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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

O.A. No. 278/88 198
XXXXXX

DATE OF DECISION 10.6.1988

Shri B.P.Walde

Petitioner

Mr. D.V.Gangal

Advocate for the Petitioner(s)

Versus

Union of India & another.

Respondent

Mr. P.R.Pai

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?
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?

NO

(6)

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

Original Application No.278/88.

Shri B.P.Walde,
Panchsheel Nagar,
Plot No.39,
Ward No.43,
Nagpur -440 017.

... Applicant

V/s.

1. Union of India through
The General Manager,
South Eastern Railway,
Garden reach,
Calcutta.
2. The Divisional Railway Manager,
South Eastern Railway,
Nagpur.

... Respondents.

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

Appearances:

Mr.D.V.Gangal,
advocate for the
applicant and
Mr.P.R.Pai, counsel
for the respondents.

JUDGMENT:

Dated: 10.6.1988

The applicant who is an employee of the South Eastern Railway holding the post of Station Superintendent submitted this application on the 25th of March, 1988. His grievance was that he had been transferred from Itwari to Rajnandgaon and the transfer was mala fide, un-constitutional, illegal, improper and inconvenient to the applicant. He had prayed for interim relief, which after hearing the learned advocate for the applicant was not granted by the Tribunal.

2. The application was resisted by the respondents by filing their written statements dt. 20.5.1988 filed in the Tribunal on 1.6.1988. They maintain that transfer of a railway servant was a

...2.

necessary incident to his service and that applicant having been transferred in the exigencies of administration there was nothing illegal or improper. All norms had been observed by the respondents.

3. On 8.6.1988 this matter was heard. Mr.Gangal, the learned advocate for the applicant submitted his written arguments as also some oral contentions. Mr.P.R.Pai, the learned advocate for the respondents was also heard.

4. Mr.Gangal's first important contention was that the transfer order had not been issued by the competent authority viz. the Chief Operating Superintendent, as required by the rules. Mr.Pai replied that this transfer which had been ordered on 15.2.1988 in modification of an earlier transfer order of some other railway servants by orders dt. 29.12.1987 had been confirmed by the Senior Personnel Officer, South Eastern Railway, Calcutta writing with the approval of the competent authority, presumably, the Chief Operating Superintendent. This however, does not show that the transfer order was issued initially by the competent authority.

5. Mr.Gangal then argued that applicant had put in faithful, efficient and obedient service for over 30 years and by dint of honesty and hard work he had reached the highest post of Station Superintendent and there was nothing against him which should have made the respondents feel that he was unsuitable for the post of Station Superintendent at Itwari. Mr.Gangal added that he had come there on transfer only in 1986. It was Mr.Pai's reply that as mentioned in the written statement there were several adverse observations and a conscious decision was, therefore, taken to transfer the applicant as he was not suitable for the important

position at Itwari. Mr.Pai however, admitted that the respondents have not today brought the Service Record, nor was the Confidential Record file available even for perusal of the Tribunal today. Mr.Gangal, however, submitted that the matter may be heard and decided on the available record, even though the service record was not today produced by the respondents. In the absence of service record it is difficult to infer that the respondents have properly found applicant to be unsuitable.

6. Mr.Gangal's next submission was that one Mr.T.J.Wankhede who was by orders on 29.12.1987 posted to Gondia is being accommodated at Itwari by transferring the applicant. This was done as a matter of favouritism, locally, and without the sanction of the competent authority. Therefore, the transfer order is void ab initio. Mr.Gangal, also adds that the Railway Board had issued certain instructions on 14.1.1975 which are reproduced in the Brochure on Reservation for SC & ST in Railway Services at page.333. According to this directive, to overcome grievances arising out of frequent transfers of SC and ST personnel, the Railway Board had directed that SC and ST employees should not be frequently transferred and such transfers should be very rare and for very strong reasons only. Further, such transfers were to be effected so that the personnel could be either in their native districts or adjoining districts or places where the administration could provide quarters. These instructions were to be followed to the maximum extent possible, subject of course, to the exigencies of service. It is Mr.Gangal's contention that by transferring the applicant when he was not due for transfer, injustice was caused to a SC personnel by transferring him

400 kms away, disturbing his family life and the education of his daughter. It is Mr.Pai's contention in reply that these instructions of the Railway Board are not mandatory and they are to be followed subject to the exigencies of service. In the present case exigencies of service required transfer of the applicant to Rajnangaon. He also adds that these ~~transferred~~ orders were not issued locally because employees of this status are controlled by the Head Office and in this particular case the transfer of the applicant was later confirmed by the Head Office. Mr.Pai also adds that transfer is not a justiciable grievance unless it is mala fide. In this case allegations of mala fides are not substantiated. The applicant has been transferred to the neighbouring district of Rajnangaon. There was no favouritism for Mr.Wankhede who also belongs to the SC and, therefore, this was a transfer purely on administrative grounds. I am not convinced of the bona fides of Respondents.

7. Mr.Pai also adds that the applicant never submitted any representations or appeals against this transfer to his departmental authorities and has not thus exhausted his remedies. Mr.Gangal points out that applicant did submit a representation, but it has not been considered, so far.

8. Mr.Gangal cites some seven Supreme Court decisions in order to support his arguments that an order to be valid, has to be issued only by a competent authority that mala fides can be established by the action of the administration if it is in violation of rules and regulations and *prima facie* there is abuse of power.

These cases are as follows:

A.I.R. 1969 S.C.212:

In the matter of cancellation or amendment of approved panels of selected candidates it was held that General Manager, Northern Railway had the power to amend the panel with the approval of the Railway Board who were the authority next above.

A.I.R. 1969 S.C.306:

It was a matter under the Industrial Disputes Act. The effect of an authority acting beyond its jurisdiction has been discussed.

A.I.R. 1977 S.C.747:

The question of competent authority had been discussed, holding that an order issued without competence and jurisdiction would be void and the defect cannot be cured by subsequent confirmation by the competent authority.

A.I.R. 1977 S.C.2313:

This is a decision about Government Orders passed in revision under the Cooperative Societies of Andhra Pradesh (it does not seem to have any direct bearing on the case before me.).

A.I.R. 1980 S.C. 319:

The question of mala fide has been discussed with reference to the Land Acquisition Act, the ratio being exercise of emergency powers would be proper only if there is real urgency and not where several years have passed. In other words, Mr. Gangal suggests with reference to this particular citation that powers not properly used should lead to the inference of mala fide. He also adds that the authority

is required to give reasons for its order, otherwise the order would be bad. Lastly, he points out that the original transfer order of Mr. Wankhede dt. 29.12.1987 was varied by the order dt. 15.2.1988, but the Chief Operating Superintendent was approached only on 22.4.1988 for confirmation i.e. after the application was filed with the Central Administrative Tribunal. This establishes that the order was issued by someone without authority and that it is mala fide. Mr. Pai states that these Supreme Court cases do not have a direct bearing on this case because they refer more to action under Article 311 of the Constitution of India and not administrative matters like transfers.

9. Having heard both the learned advocates and perused the records I feel convinced that the respondent administration has not been fair in this matter. It is true that transfers of Scheduled Caste & Schedule Tribe personnel can be ordered in the exigencies of service, even without following the principles laid down by the Railway Board. Such does not seem to be the case here. It is also apparent on the face of it, that respondents got ex post facto approval of the Chief Operating Superintendent and the transfer was neither initiated nor approved at that level ab initio. Even though the applicant has been transferred to a neighbouring district, the distance is stated to be 400 Kms i.e. a run of at least 5 to 6 hrs by Rail.

10. The contention of the respondents that applicant will be given quarters at Rajnandgaon is not very impressive because if he is going there as Station Superintendent he is bound to get assigned quarters, thus respondents are not doing any special favour to the applicant. The representation of the applicant

does not seem to have been decided. Although it is true that the person posted in the place of the applicant is also a member of Scheduled Caste, that cannot mitigate either the hardship caused to the applicant or the violation of ordinary rules underlying transfers which the respondents are expected to follow. In this particular case, there is reason to believe that the transfer is not purely in the exigencies of service and smacks of mala fides. It does not, therefore, deserve to be sustained. I therefore, pass the following orders:

O R D E R

1. The application partly succeeds.
2. The memorandum dt. 15.2.1988 transferring applicant from the post of Station Superintendent, Itwari in the same capacity, scale and rate of pay to Rajnangaon is quashed in so far as it applies to the applicant and consequential arrangements made by the respondents. The applicant should be reposted at Itwari.
3. The respondents may make suitable arrangements to post Mr. T.J. Wankhede who was erstwhile Station Superintendent, Kamptee.
4. Since *prima facie* the action of the respondents is improper, I am inclined to award costs. I award Rs. 250/- as costs, quantified by me, to be paid by the respondents to the applicant within a period of two months from the date of receipt of this order.

(J.G. RAJADHYAKSHA)
MEMBER (A).