

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 490/91

Transfer Application No:

DATE OF DECISION 25.2.93

B. K. Tiwari & 29 ors. Petitioner

Mr. L. M. Nerlekar

Advocate for the Petitioners

Versus

UOI & Ors

Respondent

Mr. P. R. Pai

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S.K. Dhaon, Vice Chairman
Ms. Usha Savara, Member(A)

The Hon'ble Shri

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

Sd/-
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

OA NO. 490/91

Shri Brajesh Kumar Tiwari & 29 ors.

Applicants

V/s

General Manager

Central Raiwlay, Bombay VT & another

Respondents

Coram: Hon.Shri Justice S.K.Dhaon, Vice Chairman
Hon.Ms. Usha Savara, Member (A)

APPEARANCE:

Mr. L M Nerlekar
Counsel
for the applicants
Mr. P R Pai
Counsel for the
respondents.
Mr. G S Walia
Counsel
for intervenors

ORAL JUDGMENT:

DATED: 25.2.93

(Per: S.K. Dhaon, Vice Chairman)

The applicants, 36 in number, were on the date of the institution of this application employed as Assistant Drivers (Diesel) in the Bombay Division of the Central Railway. They came to this Tribunal with the grievance that though they were entitled to go back to their original division viz., Bhusaval Division, the respondents were insisting that they could be sent there only after they accept the position that they would be considered as the junior most in the Bhusaval division. They prayed that a direction may be issued to the respondents to send them to the Bhusaval Division and their seniority should not be affected by that action.

2. During the pendency of this application the applicant nos. 4, 5, 12, 19, 24 and 26 were transferred. They applied that their names may be struck off from the array of the applicants. That order was passed. This application, therefore, is being pressed on behalf

of the other applicants who have not withdrawn from the application.

3. A reply has been filed on behalf of the respondents. It appears that no rejoinder affidavit has been filed. We, therefore, proceed on the assumption that the averments made in the reply are correct.

4. The material averments in the reply are these: The Railway Recruitment Board, Bhopal, vide their employment notice no. RRB/BPL/1/1987, invited applications for filling up of 1611 ^{posts, of} Assistant Driver (Diesel) for Jhansi and Jabalpur Divisions. The Bhopal Division was created after the advertisement. Therefore, the 1611 posts covered that division also. After the completion of their training the candidates were asked to submit the choice of their division and the division was allotted in accordance with the merit as well as in accordance with the choice. Due to exigencies of service some of the candidates were posted in Bombay, Bhusaval, Nagpur and Sholapur divisions. These postings were not of a temporary nature but were done on regular basis. It is true that the candidates were recruited for the division other than the Bombay division, but due to the exigencies of situation and work they were posted in other divisions including the Bombay division. Those candidates voluntarily accepted their posting and joined in the respective divisions allotted to them. They, therefore, lost their right to be posted either in the Jhansi or Jabalpur or Bhopal divisions. They can, however, be still transferred to the division of their choice provided they accept the normal rule which is laid down in para 312 of the Indian Railway Establishment Manual that upon transfer they will lose their seniority and they will be placed in the rock bottom of the seniority ^{list} in the transferred division.

5. The submission made on behalf of the applicants is that they, having applied for being given an appointment either in Jhansi or Jabalpur or Bhopal division, cannot be deprived of their right of being posted in the division of their choice in spite of the fact that they had been temporarily posted in the Bombay

division.

6. The question, therefore, to be decided is whether the applicants having accepted to undergo the training in ~~the~~ Bombay division as apprentice and thereafter having accepted their posting in the Bombay division can still insist that they have a right to be posted in Jhansi or Jabalpur or in Bhopal division. The applicants had the option of not accepting the offer of the railway administration ~~of~~ receiving their training in the Bombay division. They could have waited and could have taken their chance of receiving their training outside the Bombay Division. But they did not do so for ~~the~~ reasons best known to them. By agreeing to be trained in the Bombay division there by necessarily by implication gave up their right to be given a posting either in Jhansi or Jabalpur or in Bhopal division.

7. We, therefore, come to the conclusion that the applicants cannot claim that they have any legal right to be transferred to the division of their choice now independent of para 312 of the Railway Establishment Manual.

8. Reliance has been placed on behalf of the applicants that the circular dated 10.10.1991 issued by the Western railway. The subject of this circular is transfer from one division to another. We have gone through the circular and it has no application to the facts and circumstances of the present case and it is confined to the Western railway. Secondly it was issued on 10.10.91 i.e., during the pendency of this application.

9. Since the circular in question is confined to the Western railway and not to all the divisions of all the Railways in the country, the question of infringement of Article 14 and 16, if at all, does not arise.

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The application is dismissed, but without any order as to costs.

U. Savara
(Usha Savara)
Member(A)

S.K. Dhaon
(S.K. Dhaon)
Vice Chairman