

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

O.A. No. 956/92  
T.A. No.

198

DATE OF DECISION 3.8.93

B.S.Verma Petitioner

Mr.S.K.Jain Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

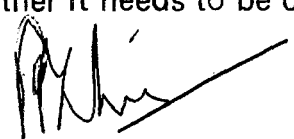
Mr.M.Bhandari Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice D.L.Mehta, Vice Chairman

The Hon'ble Mr. P.P.Srivastava, Member(Adm.).

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 ?

  
(P.P.Srivastava)  
Member (Adm.).

  
(D.L.Mehta)  
Vice Chairman.

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,  
JAIPUR.

Q.A.No.956/92

Dt. of Order: 3.8.93

B.S.Verma

...Applicant.

Versus.

Union of India & Ors.

...Respondents.

Mr. S.K.Jain

: Counsel for applicant

Mr.M.Bhandari

: Counsel for respondents

CORAM

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman.

Hon'ble Mr.P.P.Srivastava, Member (Adm.).

PER HON'BLE MR.JUSTICE D.L.MEHTA, VICE CHAIRMAN.

Petitioner is holding the post of Assistant Commercial Superintendent II, Jaipur Division, in Western Railways. Earlier he was transferred from Jaipur to Bombay and he filed an Q.A. before this Tribunal which has been decided on 18.9.92 and directions were given that the respondents should give a posting to the applicant if necessary taking into consideration the guidelines issued by the Railway Board vide letter dated 14.1.75. Further directions were given that any posting so given should not be violative of the directions so given and the transfer order was quashed. The Railway authorities were given the option to transfer the applicant if necessary in accordance with the directions/ guidelines given in the circular dated 14.1.75.

*Refutable*

*DM*

2. Applicant has again been transferred vide order dated 23.10.92 as Assistant Commercial Superintendent, Ajmer. This transfer order has been challenged by the applicant in this Q.A. before this Tribunal. The respondents have submitted in para 5(2) of their reply

that the transfer order has been issued in the interest of Railway Administration and have no personal grievance with the applicant. It was also contended by Mr. Bhandari in para 6 of the reply that the letter dated 14.1.75 issued by the Railway Board has not imposed complete ban upon the transfer of SCs/STs employees. He has further submitted that the applicant was in the habit of filing of application before the Central Administrative Tribunal and try to remain at Jaipur by hooks and crooks. In para 8 of the reply he further submitted that 'it is very strong reason and compelling circumstances which cannot be avoid by a good employers.'

3. It will not be out of place to mention here that the applicant is a resident of Sawai Madhopur District which is not even adjacent to Jaipur and in between Jaipur and Sawai Madhopur, Tonk District lies. The applicant has been transferred to Ajmer, which is again at a longer distance than Jaipur and is not a neighbouring district. In fact the Revenue Divisions of the State of Rajasthan, Ajmer is a Revenue Division consisting of Ajmer, Bhilwara, Nagaur districts whereas Sawai Madhopur District of which the applicant is a resident falls within the Jaipur Division consisting of Alwar, Sawai Madhopur, Tonk, Bharatpur, Jaipur, Dausa, Sikar and Jhunjhunu districts.

4. Mr. Bhandari, appearing on behalf of the respondents cited before us the case of Union of India & Ors. Vs. S.L. Abbas, reported in JT 1993(3) 17 page 678. In this case Shri S.L. Abbas was transferred from Shillong to Pauri and he relied upon the guidelines

issued by the respondent UOI and prayed that he should not be transferred in the facts and circumstances of the case. The guidelines are reproduced as under;

"No doubt the guidelines requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible."

In this case the only thing is required that the departmental authorities should consider this aspect alongwith the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees. The Hon'ble Supreme Court has expressly said this in para 9 of the judgment. So the consideration about the fate of other employees and administrative exigencies are relevant and allowing the spouses to continue at one place is not necessary. It may be one of the factors which may be relevant at the time of passing the order.

5. The constitutional history particularly providing a reservation under Article 16 and Directive Principles provided in Chapter IV of the Constitution needs scrutiny. So far as the question about the rights and privileges of the SC/ST is concerned, we should not overlook the provisions of Article 16 but we should also consider the provisions particularly the Chapter IV of the Constitution. Under Article 37 of the Constitution, it has been specifically mentioned that the provisions of Chapter IV of the Constitution are fundamental in the governance of the country. The very words "provisions are fundamental in the governance of the country" leads us to consider that they may be

equated to some extent with the fundamental law of the country and any orders or directions issued for the purpose of implementation of the fundamental law of the country cannot be equated with ordinary administrative instructions but they stand on a higher pedestal than the ordinary administrative instructions. Directions were issued by the Railway Board on 14.1.75 and we will have to examine the nature of the directions issued. In these directions nowhere it has been mentioned that the persons of SC/STs should not be transferred as far as practicable like the circular relating to the spouses referred in the case of UOI & Ors. Vs. S.L. Abbas, on the contrary, the directions are prohibitory in nature, the relevant part of the directions reads as under:

"The Board have, therefore, decided that the employees belong to SCs & STs should be transferred very rarely and for very strong reasons only."

Thus, it prohibits general transfer or ordinary transfer. Thus there are two ingredients of these directions. One is 'very rarely' and the second important ingredient prohibiting the transfer is 'for very strong reasons only'. Again we will have to consider the word 'only' used in the last line, the word 'only' directs that no transfer should be effected in any case if both the ingredients are not fulfilled. Thus, it is not only prohibitory in nature but it also issues a mandate to the subordinate officers not to transfer any SC/ST employees against these directions so issued. It is not like an ordinary guideline where 'if' and 'buts' are there.

6. This circular was again considered by the Railway Board and on 21.8.89, further directions were issued that this circular should be strictly followed. Mr. Bhandari, in his arguments has submitted that the order of transfer cannot be questioned in a Court or Tribunal unless it is vitiated by the violation of the statutory provisions.

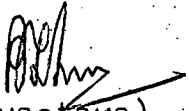
7. The second question is whether any letters, circulars, notifications, etc. issued by the Central Government or the authorities exercising the powers of the Central Government in the matter of reservation and rights and privileges of the SC/ST should be considered merely as a guideline or as a direction. To uplift the down trodden people some provisions have been made in the Constitution of India and in pursuance thereof from time to time directions have been issued and even prohibitory orders have also been issued. Generally we hear the slogans of 'poor' and 'poverty' every day and we read about them in the newspapers as well. The use of these words is so frequent that now there is a need of the substitution of these words by the words 'impoverish' and 'impoverishment'. The process of impoverishment is a regular process which is going on and which is taking away the spirit of the Constitution and for this very reason the persons of the down trodden classes could not come to the standard of living even after the lapse of 46 years of the independence. For this very reason and to achieve the object laid down in the Constitution to provide equality this prohibitory order dated 14.1.75 was issued so that there may be minimum displacement of the persons of the SC/ST

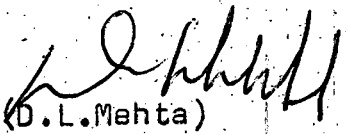
classes and they may maintain their culture and heritage and at the same time the process of upliftment may come and they may not be the victim of impoverishment.

8. Mr. Bhandari also submitted that the order of the Railway Board cannot be considered as mandatory in nature. From his argument in guarded language there is a hint that these directions may be violative of Article 14. The respondents cannot say anything against their own circular & that it <sup>is</sup> ultra vires can be challenged by an aggrieved person and the respondents cannot be allowed to challenge their 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. Respondents may pass an order that every one should be treated equally in posting and transfer matters. Mr. S.K. Jain, appearing on behalf of the applicant has argued that unequal treatment is necessary to achieve the equality and the unequal treatment is given to the persons of SC & ST to achieve the object of equality which have not been achieved so far. In such circumstances, we are of the opinion that the arguments of Mr. Bhandari cannot be entertained. To speak in guarded language and to challenge are two different things.

9. Even in the first O.A. directions were given that the respondents can give a posting to the applicant taking into consideration the directions issued by the Railway Board's circular dated 14.1.75, referred above. In this order specific reference have been made that the order so issued should not be violative of the guidelines. In the reply of this O.A. nowhere it has

been said that what were the very strong reasons and rare ground for the transfer of the applicant. It is not necessary to ~~remein~~ mention the same in the order itself but an indication should have been there in the original file and by producing the copy by which the respondents can show that these were the rare and very strong reasons for which the applicant has been transferred. Even now they can pass necessary order which may be appropriate in the facts and circumstances mentioning the very strong ground which are necessary while passing a transfer order in the case of SC & ST in terms of circular under reference. In the result, Annexure : A-1, is set aside. The O.A. stands disposed of. Parties to bear their own costs.

  
(P.P. Srivastava)  
Member (A)

  
(D.L. Mehta)  
Vice Chairman.