

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: O.A. 806/91

199

T.A. NO:

DATE OF DECISION 9.10.92

MR. R. TAYYAPPA

Petitioner

S. G. HARTALKAR

Advocate for the Petitioners

Versus

GENERAL MANAGER, C.R., Bombay. Respondent

P. R. Pai

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~xxx~~ USHA SAVARA, 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 ?

Usha Savara
(USHA SAVARA) 9.10.92
M/A

mbm*

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO.806/91

SHRI R.TAYYAPPA

.... Applicant

V/s

General Manager,
Central Railway,
Bombay.

.... Respondents.

CORAM : HON'BLE USHA SAVARA, MEMBER (A)

Appearance :

SHRI S.G.HARTALKAR, Ad.
for the applicant.

Shri P.R.Pai; Adv.
for the respondents.

JUDGEMENT

DATED: 9.10.92

(PER: USHA SAVARA, M/A)

This application has been filed against the office order No.164 of 1991 by which the applicant has been transferred from Pune to Lonavala. The applicant was working and officiating as Engine Examiner 'B' in the Grade of Rs.1400-2300 on adhoc basis in the C.T.F.L. at Pune and was transferred to C.T.F.L. Lonavala in the same grade on adhoc basis by an order dated 2.11.1991. By the same order Shri D.I.Chavare who was working at C.T.F.L., Lonavala was transferred to C.T.F.L.Pune in the same grade on panel basis.

2. Shri Hartalkar appeared for the applicant and submitted that the transfer was made with a view to accommodate the respondent No.3 i.e. Shri Chavare and therefore it was discriminatory and bad in law.

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No opportunity was given to the applicant to make his submissions and therefore the principles of natural justice had been violated. Further, the transfer order was not passed in administrative exigencies or in public interest and so it is malafide in law. It is also the case that the post of Engine Examiner Gr. 'B' was lying vacant in Pune and there was no reason why the applicant could not be accommodated in Pune and therefore the order be quashed.

3. Shri Pai learned counsel for the respondents submitted that the transfer was made on administrative grounds. Shri Chavare and the applicant had both appeared in the examination for promotion to the post of Engine Examination Gr. 'B'. The applicant was not successful and Shri Chavare was declared ~~successful~~ ^{not} since Shri Chavare was selected for the post of Chageman 'B'/ Engine Examiner. Therefore he was posted at CTFL, Pune. in the interest of administration and ^{not} because of any representation has claimed by the applicant. It was denied that the order was passed to accommodate Shri Chavare. Shri Pai also rejecting the applicants claim that before ordering his transfer, he should have been given an opportunity to make his submissions. It was stated that as the order was passed only for administrative exigencies, therefore, there was no malafide in law.

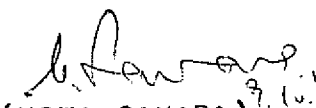
4. I ^{have} heard both the parties at length. It is not denied that the applicant is on transferable post and that he has been in Pune since 1987. It is also not denied that he did not pass in the examination for promotion to the post of Engine Examiner, whereas the respondent No.3, Shri Chavare did qualify in the examination. In the circumstances, if the respondents

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post ^{the} successful candidate at Pune on a regular basis and post the officiating candidate in Lonavala, there can be no question of malafide. The counsel for the applicant has emphasised the fact that there is a vacant post of Engine Examiner at Pune. It may be so, however, it ^{is} for the administration to decide whether they wish to fill this post or leave it vacant and the Court may not sit in judgement on the adequacy or otherwise of the respondents assessment of the administrative exigencies as a sufficient justification of providing the basis for the transfer order. I am satisfied that the transfer is only made in public interest and bonafide.

5. In view of the ~~recent~~ pronouncement of the Hon'ble Supreme Court in the case of Shilpi Bose V/s State Of Bihar 1991 Supp(2)SC 659 and in the absence of malafide, arbitrariness or departure from policy guidelines being proved, I am of the view that the petition has no merit.

6. In the circumstances, the application is dismissed as being devoid of merit, but with no order as to costs.


(USHA SAVARA)
M/A

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