

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 981 /1995

Date of Decision: 13.8.1997

M.S.Arip

Petitioner/s

Shri B.Lahiri

Advocate for the  
Petitioner/s

V/s.

DRM, S.E.Rly.Nagpur

Respondent/s

Mr.M.K.Mishra for Mr.P.N.Chandurkar

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri M.R.Kolhatkar, Member (A)

Hon'ble Shri

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

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI  
CAMP : NAGPUR

OA.NO. 981/95

Dated this the 13th day of August, 1997

CORAM: Hon'ble Shri M.R.Kolhatkar, Member (A)

Mohammed Saleem Arif,  
r/o C/o. Dinesh Choudhury,  
Parmar Wada, Dongargarh,  
Dist. Rajnandgaon (M.P.)

By Advocate Shri B.Lahiri

... Applicant

V/s.

1. The Divisional Railway Manager,  
South Eastern Railway, Nagpur.
2. Senior Divisional Electrical  
Engineer (OP), South Eastern  
Railway, Remote Control Building,  
Nagpur.
3. Chief Crew Controller,  
South Eastern Railway,  
Dongargarh, P.O. Dongargarh R.S.,  
Dist. Rajnandgaon, (M.P.)
4. Divisional Personnel Officer,  
South Eastern Railways, Nagpur.

By Advocate Shri Manoj Kumar Mishra  
for Shri P.N.Chandurkar, C.G.S.C.

... Respondents

O R D E R

(Per: Shri M.R.Kolhatkar, Member (A))

This is a second round of litigation. The applicant was transferred on promotion from Nagpur to Dongargarh on 12.9.1994. The applicant was further transferred from Dongargarh to Tumsar Road by the order dated 7.6.1995 vide Annexure-'B'. This order shows that the applicant is transferred on administrative interest. This order came to be challenged in OA.NO.206/95 and the same was disposed of by the Tribunal by directing the respondents to dispose of the appeal of the applicant dated 27.6.1995. This

appeal of the applicant is at page 19 in which basically the applicant had taken two grounds, viz. he was not the junior most employee in the cadre and he had not applied for transfer and on the other hand there were certain employees who had applied for transfer to Tumsar Road, (one of them being Subhash J, whose application for transfer is to be seen at page 22) whose request was not considered.

2. The applicant in this OA. has challenged the appellate order on the ground that it shows non-application of mind and it also shows the malafides of the respondents. The same is to be seen at page 31 which reads as below :-

" As per directives of Hon'ble CAT/BB at NGP DRM/NGP has considered your appeals and orders passed by DRM are reproduced below:-

" Going thro' the Seniority list of the drivers, it is seen that only two drivers junior to them who have not been transferred at that material time are S/SD.K. Sarkar and S.R.Sanyal. While driver Sri Sarkar at that material time was under suspension and it was not considered judicious to transfer him at that time and driver Sri Sanyal has been kept at OGG for the time being in the interest of administration.

From the above, it is seen that there is no injustice in transferring S/S Mohd.S. Arif & D.K.Mishra from OGG and that there appears to be no ground of their feeling any harassment.

In view of the above, it is considered that their transfer is fully justified and therefore, their appeals stand rejected. They should carry out their transfer orders immediately."

3. The contention of the applicant is that non-application of mind is patent from reference to D.K.Sarkar who is said to be under suspension on 2.8.1995. The applicant has pointed out that Sarkar's suspension in fact was revoked on 26.6.95 vide p. 32. Regarding Shri Sanyal, the other junior driver, it has been stated that Shri Sanyal has been kept at Dongargarh in the interest of administration but the nature of the administrative interest is not specified.

4. So far as Subhash J. is concerned, the contention of the respondents as per written statement filed by them is that "though Sri Subhash J. is staying longer time at Dongargarh station but the administration has not considered him for transfer to Tumser station because the services of the applicant were more effective than Sri Subhash J. The applicant was initially appointed for Operating Electric Locomotive and Tumser Station is a sensitive Transit for Electric Goods Traction Operation. Sri Subhash J. was loco Driver and retained at Loco Dongargarh after giving some Electric Operational Training. As Such the administration did not consider Sri Subhash J.'s Transfer at TMR due to nature of work at Tumsar Road Station."

5. The applicant contends that although the additional written statement has been filed on 11.8.1997, in fact the applicant stands further transferred from Tumser Road to Nagpur vide orders dated 27.3.1997. Therefore, the contention of the respondents that applicant's services have been especially retained at Tumsar Road is not borne out by subsequent developments.

6. The learned counsel for the applicant also relied on the judgement of Orissa Administrative Tribunal- Bhubaneswar in Smt. Binapani Tripathy vs. State of Orissa & Ors., 1995(1)(CAT) SLJ 591. It is stated in judgement that there must be cogent reason for order of transfer and in this connection, reliance is placed on the decision of Apex Court in case of P.V.Jaganmath Rao & Ors. vs. State of Orissa & Ors., AIR 1969 SC 215.

7. The contention of the applicant is that the real reason for transfer is that he has been writing to the respondents relating to certain matters, e.g. non-supply of various rules books, etc. and also certain technical matters relating to ~~brake~~ power, etc. and these actions of the applicant annoyed the respondents and this is the real reason for transfer of the applicant.

8. The present position is what has been challenged is the order dated 7.6.1995 read with appellate order dated 2.8.1995 and no interim relief having been granted, the applicant has already implemented the transfer order and more than 2 years have passed since the appellate order was issued. Further administrative development of the transfer of the applicant to Nagpur have already been noted.

9. In the facts and circumstances of the case, I do not consider it fit and proper to quash the order of transfer of the applicant dated 7.6.1995. I do, however, consider that the appellate order dated 2.8.1995 shows non-application of mind and there do not appear cogent reasons for transfer and reasons for non-transfer of

Mr

Subash J. are also not convincing. It is hoped  
that the respondents <sup>would</sup> ~~ought~~ keep in mind the  
observations made by me in this judgement in the context of  
applicant's future career. Subject to the above,  
the OA, is disposed of with no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)  
MEMBER (A)

mrj.