

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 605/1998.

Date of Decision: AUGUST 06, 1998.

Shri J. P. Lal & 3 Others, Petitioner/s

Shri Y. R. Singh, Advocate for the
Petitioner/s

v/s.

Union Of India & Others; Respondent/s

Shri P. S. Lambat, Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

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

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 605/98.

Dated this Thursday, the 6th day of August, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

1. J. P. Lal,
Turner Grade-I,
South Eastern Railway,
D.M.E. (D), Motibaugh,
Nagpur - 4.
2. Stepen Joseph,
D/Mech. Grade-II,
D.M.E. (D), South-Eastern
Railway, Motibaugh,
Nagpur - 4.
3. Shri Kesarilal C.,
D/Mech. Grade-I, (M),
D.M.E. (D), Motibaugh,
Nagpur - 4.
4. Shri Dulichand Gariba,
D/Mech Grade-I (M),
D.M.E. (D), South-Eastern
Railway, Nagpur - 4.

... Applicants

(By Advocate Shri Y. R. Singh)

VERSUS

1. The Union Of India through
The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta - 700 043.
2. The Chief Personnel Officer,
South-Eastern Railway,
Garden Reach,
Calcutta - 700 043.
3. The Divisional Mechanical
Engineer (D), S.E. Railway,
Motibaugh, Nagpur - 4.
4. Shri S. Tandan,
D.M.E. (D), S.E. Railway,
Motibaugh, Nagpur - 4.
5. Shri S. Kalyanraman,
D.M.E. (D), S.E. Rly.,
Motibaugh, Nagpur - 4.

... Respondents.

(By Advocate Shri P.S. Lambat)

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OPEN COURT ORDER

(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. I have heard the Learned Counsels appearing on both sides.

2. The applicants are working in the South-Eastern Railways at Nagpur. All the four applicants came to be transferred ~~by~~ separate orders dated 10.07.1998 to different Divisions. The four applicants who were at Nagpur are transferred to Waltair, Kharagpur, Bandarmunda and Bokaro Steel City respectively. The applicants are challenging the orders of transfer on many grounds. According to them, the order of transfer suffers from ^{malafide} ~~malafide~~. They have already pleaded personal difficulties to which they are put in view of the sudden transfer. It is stated that the applicants are Members of Trade Union called Technical Employees' Association of Railways and they had even arranged one day tool-down strike in May, 1998. Then there are some pleadings ^{about} the manner in which the applicants came to be relieved on 15.07.1998. On these allegations the applicants have approached this Tribunal challenging the order of transfer.

3. The respondents have filed reply justifying the orders of transfer on the ground of administrative exigencies. They have denied the allegations of malafide. They have denied the allegation about the manner in which the applicants came to be relieved on 15.07.1998. Though

the tool-down strike is admitted, it is denied that the applicants were transferred on the ground of prejudice or malafide. That the personal difficulties alleged by the applicants are no grounds to interfere with the orders of transfer which are issued in administrative interest.

4. I have heard the Learned Counsels appearing for both the parties at length. Since I am disposing of the application at the admission stage, it is not possible to refer to the pleadings in detail and to all the arguments addressed at the bar in detail.

5. As far as the first applicant, J. F. Lal is concerned, it is brought out that he had filed a previous application before this Tribunal where the order on ^{Review} ~~of~~ transfer came to be quashed. It is therefore stated that the present transfer order again transferring the applicant suffers from malafide. In the previous O.A. No. ^{489/97} ~~the~~ Single Member of the Tribunal, by Order dated 18.09.1997 quashed the order of transfer on certain grounds. The reasons given by this Tribunal are given in para 6 of the order. The Tribunal was persuaded on three grounds. One ground is that the applicant, J.F. Lal, had been transferred alongwith the post for a period of 6 months and this Tribunal was not satisfied that the transfer was being made in administrative interest. Then the other ground which was accepted by the Tribunal was that, there are number of litigations pending on which the applicant has to give evidence and the case had become ripe for giving evidence and therefore, he should not be disturbed at this stage. The third circumstance was that the mother of the applicant was not keeping well due to paralysis.

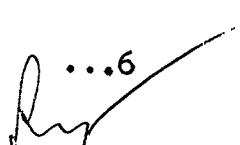
It is now admitted that the applicant's mother has expired and therefore, that ground no longer survives. As far as the applicant being transferred alongwith the post for six months is concerned, that ground also does not survive since the present transfer is no longer with the post or limited to six months.

The only other ground which still survives is about the applicant being involved as a witness in some criminal cases between his union and the rival union. On the previous occasion the Tribunal was persuaded to accept this contention on the ground that the cases had become over-ripe for recording the evidence and at the crucial stage ~~and~~ he should not be disturbed. Now nearly nine months have lapsed and I do not find any improvement in the situation. One of the cases ~~was~~ of the year 1991 and now we are in 1998 and it may take another few years for the evidence to be recorded. As rightly argued by the Learned Counsel for the respondents, if this applicant is to be stationed at ^{at two} Nagpur to contend ~~these~~ cases it may take another few years and he will retire from service. That is not the intention of law. This applicant is not personally concerned with those cases, except as a member of the Union. He is not a complainant nor a party to the case. He is only a witness. Even if he is transferred, he can take leave and come to the Court on the date on which his evidence is to be recorded. Therefore, in my view, the three grounds which were argued in the previous O.A. No. 489/97 ~~does~~ not survive for consideration at this stage.



6. Then the Learned Counsel for the applicants urged that the case of all the applicants is common as far as personal difficulties are concerned and they are the members of the Union. The respondents in their reply have stated that the Union to which the applicants are members, is not a recognized union. There are two recognized unions at Nagpur. The fact that the applicants are members of the union is not a circumstance, particularly, being a unrecognized union is not a circumstance to interfere with the order of transfer. As far as the personal difficulties are concerned, time and again the Supreme Court has observed that these are grounds to be dealt with by the administration and not by the Court or Tribunal. It is open to the applicant to persuade the authorities or take up the matter with the higher officers in case of personal difficulties and request for modification of the order of transfer. This Tribunal cannot sit in appeal over the orders passed by the administration on a matter like this.

Now it is fairly well settled by number of decisions by the Apex Court that the jurisdiction of the Court or Tribunal to interfere with the order of transfer is very limited. The only two grounds on which the Court or Tribunal can interfere are - when the order is contrary to any statutory rules or when it suffers from malafides. The personal grounds and difficulties are not grounds for a Court or Tribunal to interfere. Even on the question of husband and wife working in the same place, it is again a guideline meant for the administration to consider and not a

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ground for a Court or Tribunal to interfere with the order of transfer. The Learned Counsel for the respondents has referred to many authorities and the principles mentioned above are now fairly well known and well settled (vide A.I.R. 1991 SC 532 - Smt. Shilpi Bose V/s. State of Bihar, A.I.R. 1993 SC 2444 - Union Of India & Others V/s. S. L. Abbas, AIR 1989, SC 1433 - Gujarat Electricity Board & Another V/s. Atmaram Sungomal Poshani and AIR 1995 SC 1056 - State of Madhya Pradesh & Another V/s. S. S. Kaurau & Others). Infact, in the last case, the Supreme Court has cautioned the Courts and Tribunals that they should not pass any orders which may interdict the wheels of administration. It is for the administration to take appropriate decision regarding transfer and the order should not be interfered with unless it suffers from malafides, etc.

7. One of the legal ground pressed into service by the Learned Counsel for the applicants is that the inter-divisional transfer can be made only by the General Manager and not by any other lower authority. The Learned Counsel for the respondents invited my attention to Establishment Serial Circulars, 1981 of South Eastern Railway. In this book at page 234, item no. 30 reads as follows :-

"Transfer of staffs from one division to another - full powers for General Manager, Additional General Manager and Head of the Department."

In the present case, the orders of transfer are issued by or with the approval of Chief Personnel Officer, who is the head of the department. Therefore, in my view,

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the order of transfer does not suffer from any legal infirmity. It is true that in item no. 30 in the bracket there is reference to para 147 (R-1). I am told that this para 147 (R-1) refers to para 147 Railway Establishment Code Volume-I. In para 147 of the Railway Establishment Code again the heading starts as "transfer from one department to another" but in the body of the para there is reference to employment. Though there is some confusion in the wording of para 147, in item no. 30 of circular book there is no such confusion since the wording used is "transfer of staff from one division to another". Hence, we need not ~~call back~~^{fan} para 147, since the heading of item no. 30 is clear and unequivocal. It provides for powers of transfer of staffs from one division to another and full powers are given to the General Manager, Additional General Manager and Head of the Department. Hence, I am satisfied that the Head of the Department, namely - the Chief Personnel Officer, is competent to transfer Class-III officers from one Division to another Division.

8. As far as malafides are concerned, there is some reference to the incident on 15.07.1998 about the circumstances under which the applicant came to be relieved. These allegations are denied by the respondents. The fact that the respondents filed a caveat application in the Tribunal is not a ground to make out the case of malafide. After going through the materials on record, in the light of the arguments addressed by both sides, I am not satisfied that the case of malafide is made out in this case, so as to call for interference with the order of transfer of the applicants.



9. The Learned Counsel for the applicant invited my attention to a case reported in 1994 SCC L&S 1180 (Director Of School Education, Madras & Others V/s. O. Karuppa Thevan & Another). In that case, the Tribunal had quashed the order of the transfer. On an appeal, the Supreme Court set aside the order of the Tribunal. The Supreme Court has observed that an employee need not be heard before he is transferred in the exigencies of administration. Then a grievance was made that the official has been transferred during the mid of the academic term when his children are studying in school. Even then the Supreme Court observed that there is no such rule. However, on facts, the Supreme Court directed that the order of transfer should not be given effect till the end of academic year. The judgement of the Supreme Court was delivered on 31.01.1994, which means that it was the fag end of the academic year. We can take judicial notice that normally the academic year comes to an end by March/April every year. In those circumstances of the case, the Supreme Court while allowing the appeal and setting aside the order of the Tribunal, observed that since only short time is left over for the end of the academic year, directed that the order of transfer should not be given effect to till the end of academic year. On the other hand, the decisions referred by me earlier gives us a clear position of law declared by the Apex Court that a Tribunal or Court cannot sit in appeal over the orders of the administration regarding transfer. After going through the facts and circumstances of the case, I am not inclined to interfere with the order of transfer in this case.

Another grievance made by the Learned Counsel for the applicant was about the question of seniority. The Learned Counsel for the respondents submitted that the applicants' seniority is not affected when the transfer is made in public interest. Even otherwise, the Indian Railway Establishment Manual provides for maintaining seniority in case of transfer in public interest from one seniority unit to another. There are number of provisions in the Indian Railway Establishment Manual touching on this question when officials are transferred from one seniority unit to another. If in future the applicants are affected regarding promotion, etc. due to change from one seniority unit to another seniority unit, liberty is given to them to make a representation to the appropriate authority on this question and the Appropriate Authority shall see that no injustice is done to the applicant regarding seniority and other benefits due to transfer from one seniority unit to another seniority unit. If however, any adverse order is passed on this point by the administration, the applicants will have a right to approach the Court or Tribunal for redressing their grievance.

At this stage, the Learned Counsel for the applicant makes a submission that the applicants may be given liberty to apply to the administration for voluntary retirement at Nagpur. In my view, we are not concerned with that question in the present case, since we are only concerned with the validity or otherwise of the order of transfer. However, no leave of the Tribunal is necessary for the applicants to apply for voluntary retirement. The law gives full

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right to any employee to apply for voluntary retirement subject to certain conditions like minimum period of service, etc. and it is open to the applicants to take whatever necessary steps according to law to apply for voluntary retirement

10. In the result, the application fails and is hereby dismissed. In the facts and circumstances of the case, there will be no order as to costs.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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