

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: **131/97**

Date of Decision: **15.97**

Harendra Singh

... Applicant

Shri M.S.Ramamurthy

... Advocate for
Applicant

versus-

Union of India & Ors.

... Respondent(s)

Shri M.I.Sethna with Shri S.C.Dhawan Advocate for
Respondent(s)

CORAM:

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

The Hon'ble

(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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 131 / 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J).
_____18/ this the Third day of May 1997.

Harendra Singh,
E/65, Badhwar Park,
Wodehouse Road,
Mumbai - 400 005. ... Applicant.

(By Advocate Shri M.S.Ramamurthy)

V/s.

1. Union of India
through the Secretary,
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.
2. Abdul Khaliq,
Executive Director (P.G.),
Office of the Minister for
Railways (MR) Cell,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.
3. The General Manager,
Central Railway,
CST,
Mumbai - 400 001. ... Respondents.

(By Shri M.I.Sethna with
Shri S.C.Dhawan, C.G.S.C.)

O R D E R

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

In this O.A. the applicant is challenging his transfer orders issued by the Respondents from Bombay to Northeast Frontier Railway Guwahati vide their order dt. 22.1.1997 through a Wireless Message. Till now he has not been received with any transfer order except the Wireless Message. He challenges the order as mala fide, arbitrary and the same is required to be quashed and set aside.

2. The Tribunal on the basis of the submissions made by the learned counsel for the applicant stayed the order of transfer dt. 22.1.1997 vide its order

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dt. 5.2.1997 and is continued from time to time till to day. The applicant is working as "Chief Rates Manager" from 2.5.1990 under General Manager, Central Railway and since the month of July, 1996 he has been asked to look after the work of Catering which was earlier directly looked after by the then CCM Shri R.A. Agarwal as the post of CCSM was abolished due to the transfer of the post to the Railway Board.

3. The learned counsel for the applicant contended that the starting point arose because the Ministry of Railways ordered the cancellation of the contracts at Itarsi station held by M/s.Vyas and M/s.Tiwari & Sons. The contract of M/s.Tiwari & sons was cancelled by the Minister due to a cockroach found in the meals and of M/s.Vyas for over-charging a packet of cigarettes. At Itarsi station there were only three Contractors including M/s.V.P.Diwadkar, all these contractors were operating catering units at Itarsi under the stay order of the Madhya Pradesh High Court against ~~two~~ units policy of 3.9.1985 of the department. Thereafter, the Railway Board cancelled the two units policy under the new Catering Policy of 1992, accordingly, the Railway Board directed that the Contractors who were working under stay order be considered for extension of the contract if their performance during the stay period was found satisfactory by a committee of three SAG Officers; out of the three SAG Members, the applicant is the convener and the committee after examining the performance of the contractors at Itarsi had recommended cancellation of all the three Contractors for poor performance vide

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its order dt. Q6.8.1996. On the basis of the Committee's recommendation, cancellation in respect of the first two Contractors was issued on 2.8.1996 after the approval of the CCM. Whereas, the performance of M/s.V.P.Diwadkar was also equally poor on various grounds, despite time to improve, cancelled the Contract on 14.12.1996 for administrative convenience.

4. It is vehemently urged by the learned counsel for the applicant that Respondent No.2 spoke to applicant on Phone and told him that MR desires the order of cancellation of the contract of M/s.V.P.Diwadkar is required to be revoked and his licence should be extended for a period of 5 years. Thereafter, it is urged that one Shri Naseem Siddiqui, Secretary General, Janata Dal, Mumbai met the applicant on 29.11.1996 and handed over visiting card bearing the endorsement of Respondent No.2 and demanded the cancellation of termination orders of M/s.V.P.Diwadkar and extend the contract for which the applicant did not accede to his demand and heated arguments took place between the two. Further when the M.R. while on tour to Bombay on 3.1.1997 wanted to discuss with G.M. the case relating to cancellation of the catering contract of M/s. V.P. Diwadkar at Itarsi Station. The applicant prepared a note so as to enable the G.M. to discuss with the M.R., despite the same, since no orders of the M.R. Cell has been received for revoking the cancellation of the contract, ^{however} pressure was applied on the applicant to revoke the cancellation and order extension of M/s.V.P.Diwadkar's contract at Itarsi. Respondent No.2 was annoyed and he saw/it that the applicant should be punished by transferring him to a remote place in India that too in the mid-academic session and then reviewed after pressurising the applicant to cook up the report, all these happened ^{to} *b7c*

orally and on telephonic message.

5. Further, it is contended that R-2 is working in the M.R. Cell for more than 5 years and is well connected with all the catering/supplying contractors and has been issuing verbal orders on behalf of the M.R. Cell since long to officials to carry out his orders. His orders were obeyed and acted upon by the Railway Officials without any protest, on his refusal to oblige, he has been targetted for punishment transfer to North Eastern Frontier. The applicant has cited various instances wherein the influences of Respondent No.2 and thereby cancellation and renewal of contracts are given and therefore he submits that Respondent No.2 is instrumental in ordering the transfer of senior Railway Officials of Central Railway. It is not the case of the respondents that the applicant did not go on transfer, in fact prior to 1990 he was on South Central Railway for a period of 2½ years, earlier he was posted at Ferozpur, prior to this he was on the Western Railway for a period of 10 years and before that in Southern Railway. But there are a number of senior officers of Traffic Department in Central Railway who are here since three decades, therefore the transfer of the applicant to North East Frontier Railway, Guwahati is nothing but a mala fide and is a warning to other officials who may question or refuse to carry out verbal or illegal orders of M.R. Cell. The applicant is left with 3½ years service and his daughter is studying in College, thus the transfer order is required to be quashed on this ground apart from the ground of mala fides that the transfer order is not dictated by public interest or any administrative exigency, but it is clearly by way of punishment.

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6. The Respondents No.1 and 2 in their reply filed have negatived the contentions of the applicant. The learned counsel for the respondents Shri M.I.Sethna submitted that the applicant is a Group 'A' Officer and is liable to transfer anywhere in India. He has also brought to our notice that in terms of 1979 Board's Instructions, the Railway Officials who hold positions where contacts with public and dealings with the Contractors are involved should be transferred from that position at least once in five years, even if there has been no complaints against them. Since the applicant has been working since 1990, he has been transferred to North-East Frontier Railway, Guwahati in administrative interest. Further he urged that transfer is an incident of service and in support of his contention he has cited various decisions of the Apex Court in the reply. However, on a perusal of the reply, I find that there is no specific comments about the allegation made by the applicant against the Respondent No.2 and the Department except stating at page 7 Para (g) to (k) not answered the pleas effectively, but only denied that there is no mala fides or unjust in the order of transfer. The reply has been filed by the Deputy Secretary and not by the Secretary of the Railway Board. So far as the R-2 is concerned he has not answered to any of the allegations made in the O.A. except denying and stating that he is not the transferring authority.

7. In the Rejoinder ~~it is~~ it is submitted that the ~~so~~ called policy decision has not been adhered to so far. This policy is apparent that 18 senior officers of SAG grade are working in Central Railway/Western Railway at Bombay

with Stores/ and held similar positions ~~as~~ Civil Engineers/ Accounts Staff who ~~are~~ dealing with the Contractors have not been transferred to other places. The transfer from one Railway to Another Railway is done by Member and Chairman of the Railway Board with the approval of the M.R. The affidavit in reply should have been signed by the Secretary, the least who is competent to give details of the transfer policy of the Railway Board. North-East Frontier Railway is not a normal posting and is considered as a punishment. If the policy is to be adhered to in that event Respondent No.2 continued in the M.R. Cell for over 5 years and dealing with contractors and suppliers as middle man, nevertheless he has not been transferred so far. Further, it is contended that the applicant is not dealing with public nor with the contractors and policy guidelines referred to above would not apply to the applicant who deals normally with notifications of Tarriffs, Cases and policy matters and is looking after the catering work since 19.7.1996 onwards. This only shows that quoting Railway Board's letter is an after thought and is being used as a cover to shelve Respondent No.2. The post of CRM has no dealings with suppliers and contractors. To this the Respondents have filed a sur-rejoinder stating that it is not incumbent on the administration to follow them in each and every cases. It is for the government to decide who are the officers to be transferred keeping in view the administrative interest in mind. The ~~present~~ Deputy Secretary has no locus standi to deny or assert allegations regarding the purported cases linked between the Secretary and Respondent No.2 or in any other manner.

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8. Insofar as the mala fides are concerned, the learned counsel for the applicant has drawn our attention to the Supreme Court decision S. Pratap Singh V/s. State of Punjab (AIR 1964 SC 72) at para 14 and 28 and also Express Newspapers Pvt. Ltd. and others V/s. Union of India & Ors. (AIR 1986 SC 872), where mala fides are alleged against the persons against whom such allegations are made it is necessary that such persons should come forward with an answer refusing or denying such allegation. In the instant case ~~the~~ neither Respondent No.2 nor Respondents are able to give a satisfactory answer to the allegation except denial. Therefore, in view of the above decision, the transfer of the applicant from Bombay to North-East Frontier Railway, Guwahati suffers from the vice of arbitrariness and cannot therefore be sustained.

9. Insofar as the policy matter of 1979 Circular is concerned, if the 1979 Circular is to be implemented in the administration when the list of all the officials referred by the applicant who are working for more than 5 years should be made and each one of them should be considered for transfer and at the time of transfer, the criterion of maximum stay could be adopted. The respondents have not shown any material though this has been carried out and the applicant has been chosen for transfer as an exception to the Rule and which is clear from the reply that it is for the Government to decide the issue by keeping the administrative interest in mind. Even MR's Note indicates that the applicant may be transferred if he has completed 5 years and compliance reported for information of MR. They have taken a stand that since the applicant has been working since 1990 and there is a vacancy of CCO in N.F. Railway Shri K. Laloo, IRTS, N.F. Railway on being relieved by

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Shri P.Murugan was ordered posting against this post. However, Shri P.Murugan obtained a stay order from the Madras Bench of the Tribunal, therefore, the applicant has been posted to Guwahati, but it has not been mentioned that he should be transferred to North-East Frontier Railway. The transfer order issued by the Secretary has been approved by the Chairman, but not signed by the Minister ~~who is~~ who is acting on behalf of the President, therefore, even if it is assumed that the P.S. to MR's note that officer should be transferred to N.F. Railway, the ultimate transfer order issued by the Secretary which has been approved by the ~~Chairman~~ and not seen by the Minister who is acting on behalf of the President. As stated earlier, the respondents have not brought out any material to show whether the policy of 1979 has been implemented by the department. It looks like 1979 Circular applied to the applicant arbitrarily insofar as the applicant is concerned because he was holding the additional charge of catering only since July, 1996. Though he has specifically stated that he has nothing to do with the public nor with the contractors, no specific denial by the respondents. Therefore, this is being used selectively to transfer the officer for reasons other than the compliance of policy matter. Therefore, I am unable to accept the contention of the Respondents that the order of the transfer of the applicant is in compliance with the 1979 Circular of the Department. The transfer order issued by the respondents is neither in public interest nor in administrative exigency. Since some one from Madras refused to go on transfer the applicant has been—chosen for transfer.

10. Therefore, in view of the above, the transfer of the applicant from Bombay to N.F. Railway suffers from vice of arbitrariness and cannot therefore be sustained and in my opinion, the letter signed by the P.S. to Minister (MR) is not sufficient for the purpose of formal order on behalf of the President of India and it is incumbent that the said order is required to be seen by MR before issuing the transfer order. It looks perhaps the proper facts have not been brought to the notice of the MR before issuing the transfer order of the applicant. Normally, the Tribunal is reluctant to interfere with the transfer order. In this case the order passed by the respondents is mala fide and arbitrary and violative of statutory rules. In the instant case, the order passed by the respondents is shown to be arbitrary and as such it cannot be sustained. Though we had directed the respondents to furnish the file in which MR while on tour discussed with the G.M., on a perusal, the respondents were not able to say anything whether the MR had discussed with the G.M. regarding the revocation of the licence of M/s. V.P. Diwadkar at Itarsi. However, on a perusal of the G.M's file it is noticed that the G.M. considering the other two cases directed that the case of M/s. V.P. Diwadkar also be considered, in similar manner other two parties M/s. Vyas and M/s. Tiwari. In view of the revised policy of the Railway Board and they may be given contract for a period of six months on ad hoc basis.

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11. Since the Tribunal had given interim order dt. 5.2.1997 which was continued till date i.e. 5.4.1997 and since the Respondents had filed their reply in time and with the consent of both the parties the matter was finally heard on 15.4.1997 and accordingly the same is being disposed of at the admission stage itself.

12. In the result, the O.A. is allowed. The order dt. 22.1.1997 is quashed and set aside. There will be no order as to costs.


(B.S. HEGDE)
MEMBER (J).

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