

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 265/89

T. A. No.

198

DATE OF DECISION 23.11.1989C.M.Deore

Petitioner

Mr.E.K.Thomas for Mr.M.M.Sudame

~~ExxxExxxManagerxx&xAmxxex~~

Advocate for the Petitioner(s)

Versus

Divl.Rly.Manager & another

Respondent

Mr.J.G.Sawant

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 ?

Yes

No

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.265/89

Chandrakant Madhav Deore,
Diesel Mechanic,
R/o.15, Bungalow Railway Colony,
Zopadi Near Quarter No.RB-1,588,
Bhusaval District Jalgaon. .. Applicant

vs.

1. Divisional Railway Manager,
Central Railway,
Bhusawal.
2. C.G.Saraf,
Assistant Mechanical Foreman,
Diesel,
Bhusawal. .. Respondents

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

Appearances:

1. Mr.E.K.Thomas,
for Mr.M.M.Sudame,
Advocate for the
Applicant.
2. Mr.J.G.Sawant,
Advocate for the
Respondents.

Oral Judgment:

[Per P.S.Chaudhuri, Member(A)] Date: 23.11.1989

This application was filed on 14.4.1989 under section 19 of the Administrative Tribunals Act, 1985. In it the applicant has prayed that the order dated 22.2.1989 by which he is transferred from Bhusaval Fuelling Point to Itarsi Diesel Shed be quashed and set aside and other connected/consequential reliefs.

2. In view of this prayer, in terms of this Tribunal's Chairman's order dated 21.3.1988 the application comes within the jurisdiction of a Bench consisting of a Single Member. I have accordingly proceeded to hear and decide it.

3. The facts may be briefly stated. The applicant was appointed on 17.10.1973 as a Diesel Cleaner at Itarsi Diesel Shed. By order dated 16.11.1978 he was promoted as Diesel Mechanic in the skilled grade at Itarsi. By order dated 21.6.1982 he was transferred to Bhusaval. He joined his duties at Bhusaval on 27.6.1982. By order dated 27.1.1987 he was promoted as Diesel Mechanic Gr.II at Bhusaval. This promotion order became effective from 30.7.1987 as he was undergoing a punishment. By order dated 1.12.1987 he was transferred to Itarsi Diesel Shed but this was cancelled by order dated 29.3.1988. By order dated 15.2.1989 he was placed under suspension with effect from 13.2.1989. This order of suspension was revoked by order dated 21.2.1989. On 22.2.1989 he was served with a chargesheet for the imposition of a major penalty. This chargesheet contained one article of charge viz.that on 13.2.1989 he worked in irresponsible manner and committed a serious misconduct. One witness, viz. Shri C.G.Saraf, Asstt.Mechanical Foreman, Diesel, Bhusaval, who is respondent No.2 in this application, was listed. On 22.2.89 the impugned order was issued in terms of which he was transferred to Itarsi Diesel Shed in the interest of administration. In his reply dated 2.3.1989 to the chargesheet he asked to be retained at Bhusaval. On 30.3.1989 he submitted a representation requesting for his retention at Bhusaval. As he did not receive any reply he filed this application on 14.4.1989. By our order dated 21.4.1989 the implementation of the transfer order was stayed.

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4. The respondents have opposed the application by filing their written statement. I have also heard the oral arguments of Mr.E.K.Thomas, holding the brief of Mr.M.M.Sudame, learned advocate for the applicant and Mr.J.G.Sawant, learned advocate for the respondents.

5. Mr.Thomas made a number of oral submissions. The first was that the transfer was by way of victimisation. It was his case that one Shri Harishankar,Khalasi had allegedly beaten up respondent no.2 in 1979. At that time respondent no.2 had pressed the applicant to stand as a witness, but the applicant refused stating that he had not witnessed any such incident. It is the applicant's contention that because of this respondent No.2 developed malice towards him. In support of this, the applicant mentioned that he had submitted an application on 5.1.1987 stating that he was being harassed by respondent no.2 but he did not receive any reply. The applicant also submitted that because of respondent no.2 six chargesheets had been issued to him. He also stated that respondent no.2 had made three written complaints against him, copies of which have been attached at pages 21,22 and 23 of the application. It has been held by the Gujarat High Court in J.K.Dave's case(see 1989(3)SLR 593) that :

"Simply because some averments are made in the petition and the order of transfer is labelled as discriminatory and/or as actuated by mala fides it does not become discriminatory or cannot be said to have been passed

Qm

on account of malafides. To make out a case for interference in matter of transfer there should be concrete material which should be unimpeachable in character."

I am in respectful agreement with this view. Respondent No.2 was the applicant's superior and there is nothing wrong if in the course of the discharge of his duties he has occasion to find fault with the applicant's working and takes appropriate measures. In this view of the matter I do not see any merit in this submission.

6. Mr. Thomas' second submission was that the applicant was working on Bhusaval Division and hence his transfer to Itarsi which is on Bhopal Division amounted to an inter-divisional transfer. His alternative argument was that if it was considered that he was under Bhopal Division, then his order of transfer should have come from Bhopal Division. Mr. Sawant countered this by submitting that the post held by the applicant, viz at Bhusaval Fuelling Point was a part of the cadre of Itarsi Diesel Shed, even though the post might be located on Bhusaval Division, and that the cadre of Itarsi Diesel Shed was a part of Bhopal Division. It was his contention that the impugned order of transfer had been passed in consultation with the controlling authority, viz. Itarsi Diesel Shed and there was nothing wrong if the order of the transfer was signed by an

officer of the Bhusaval Division as the order itself clearly brought out that it had been issued after such consultation. In view of this position I do not see any merit in this submission of Mr.Thomas.

7. Mr.Thomas' third submission was that when Bhopal Division was formed specific options had been invited from the staff of Bhusaval Division. While doing so it has been made clear that the staff who do not give any option will be deemed to have opted for the Division where they were posted on 30.9.1986. It was his submission that the applicant had not given any option for Bhopal Division and hence he was required to be retained at Bhusaval Division. Mr.Sawant countered this by submitting that the applicant belongs to the cadre of Itarsi Diesel Shed and this entire cadre become a part of Bhopal Division. It was his submission that there was no question of splitting up an already existing cadre merely because Bhusaval Division had been split with a part of it going to the newly formed Bhopal Division. I see considerable merit in this submission of Mr.Sawant.

8. Mr.Thomas' final submission was that the copy of the impugned transfer order addressed to Loco Foreman(Diesel),Itarsi carried an endorsement that it had been issued on the basis of a telephonic conversation between Divisional Mechanical Engineer(For short,DME)-(Head quarters),Bhusaval and Assistant Mechanical Engineer(for short,AME)(Diesel)Shrivastav at 4PM on 21.2.1989. It was his case that the

respondents were basing their claim that the transfer had been effected in consultation with Itarsi Diesel Shed on this endorsement. He submitted that an AME was not competent to order a transfer. He also pointed out that the respondents had ~~attempted~~ admitted to wriggle out of this situation by making a statement in their subsequent affidavits to the effect that there had been a telephonic conversation between DME(Head quarters), Bhusaval and DME(Diesel), Itarsi on 21.2.1989. What is more, along with the affidavit dated 8.8.1989 the respondents have attached a letter dated 29.7.89 from DME(Diesel), Itarsi stating that at 16 hours on 21.2.1989 DME(HQ), Bhusaval had contacted him on telephone. The statements are not in concordance with the written order passed earlier. The statements made now might well be an afterthought. I take an extremely dim view of such goings on. I do hope the respondents will take adequate remedial measures and ensure that this is not repeated. In any case, it is now well established that "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out." (See Mohinder Singh Gill's case - AIR 1978 SC 851 at 858). There is no doubt that the impugned transfer order was passed on the basis of consultation only with an AME of the Diesel Shed at Itarsi.

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9. "Transfer" has been defined in Rule 103(51) of the Indian Railway Establishment Code, Volume I, as "Transfer means the movement of a railway servant from one headquarter station in which he is employed to another such station, either-

(a) to take up the duties of a new post, or

(b) in consequence of a change of his headquarter".

"Competent Authority" has been defined in Rule 103(11) of this code as under:

"(11) Competent Authority in relation to the exercise of any power under these rules, means the President or any authority to which such power is delegated in Appendix VI."

of this & code

Appendix VI details the delegations made by the President with reference to rule 103(11).

The portion thereof pertaining to transfer reads as under:

S.No.	No. of rule under which delegation is made	Nature of Power	Authority to which delegated	Extent of power delegated
(1)	(2)	(3)	(4)	(5)
1 & 2				
3.	103(51)	Power to transfer a railway servant from one post to another.	(1) All heads of Departments.	Full power provided that they are authorised to make appointments to both posts concerned.
			(2) General Managers & Divisional Railway Managers.	Full powers in respect of posts under their control.

(1) (2) (3) (4) (5)

(3) Senior Scale Officers. Full powers in respect of Group 'C' and Group 'D' Posts under their control.

(4) Assistant Officers. Full powers in respect of Group 'D' posts under their control.

4 to 11

A similar provision exists in Vol.II of the Indian Railway Establishment Code in respect of Rule 2011(FR50)thereof. These codes have been issued by the President in exercise of the powers conferred on him made by the proviso to Article 309 of the Constitution.

10. It is not disputed that a Diesel Mechanic Gr.II is a Group "C" employee. A plain reading of the above mentioned rules makes it clear that an Assistant Officer has power to transfer only Group "D" employees. He has no power to transfer Group "C" employees. Mr. Sawant attempted to counter this by recourse to item 14 of "Schedule of Powers on Establishment Matters" issued by the General Manager, - Central Railway. This item also indicates that no powers had been delegated to Junior Scale officers in respect of transfer of staff within the railway but the note to that item reads as under:

"Note: This does not prohibit administrative transfers including periodical/rotational transfers of

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group "C" & "D" staff from one station to another or from one post to another at the same station in the same grade controlled by Sr. Scale/Jr. Scale officers within their own jurisdictions subject to any general or specific order issued by Administration, (HOD, etc.)"

I do not see how this can help the respondents. No delegation by way of administrative instructions can over-ride statutory rules framed under Article 309.

11. In this view of the matter I have no hesitation in holding that the impugned order of transfer was passed by an authority not competent to do so. Such an order cannot be sustained.

12. In result, the application succeeds. The impugned order dated 22.2.1989 is quashed and set aside. In the circumstances of the case there will be no order as to costs.


(P.S. CHAUDHURI)
Member(A)