

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 264/95  
Transfer Application No.

Date of Decision : 30.3.95

B. Prasad

Petitioner

Shri S. Pillai

Advocate for the  
Petitioners

Versus

Union of India and others.

Respondents

Advocate for the  
respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

  
(B.S. Hegde)  
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 264/95

B. Prasad

... Applicant.

V/s.

Union of India, through  
The General Manager,  
Central Railway,  
Bombay V.T.  
Bombay.

Dy. CE (TT), Jhansi  
Office of the DRM (W)  
Track Machine, Jhansi

The XEN (TM) Bhusaval,  
Office of the XEN (TM)  
Central Railway,  
Bhusaval.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Appearance:

Shri S. Pillai, counsel  
for the applicant.

None for the respondents.

ORAL JUDGEMENT

Dated: 30.3.95

( Per Shri B.S. Hegde, Member (J) )

On the last occasion, the learned  
counsel for the respondents, Shri Subodh Joshi  
was specifically directed to file a detailed  
affidavit/written statement regarding the points  
raised by the applicant's counsel. The respondents  
have filed an affidavit without giving the  
circumstances under which the applicant was  
transferred and the learned counsel for the  
respondents was absent today. In the circumstances,  
I have perused the pleadings and propose to pass  
the following order.

2. The applicant was working at Kalyan  
as Chief Foreman since September 1989 and he  
has been transferred to Bhusaval in the same

capacity vide order dated 31.1.95 and 9.2.95 respectively, against which the applicant has filed this O.A. seeking for interim relief.

The Tribunal vide its order dated 8.3.95 while admitting the O.A. did not grant any interim relief and directed the Registry to post the case on 16.3.95. On 16.3.95 both the counsels were heard and necessary directions were given to the respondents to file a detailed reply to the O.A. During the course of hearing, the learned counsel for the applicant stated that V.R. Kharat who has come in place of Prasad has already taken charge.

3. The learned counsel for the applicant submits that the employee who joined in his place is not holding the same post to which the applicant is holding. V.R. Kharat is holding the post of Assistant Foreman whereas the applicant was holding the post of Chief Foreman. Therefore, it is incorrect to say that Kharat will take over the charge of CSM-927 the post which was held by the applicant. Secondly, the learned counsel for the applicant draws our attention to the order passed by the Railway Board letter dated 14.1.1975 which reads as below:

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"Attention is invited to Board's letter No.E(SCT)70CM 15/15/3 dated 19th November 1970 wherein it was desired that the transfer of Scheduled Castes and Scheduled Tribes employees should be confined to their native districts or adjoining districts or places where the administration can provide quarters and that these instructions should be followed to the maximum extent possible, subject of course to the exigencies of service."

(J)

It has been represented that the Scheduled Castes and Scheduled Tribes are being transferred from one place to other quite frequently. The Board have, therefore, decided that the employees belonging to Scheduled Castes and Scheduled Tribes should be transferred very rarely and for very strong reasons only."

Besides, that he has also drawn my attention to the judgement of the Division Bench of the Jodhpur Bench in the case of B.S. Verma V/s. Union of India and others. 1994(1)(CAT) decided on 3.8.93. Wherein the Tribunal ~~has~~ held after hearing the parties, that one cannot challenge his own order and can withdraw it if found wrong. In this connection the learned counsel for the applicant draws to the relevant portion of the judgement i.e. para 5, 6, 7 and 8. However, directions were issued to the competent authority that the circular of Railway Board dated 14.1.9175 should be followed, in that context the Tribunal made observation with the guide lines issued by the Railway Board should be adhered ~~and that~~ the employees belong to SCs and STs should be transferred very rarely and for very strong reasons only. The Tribunal also observed that the respondents cannot say anything against their own circular and that it is ultra vires can be challenged by an aggrieved person and the respondents cannot be allowed to challenge the own circular. Apart from that, it is within the privilege of the respondents to withdraw the circular if they feel that it is ultra vires or it is causing hardship to the persons who are not of SC/ST.

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4. Normally the judgement rendered by the Division Bench is binding on Single Bench. Despite the directions given to the respondents to clarify under what circumstances the applicant was transferred, they did not come out with any suitable reasons for transferring the applicant. In the reply, they only stated that the applicant was issued the instructions to work on UNIMAT-8268 at Nandgaon which is at present at Nasik and near to Kalyan. This statement is itself far from truth. The reply given by the respondents is very unsatisfactory.

5. In the circumstances, I am convinced the posting of the applicant is not of any administrative exigencies, as no reasons have been assigned and it is not open to the respondents to go against their own circular regarding transfers of SC/STs. The respondents should have made specific order giving reasons as per the circular.

6. In the result, Exhibit I and II dated 30.1.95 and 9.2.95 respectively are hereby quashed and set aside. In that event of the matter, the transfer order of the respondents is a nullity in the eyes of law and therefore it is open to the respondent to pass appropriate orders revising the transfer of the applicant as they deem fit within a period of 15 days from today. With the above directions, the O.A. is disposed of but with no costs.

  
(B.S. Hegde)  
Member (J)

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