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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

NEW BOMBAY BENCH

O.A. No. 175 of 1989
~~XXXXXX~~

DATE OF DECISION 14.6.1989

Shri Bhargav R. Virkar Petitioner

Mr. G. K. Masand 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. M. Y. Priolkar, 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? *No*
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? *No*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

ORIGINAL APPLICATION No.175 OF 1989.

Shri Bhargav Rajaram Virkar,
21/1671, M.H.B. Colony,
L.T. Road, Borivali(West),
Bombay - 400092.

... Applicant

V/s.

- 1) Union of India, through
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
- 2) Divisional Personnel Officer,
Bombay Division, Western Rly.,
Bombay Central,
Bombay - 400 008.

... Respondents

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

Appearances:

- 1) Mr.G.K.Masand,
Advocate for the
applicant.
- 2) Mr.P.R.Pai,
Advocate for the
respondents.

ORAL JUDGMENT:

Dated: 14.6.1989.

[Per: Shri M.Y.Priolkar, Member(A)]

The applicant in this case is an employee of the Western Railway working since 5th May, 1988 as Welfare Labour Inspector Grade-III at Bombay Central on ad hoc basis in the pay scale of Rs.1400-2300(revised).

2. By an office letter dated 11.12.1987, 12 persons working as Senior Clerks including the applicant and one Mr.M.D. Rathod were asked for their willingness for the post of Welfare Labour Inspector, Grade-III on ad hoc basis at Nandurbar. According to the applicant, all the persons who were approached except Mr.Rathod expressed their unwillingness for this post. Accordingly, Mr.Rathod was promoted and posted at Nandurbar in December, 1987 as Welfare Labour Inspector,

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Grade-III on ad hoc basis. Subsequently, by office order dated 4.5.1988 issued by the office of the Divisional Railway Manager, the applicant was promoted as Welfare Labour Inspector, Grade-III at Bombay Central on ad hoc basis in place of Miss. N.R. Karnik.

3. The applicant received a note dated 30.1.1989 from respondent No.2 whereby he was informed that he stood transferred as Welfare Labour Inspector, Grade-III to Nandurbar with immediate effect and that the posting order was being issued separately. The applicant immediately sent a representation dated 30.1.1989 against this transfer order. He also sent a reminder on 13.2.1989. On 13.2.1989, posting order was issued transferring the applicant as Welfare Labour Inspector, Grade-III at Nandurbar on ad hoc basis in place of Mr.Rathod who was transferred to Bombay in place of the applicant.

4. Aggrieved by this transfer order, the applicant has filed the present application before the Tribunal praying for setting aside the transfer order dated 13.2.1989 on the ground that the transfer order has been issued only to accomodate Mr.Rathod and not in interest of the administration.

5. During the admission hearing on 17.3.1989, Mr. G. K. Masand, learned advocate for the applicant, submitted that the cadre of Welfare Inspectors at Bombay Division consists of 12 posts in various grades against which there are only 10 incumbents including the applicant. He also submitted that even on that day there were two vacancies, one at Nandurbar and the other at Bombay, and that if the applicant is transferred to Nandurbar, there will be two vacancies at Bombay or alternatively, even if he remains at Bombay there would be still one vacancy at Bombay. It was, therefore, 1

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his submission that no hardship will be caused to the applicant. In view of this specific submission of the learned advocate of the applicant, this Tribunal restrained the respondents from giving effect to the applicant's transfer to Nandurbar till 28.3.1989, by its order dated 13.2.1989. It was also ordered by the Tribunal in that order that the respondents should bring full details regarding the sanctioned and incumbents of all the posts in all the grades of Labour Welfare Inspector in Bombay Division, on the date of the hearing fixed on 27.3.1989.

6. In their additional written statement filed on 23.3.1989 the respondents stated that the sanctioned cadre of posts of Welfare Inspector in Bombay Division is only 10 and no post was vacant. Thus they were not in position to continue to accommodate the applicant at Bombay. In view of this written statement, the ad interim relief order passed on 17.3.1989 was vacated by this Tribunal on 27.3.1989. Mr. Masand also desired the respondents to produce the relevant documents to establish that the sanctioned cadre of Bombay Division was 10 from at least 1.1.1989 onwards and in case there have been any changes, details of such changes including the dates. The case was, therefore, adjourned to 4.4.1989.

7. On 4.4.1989, Mr. P. R. Pai, learned advocate for the respondents submitted that the relevant documentation asked for on 27.3.1989 was ready and he could show it to the applicant. However, since the applicant prayed for short adjournment as his advocate was not to come on that date, the case was fixed for final hearing on 17.4.1989. The case could not be taken up on 17.4.1989 because the applicant's advocate could not come on that day also and the case was adjourned to 1.6.1989 for final hearing.

8. On 1.6.1989 the respondent's advocate Mr.P.R. Pai was not able to come to the Tribunal and short adjournment was requested. However, the Law Assistant Mr.M.A. Ansari in the office of the respondent No.2 who was present showed the required documents, namely, those relating to the cadre strength and the seniority list to the applicant's advocate Mr.Masand and the case was fixed for final hearing on 14.6.89. It was specifically made clear in the Tribunal's order of that day that no further adjournment will be granted.


9. Today, however, the applicant has again made a request for adjournment stating that his advocate is not able to come to this court as he is busy in the High Court. However, since the case has already been adjourned earlier on four occasions and it had been specifically mentioned on the last date that no further adjournment will be allowed, the applicant's prayer for adjournment is rejected. The applicant was however, able to argue on the facts of his case.

10. Mr.P.R. Pai produces today the required documents which were already shown to the applicant's advocate showing the cadre strength of Labour Welfare Inspectors and their seniority list, in support of the contention made in the additional written statement earlier filed by the respondents. It is clear from these documents that the sanctioned cadre posts of Labour Welfare Inspector in Bombay Division are only 10 and not 12 as claimed by the applicant. The applicant could not also produce any evidence today on the basis of which he had made this statement that the cadre strength was 12 instead of only 10 as averred by the respondents. It was also admitted by the applicant that Mr.Rathod who was earlier junior to the applicant as senior clerk and was, therefore,

posted to Nandurbar as Welfare Labour Inspector, Grade-III on a trial basis, after his willingness was obtained, became senior to the applicant in the cadre of Welfare Labour Inspector after he was regularised in that post on 24.11.1988.

11. On the request of Mr. Rathod for transfer to Bombay Central after his regularisation, his request was accepted by the Competent Authority and he was transferred to Bombay Central with effect from 1.2.1989 and the applicant, being junior most Welfare Labour Inspector working on ad hoc basis was, therefore, transferred to work in the same grade in Nandurbar. It is the contention of the respondents that the applicant happened to be the junior most employee in that cadre as on that date and, therefore, he was transferred to Nandurbar in accordance with the policy that the junior employee is transferred first in preference to senior from one place to another. I am, therefore, satisfied that this transfer order has been issued as routine administrative action in the performance of official duties and it cannot be considered as arbitrary or due to non-application of mind or based on any extraneous considerations.

12. In the result, the application is dismissed but with no order as to costs.


(M.Y. PRIOLKAR)
Member(A)