr.D.O.S. Bombay Division,
Bombay Central,
Bombay - 400 008. ... Respondents.

Coram:Hon'ble Member (A) J.G.Rajadhyaksha.

Appearances:

1. Mr.G.K.Masand,
Advocate, for
the Applicant.
2. Mr.A.L.Kasturey,
Advocate for the
Respondents.

JUDGMENT:

Date: 21-1-1988

The applicant who is an Assistant Station Master at Kandivli Station on the suburban section of the Western Railway in Bombay has filed this application challenging the order issued on 10-7-1987 transferring him from Bombay to a railway station called Bhadbhunja on the Tapi Valley section of the Western Railway.

2. Though there are several averments in the application, the main dispute is about the transfer order which the applicant alleges has been issued as a penalty. He has attributed mala fides to Shri Arun Dubey, Respondent No.3, the Senior Divisional Operating Superintendent, Bombay Division. The reason for this transfer is stated to be the applicant's refusal to collect cash from the booking office and instead expecting the other supervisory personnel to collect the cash and hand it over to the Station Master or Asstt. Station Master on duty. The respondents have resisted the application by filing the reply on 26-8-1987 and stating therein that the applicant used to follow the correct procedure and collect the cash, but after he attended some training at Udaipur and returned to duty he refused to carry on this practice prevailing at all the stations. They added that he was the only Asstt. Station Master who was refusing to follow the procedure that other Station Masters and Asstt. Station Masters of the Western Railway's suburban stations are even now following. They, however, maintained that there was no mala fide intention behind the transfer, and that the Respondent No.3 did not have any altercation with the applicant, holding out threats of transfer to out of the way stations as alleged or that this transfer was ordered as a result of applicant's disobedience of any instructions given by the respondent officers. The reply, however, discusses applicant's attitude and persistent refusal to follow procedure and thus set an example in indiscipline to other staff.

3. Thus the only question for determination is whether the order dtd. 10-7-1987 transferring the applicant to the Tapi Valley section as Asstt. Station Master, Bhadbhunja, in the same pay scale and in the existing vacancy, was issued by way of a punishment or it was a routine transfer ?

4. I have heard Mr. G. K. Masand, the learned Advocate for the applicant and Mr. A. L. Kasturey, the learned Advocate for the respondents. Mr. Masand has quoted extensively from the Indian Railway Commercial Manual to strengthen his argument that it was not for the Assistant Station Master to move about and collect the cash. He was only to take over cash. He also stated that the applicant had met both the Divisional Operating Superintendent and the Divisional Commercial Superintendent on 4-5-1987 and 5-5-1987 respectively. But the result was a threat that the applicant would be transferred to a station where there would not be available even drinking water. The order dtd. 10-7-1987 is in furtherance of such a threat given by Shri Arun Dubey. This would also be clear from the vagueness in the order as to who would relieve the applicant and whom he would relieve at Bhadbhunja. His representation dtd. 19-6-1987 about the whole episode is still unanswered. Mr. Masand therefore, argued that this is clearly a punitive transfer order.

5. Mr. Kasturey argues that though Shri Arun Dubey has not specifically rebutted the allegations of mala fide, the written reply signed by Shri Basrur, the Additional Divl. Railway Manager, and verified by Shri Arun Dubey the Senior Divisional Operating Supdt. clearly states that the transfer is not punitive in nature. Rules in the Indian Railway Commercial Manual were cited only to pinpoint the default of the applicant inasmuch as while four other Assistant Station Masters collect the cash at the Station, the applicant refused to do so. Applicant had failed to comply with the instructions in spite of all reasonable opportunities given to him.

Mr. Kasturey adds that there are no rules standing in the way of transferring a railway employee from the suburban section to the Trunk route and vice versa or from one department to another department.

6. I do not consider it necessary to go into the various rules in the Indian Railway Commercial Manual which are quoted by both the learned advocates. Their interpretation need not detain me as the only contention of the respondents is that non compliance with these rules constituted disobedience and, therefore, misconduct on the part of the applicant. The question, therefore, is whether the transfer is punitive in its nature ? After reading the application and the reply I have no hesitation in concluding that the applicant had indeed departed from a well settled

practice regarding collection of cash according to the Indian Railway Commercial Manual. But this could enable the respondents to take disciplinary action against him if they so desired. They do not seem to have resorted to that course of action. On the contrary, the applicant has received an order of transfer outside Bombay. It is also not necessary to go into the allegations of mala fides and investigate into the conversation between Mr. Arun Dubey and the applicant or to ascertain whether there were in fact, any threats of transfer. The fact remains that as stated in the reply at paragraph 9 at page 5 and 6 as well as paragraph 10, the respondents had felt that the applicant was adamant and continued with his indisciplined behaviour in spite of oral admonitions and he was advised that it would become necessary to shift him to a station where a similar problem would not exist. This is over-simplification of the respondent's stand. All this leads me to hold that instead of contemplating disciplinary action against the applicant, the respondents decided to resort to the simpler expedient of a transfer order sending the applicant out of Bombay. Their averments in the reply also suggest that they wanted to make an example of the applicant for the other railway staff to note. Therefore, the order of transfer, however innocuous it might appear, is clearly a punitive order issued by the respondents because of the applicant's attitude to certain instructions contained in the Indian Railway Commercial Manual and given personally to him by his superiors. Such a punitive transfer cannot be allowed to stand.

13

It is not one of the prescribed punishment nor has it been preceded by appropriate procedure prescribed for taking disciplinary action.

7. In the circumstances the transfer order deserves to be quashed and set aside. Accordingly, I pass the following order:

The application is allowed.

The order transferring the applicant from Kandivli to Bhadbhunja Railway Station on the Tapi Valley issued from the Office of the Divisional Railway Manager, Bombay Central, is hereby quashed and set aside. Thus the stay granted by the Tribunal on 30-7-1987 and continued from time to time is converted into finally setting aside the transfer order, which was issued by the respondents as a punitive measure.

8. In the circumstances of the case, however, the parties to bear their own costs of this application.

(T.G. RAJADHYAKSHA)
Member (A)

Delivered in open Court