

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 376 of 1988
ExxooNexx

DATE OF DECISION 6.6.1989

Shri Ravindra Sitaram Chowdhari Petitioner

Shri M.D. Lonkar Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Shri R.K. Shetty. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Chaudhuri, 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?]
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?]



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.376/88

Shri Ravindra Sitaram Chowdhari,
 Trained Examiner(Central Railway),
 Bhusawal Division,
 C/o M.D.Lonkar,
 Advocate,
 B-56, Suyog Society,
 Sant Dnyaneshwar Road,
 Mulund(East),
Bombay-400 081.

.. Applicant

V/s.

1. Union of India
 through General Manager,
 Central Railway,
 Bombay V.T.
2. Divisional Railway Manager,
 Bhusawal Division,
 Central Railway,
 Bhusawal.

.. Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearance:

1. Shri M.D.Lonkar,
 Advocate,
 for the applicant
2. Shri R.K.Shetty,
 Advocate,
 for the respondents.

JUDGMENT:-

Dated: 6.6.1989

IPER: Shri P.S.Chaudhuri, Member(A)]

This application was filed on 23.5.1988 under Section 19 of the Administrative Tribunals Act, 1965. In it the applicant prays that the order dated 4.5.1988 in terms of which he was returned from Bhusawal to Bhopal be cancelled. The case thus comes within the jurisdiction of a Single Member Bench in terms of the Chairman, Central Administrative Tribunal's Order No.1/32/87-JA/2161(A) dated 21.3.1988.

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2. The applicant was appointed on the Bhusawal Division of Central Railway on 5.1.1959 as a Khalasi. He was given various promotions and was ultimately promoted and posted as Train Examiner (Electrical) at Bhusawal in 1983. By an order dated 9.7.1986 he was transferred from Bhusawal to Itarsi. It appears that from 11.7.1986 to 2.2.1987 he was on sick list except for two short spells, viz. 29.7.1986 to 31.7.1986 and 9.8.1986 to 16.8.1986, when he was at work at Bhusawal and that the period of his sickness was subsequently converted into leave as due. He eventually took charge at Itarsi under protest on 9.2.1987.

3. Being aggrieved at this transfer to Itarsi, the applicant had filed O.A.No.77/87 (in which there were two other prayers) and also O.A.No.163/87 before this Tribunal. These applications were rejected summarily on 23.1.1987 and on 24.6.1987. These two applications do not, however, concern us at this stage as the issue in the present application is different.

4. Some time earlier, the Railway had taken a decision to form a new Railway Division with Headquarters at Bhopal. As a consequence of this decision on 21.1.1986 the staff working on the old Bhusawal Division were invited to exercise their options for either the new Bhopal Division or the re-organised Bhusawal Division. The last date for submitting the options was 10.2.1986. On 11.2.1986 this last date was extended upto 28.2.1986 and subsequently on 19.9.1986 it was extended upto 30.9.1986. It is important to note that the original circular dated 21.1.1986 made it clear that there was no need for the staff working on sections of the erstwhile Bhusawal Division other than Itarsi to Khandwa to submit

any option in case they desired to continue on the re-organised Bhusawal Division. The order dated 19.9.1986 stated that "The staff who will not give any option till 30.9.1986, will be deemed to have opted for the division where they are posted on 30.9.1986"

5. It is the applicant's contention that as he was working at Bhusawal on 21.1.1986 and till 30.9.1986 had not carried out the order of transfer to Itarsi and as he wanted to remain at Bhusawal, in terms of these provisions he was not required to submit any specific option to remain on the re-organised Bhusawal Division. The need to exercise such an option only arose when he carried out the order of transfer to a station on the Itarsi - Khandwa section, viz. Itarsi, and took charge there under protest on 9.2.1987. Immediately thereafter, on 26.2.1987, he exercised his option for the re-organised Bhusawal Division. In the meantime, Bhopal Division had started functioning with limited jurisdiction from 15.8.1986 and became a full fledged Division from 1.7.1987 onwards.

6. It is the applicant's submission that a list of staff who were to be returned to the re-organised Bhusawal Division from the newly formed Bhopal Division in pursuance of the options exercised by them was published by the Divisional Railway Manager, Bhopal. It is his further submission that his name found a place in this list. On 25.3.1988 an order was issued transferring him to Bhusawal Division in the same pay scale. Thereafter, an order was issued on 28.3.1988 relieving him from Itarsi from that date with a view



to enable him to resume duties at Bhusawal. It is the applicant's submission that he thereafter reported for duty at Bhusawal on 30.3.1988 but no order allotting duties was issued by the respondents and so he submitted representations dated 19.4.1988 to the authorities concerned. Thereafter, the impugned order dated 4.5.1988 was issued.

7. Being aggrieved at this order dated 4.5.1988, the applicant filed the present application on 23.5.1988. At the first hearing of the application on 24.5.1988 an interim order was issued to the effect that the respondents shall implement their own orders dated 25.3.1988 and 28.3.1988 and shall not act upon their letter dated 4.5.1988 until 6.6.1988. When the case was next heard on 3.6.1988, the earlier interim order was modified to the extent that the respondents were permitted to implement their letter dated 4.5.1988 and issue suitable orders which could be challenged by amending the main application. It was also indicated that the applicant would be well advised to remain at Itarsi pending hearing and decision of this application. It is the applicant's case that in response to this order he promptly went back to Itarsi and has been working there from 9.6.1988.

8. The respondents have opposed this application by filing their written statement and sur-rejoinder. I also heard Mr. M.D. Lonkar, learned advocate for the applicant and Mr. R.K. Shetty, learned advocate for the respondents.

9. The case was argued at length by both the learned advocates and various issues were raised. The case, however, hinges on one short point which is what really concerns us. This point is whether there is a special situation because a new Railway Division with headquarters at Bhopal was formed and, as a result the erstwhile Bhusawal Division had to be re-organised with a part of it going to the newly formed Bhopal Division. Mr. Lankar submitted that the circular dated 21.1.1986 inviting the staff working on the old Bhusawal Division to exercise their options for either the new Bhopal Division or the re-organised Bhusawal Division made it mandatory for the railway authorities to act according to this option. It was his further submission that neither had any restrictions been placed in the matter of exercising such options nor had the railway authorities reserved to themselves the right to reject any option. He submitted that if was common ground that the applicant had been given an option for transfer to Bhusawal Division and that it had not been denied that the applicant had in fact specifically opted for Bhusawal Division. He fairly conceded that it might not be possible for the railway authorities to give effect to all the options on 1.7.1987, i.e. the very day on which the newly formed Bhopal Division started functioning as a fullfledged Division, but this should be done at the first of availability opportunity thereafter as vacancies went on occurring.

10. It was respondents' first submission that

transfer is a management function and orders in this regard should not be interferred with unless some mala fide intention or action was involved. Mr.Lonkar contended that whilst that may be the position in respect of transfers under normal circumstances, it could not hold in the present special situation where a new Railway Division was being formed and options without any conditions had specifically been invited. After weighing the rival submissions, I see considerable merit in Mr.Lonkar's submissions.

11. The respondents' second submission was that the transfer order of the applicant from Bhopal Division was issued without the prior written consent of Bhusawal Division and that is why the applicant was returned to Bhopal. But that is something for the respondents to sort out themselves. In any case, at the very first hearing on 24.5.1988, it had been stated by us that the impugned order dated 4.5.1988 was not in the form of transfer order and, as such there did not seem to be any formal transfer order. At the next hearing on 23.6.88 the respondents had been given an opportunity to issue suitable orders but they never did so. I do not, therefore, see any merit in this submission of the respondents.

12. It was the applicant's submission that a vacancy did occur on Bhusawal Division due to the retirement on superannuation on 30.11.1987 of one Shri Shersingh Rathod, Chargeman 'B' and that he could have been posted against it. However, by an order dated 27.11.1987 the respondents down graded the post and appointed his