

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 1249/93.

Dt. of Decision : 24.6.94.

1. R.R. Swamy
2. A. Bhasker Rao
3. P. Achanna
4. S. Sattaiah
5. M. Appalanaidu
6. P. Appa Rao
7. K. Achutramaiah
8. S. Krishna Murthy Raju
9. G. Sanyasi Raju
10. S. Polaiah
11. N. Narayana Swamy
12. B. Rama Rao
13. P. Deva Das
14. G. Radhakrishna
15. A. Appa Rao
16. G. Appala Naidu
17. A. Krishna Rao
18. K. Rama Rao
19. K. Narayana Rao
20. A. Demudu
21. R. Sathyam
22. M. Dalaiah
23. G. Suri Reddy
24. N. Chinna Rao
25. V. Gajapathi Rao
26. N. Appalamurthy
27. S. Appa Rao
28. S. Rama Rao
29. A. Kanaka Raju
30. G. Subba Rao
31. P. Mohan Rao
32. Y. Appa Rao
33. J. Guruvulu
34. K. Appa Rao
35. Ch. Sambasiva Rao
36. S. Krishna
37. B. Guru Murthy
38. Md. Subhan
39. P. Laxamana Reddy
40. V. Noka Reddy
41. S.K. Rasulu
42. K. Janaki Rama Raju
43. O. Suryanarayana
44. Md. Ghous
45. A. Maruthi Rao
46. A. Tulasi Das
47. B. Trinatha Rao
48. J.W. Adams
49. B. Narayana Rao
50. N. Appa Rao
51. P. Ganapathi Rao
52. G. Gurunath
53. B. Katu Raju
54. B. Sathyanarayana
55. B. Kanaka Raju
56. B. Ramachendhraju
57. G. Paradeshi
58. G. Ammulu
59. M. Nagaraju
60. Ch. Venkateswarlu
61. R. Papa Rao
62. S. Chekaravarthi
63. D. Sathyanarayana Raju
64. G. Appala Reddy
65. S. Appa Rao
66. D. Sathya Rao
67. K.D. Chekaravarthi
68. M. Krishna Rao
69. Ch. Appalanaidu
70. D. Suryanarayana Raju
71. Md. Musthafa
72. Shek Miskeen
73. S. Sathyanarayana
74. S. Ramanujjaiah
75. A. Sankulu
76. P. Appa Rao
77. K. Sreeramulu
78. B. Suri
79. S. Sathyanarayana
80. M.D. Giri
81. Ch. Simhachalam
82. K. Eswara Rao
83. Ch. Sathyam
84. G. Jaganatham
85. L. Penta Rao
86. M.D. Datha Giri
87. B. Ella Raju
88. S. Rama Raju
89. C. Chendhra Rao
90. K. Babji
91. J. Appa Rao
92. M.D. Khadhar
93. R. Ganeshan
94. B. Pentaiah
95. B. Ramana
96. S. Rama Rao
97. G. Tatha Rao
98. K. Appala Raju
99. V. Rama Rao
100. D. Appa Rao
101. K. Appa Rao
102. N. Paidi Raju
103. M. Erraiah
104. K. Gurumurthy
105. K. Mahalaxmi
106. N. Appa Rao
107. Abdul Jabbar
108. S. Bhaskhara Raju

.. Applicants.

VS

VS

1. Government of India,
represented its Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. Chief of Naval Staff,
Naval Headquarters,
New Delhi.
3. Flag Officer,
Commanding-in-Chief,
Headquarters-Eastern Naval Command,
Visakhapatnam.

.. Respondents.

Counsel for the Applicants : Mr. S.L. Chennakeswa Rao

Counsel for the Respondents : Mr. N.V. Ramana, Addl. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI A. B. GORTHI : MEMBER (ADMN.)

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55 Dated 24-6-1994.

JUDGEMENT

(of the Bench delivered by Sri Justice V.Neeladri Rao,
Vice-Chairman).

One hundred and eight Motor Transport (M.T.) drivers working in the industrial units of the Navy at Visakhapatnam under the command of the Flag Officer, Commanding-in-Chief, Eastern Naval Command filed this O.A. praying for a direction to the respondents not to disturb them from the units belonging to industrial establishments of the Eastern Naval Command, Visakhapatnam.

2. There are MT drivers both in industrial and non-industrial establishments of the Eastern Naval Command. Navy at Visakhapatnam is also under the Eastern Naval Command. While the MT drivers in the industrial establishments get over-time wages at double the rate and also productive linked bonus, the MT drivers working in non-industrial establishments get OT wages at normal rate and ex-gratia bonus, and thus, the amounts payable to the MT drivers in non-industrial establishments under the above two heads are less than the amounts payable to MT drivers in industrial establishments in regard to the same. As such there was a demand in 1979 from MT drivers in non-industrial establishments for their transfer to industrial establishments and vice versa on rotational basis. When some of the MT drivers in non-industrial establishments were transferred to industrial units and thereby some MT drivers in the latter were transferred to the non-industrial establishments, the transferee MT drivers ^{from} in the industrial establishments filed writ petition in the High Court and the order of

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transfer was suspended pending disposal of the same. Thereupon it was submitted for the respondents that the transfer of other MT drivers from industrial establishments to non-industrial establishments was not effected and as and when vacancies in the post of MT drivers arose in industrial establishments, the MT drivers, on the basis of their seniority in non-industrial establishments, were being transferred to the industrial establishments.

3. The writ petition filed in the High Court of Andhra Pradesh was later transferred to this Bench and the same was dismissed as withdrawn. Then the MT drivers in non-industrial establishments filed O.A. 56/92 praying for a direction to the respondents to implement the transfer policy of transferring the MT drivers in non-industrial establishments to the industrial establishments and vice versa. The same was disposed of by learned single Member of this Bench by order dated 10-2-93 whereby the respondents were directed to implement the existing transfer policy and, if necessary, by making suitable amendments.

4. It is stated that after the disposal of O.A. 56/92, a committee was constituted vide HQs. Eastern Naval Command's letter No. CE/2007/16 dt. 22-10-93 with a view to formulate policy for transfer of MT drivers from non-industrial establishments of the Eastern Naval Command to the industrial establishments thereof and vice versa. It was found by the committee that 40 out of 108 MT drivers working in the

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non-industrial establishments had put in more than 10 years of service and hence it was recommended that they should be transferred to the industrial establishments and to the extent ^{necessary} the senior most out of the 135 MT drivers in the industrial establishments should be transferred to the non-industrial establishments with the exception that those MT drivers working in the industrial establishments who are in the last year of service should not be disturbed. The said committee also recommended that such of those MT drivers in the non-industrial establishments who are in the last year of service should also be transferred to the industrial establishments. It was also noticed by the said committee that out of the remaining MT drivers in the non-industrial establishments, 11 would complete 10 years of service by 31-12-94 while 8 and 9 would complete 10 years by 31-12-95 and 31-12-96 respectively. The further recommendation of the said committee is that after 1996, the MT drivers who would complete five years in the non-industrial establishments should be transferred to the industrial establishments so that faster rotation can be fixed so as to enable all the MT drivers to enjoy the extra benefits in regard to Over-time wages and productive linked bonus on equitable basis. It is that stated/in pursuance of the said scheme, the MT drivers in the non-industrial establishments were transferred to the industrial establishments and to the extent necessary the senior MT drivers other than ^{the} who were an

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in the last year of service from the industrial establishments were transferred to non-industrial establishments.

^{aggrieved}
Being as it is, these 108 out of the MT drivers in the industrial establishments filed Writ Petition No.5996/93 in the High Court of A.P. When the same was dismissed on the ground that this Tribunal is having jurisdiction to entertain the same, this O.A. was filed in this Tribunal.

5. While it is stated for the respondents that there are two categories of MT drivers, that is, MT drivers Gr.II and MT drivers Gr.I and all the MT drivers in Grades I and II in both the non-industrial and industrial establishments are in the same seniority unit, i.e. borne by one common command roster, it is admitted for the applicants even in the rejoinder filed that the MT drivers in both the industrial and non-industrial establishments are borne by one common command roster.

6. Then the question arises as to whether the Motor Transport drivers in the Navy under the Eastern Naval Command are not liable for transfer from industrial units to non-industrial units when the MT drivers both in the industrial and non-industrial units are borne by a common command roster.

7. It is not the case of the applicants that they were appointed as MT drivers for industrial establishments in the Eastern Naval Command. When the appointment is only for the establishments in the Eastern Naval Command and when all the MT drivers are borne by common command roster and when it is the prerogative

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of the management to transfer, the MT drivers in industrial establishments are liable for transfer to non-industrial establishments, urged the learned counsel for the respondents. But it was urged for the applicants that as such transfer entails monetary loss to such transferees from the industrial units to non-industrial units, such a transfer cannot be effected without their consent and in any case the order effecting such transfer is vitiated as no notice was issued to ~~the~~ such transferees before such transfer was effected. In this context the judgment of the Supreme Court reported in 1991 (2) SCC 209 (Shankar Pandurang Jadhav & ors. Vs. Vice-Admiral, Flag Officer Commanding-in-Chief and Ors.) is relied upon for the applicants.

8. The facts which had given rise to the judgment in 1991 (2) SCC 209 are as under:

The posts of junior time-keepers and the LDCs in the Naval Dockyard, Bombay were merged with effect from 1st December, 1966. As the time-keeping department was considered as an industrial unit, the time-keepers are getting over-time wages at double the rates and productive linked bonus while the LDCs working in the non-industrial units were getting over-time wages at normal rates and ex-gratia bonus. The time-keepers who were transferred as LDCs in the Naval Dockyard, Bombay subsequent to 1-12-66, challenged their transfer by urging, *inter alia*, that as such transfer ^{resulted in} ~~suffers~~ monetary loss ~~in view of merger~~ the same entails ~~amount~~ civil consequences and hence they would be entitled for being given an opportunity to exercise their option

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either for retention as timekeeper or for transfer as LDC. The Supreme Court held that the time-keepers who were appointed subsequent to 1-12-66 had no right for the post of time-keeper ~~and~~ as they were appointed to the merged cadre of time-keepers and LDCs and hence they need not be given an opportunity to exercise option either to continue as time-keeper or to go as LDC even though the transfer from the post of time-keeper to the post of LDC entails monetary loss. But it ^{was} ~~was~~ held urged that those who joined as time-keepers prior to 1-12-66 should be given opportunity either to continue as time-keeper or to go to the post of LDC as they were appointed in the post of time-keeper.

9. It is, thus, manifest from the above judgment of the Supreme Court that the question as to whether transfer can be effected or not depends upon the fact as to whether the transfer is from one seniority unit to another seniority unit or whether it is from one section in the seniority unit to another section in the same seniority unit, and the transfer from one section in the seniority unit to another section in the same seniority unit cannot be challenged even if such transfer results in monetary loss to the transferee.

10. As already observed, the plea of the respondents that the recruitment to the post of MT driver is for the Eastern Naval Command and it is not a recruitment either ~~for~~ for industrial establishment or non-industrial establishment of the Eastern Naval Command and all the MT drivers in the Eastern Naval Command are borne on

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common command roster, was not challenged for the applicants. Hence it follows that the seniority unit of all the MT drivers in the Eastern Naval Command is one and when it is a case of transfer of the MT drivers in the industrial establishment to non-industrial establishment, it is a case of transfer from one section to another section in the same seniority unit and it is not a case of transfer from one seniority unit to another seniority unit. It is true that in view of the transfer of MT drivers from the industrial establishments to non-industrial establishments of the Eastern Naval Command there will be decrease in the over-time wages and also in the case of bonus. But the Supreme Court held that such monetary loss to the transferee is not a ground for challenging the transfer when such transfers ~~are~~ within the same seniority unit, are effected.

11. Of course if it is a case of pick and choose in regard to the transfer whereby the transferees suffer monetary loss, the same can be challenged on the ground of arbitrariness but it is not a matter that arises for consideration in this O.A. The policy of transfer from ~~are~~ industrial establishment to non-industrial establishment is not only with regard to MT drivers but also in regard to other categories of posts and the same ^{were} evolved so as to ensure to the extent possible that all the employees in various categories should get the additional benefits of which working in the industrial units and the said policy ^{is} ~~lack~~ does not ~~lack~~ of arbitrariness, contends the learned counsel for the respondents. But when for the last

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one decade the MT drivers, on the basis of their seniority in the non-industrial establishments, were being transferred to the industrial establishments as and when vacancies arose in the latter and when thereby the senior MT drivers are getting the additional benefits which accrued to the MT drivers in the industrial establishments, the same cannot be held as inequitable and hence there was no justification for altering the transfer policy, urged the learned counsel for the applicants.

12. Item 23 of the minutes in regard to points which were considered by J.C.M. IV level council held on 22nd and 23rd November, 1991 is in regard to the transfer of MT drivers from non-industrial establishments to industrial establishments against the existing vacancies in the industrial establishments. The said point was closed with endorsement that "the chairman explained that as and when vacancies are accruing in industrial establishments the same are being filled in by transferring the senior most MT drivers working in non-industrial establishments and at present no vacancy existed in industrial establishments." It was urged for the applicants that the transfer policy in regard to transfer of MT drivers in the Eastern Naval Command was only a case of transfer of M.T. Drivers in the non-industrial establishments on the basis of seniority basis to the industrial establishments as and when vacancies were existing in the latter, and when it was true that it was narrated for the respondents in OA 56/92 when it was stated for the respondents that there was a policy on transfer from non-industrial unit to

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industrial unit on rotation basis, as per expiry of stay of five years in the non-industrial establishments and hence the applicants ^{having} who are not parties to the OA 56/92 are not bound by the judgment in OA 56/92, and there was no need for the respondents to come up with a new transfer policy on the basis of the said judgment. But it is evident from the additional material papers produced for the respondents that as early as in 1979 there was a demand from MT drivers who are in the non-industrial establishments for transfer to industrial units on rotational basis and vice versa and the same was acceded to in 1981 and MT drivers in the industrial units were transferred to non-industrial units so as to accommodate the MT drivers transferred from the non-industrial units to industrial units, and when such transfers ^{were} suspended in regard to two by the interim order of A.P. High Court, the said rotational transfer policy was not implemented and in view of legal advice, the same was not implemented even in regard to other MT drivers pending disposal of the Writ Petition/Transferred Application and during the said period only the senior most M.T. drivers in the non-industrial units were being transferred to industrial units as and when vacancies arose in the latter and as such the contention of the applicants that the respondents wrongly submitted in OA 56/92 that there was a transfer policy is not tenable, submitted by the learned counsel for the respondents. It is also the contention for the respondents that as by the time the ~~SRM~~ JCM IV Level ~~met~~ in 1991, the senior

most MT drivers in non-industrial units were being transferred to industrial units to stand when vacancies arose in the latter, it was so stated by the Chairman of the JCM as per minutes in regard to item-23, relied upon for the applicants. In view of the additional material papers produced for the respondents it cannot be stated that there was misrepresentation before this Tribunal when the respondents in OA 56/92 admitted that there was a transfer policy as ~~regards~~ referred to for the applicants therein.

13. It is for the employer to ~~evaluate~~ ^{frame} the recruitment rules and also to evaluate a transfer policy. There can be more than one view with regard to the policy that has to be adopted in the ~~local~~ ^{case} of transfer. The applicants contend that if the senior mosts in the non-industrial establishments are transferred to the industrial units, the seniors will get the extra monetary benefit and if such a policy is followed the same cannot be held as inequitable. But it is stated for the respondents that the vacancies that ~~arise~~ in the industrial establishments ~~and~~ ^{os s.d.} each year may be few and some who joined as MT drivers may retire without getting a chance of working in the industrial units if the transfer policy as suggested by the applicants is going to be followed and in order to allow all the MT drivers to have the extra monetary benefits which ~~arise~~ ^{acme} while working in the industrial units the rotation basis is followed, and the new recruits ^{first allocated} are being limited to non-industrial units and hence

the transfer policy evaluated by the committee appointed by the Commanding-in-Chief of the Eastern Naval Command is fair. Anyhow, when it is for the management to have a policy of transfer and when it is possible to have more than one policy of transfer in the department, it is not for the Court/Tribunal to direct the department to follow a particular policy. The court/tribunal can only consider if such policy is violative of Articles 14 and 16 of the Constitution and if it is challenged on that ground. There is no such challenge in this O.A. and hence there is no need to advert to it.

14. The learned counsel for the applicants also relied upon the judgment of the Rajasthan High Court in Writ Petition No.580/87 dated 10-7-90 (Aiden Singh Vs. Rajasthan State Electricity Board & ors.). It was referred to in summary of cases in 1992 SLR 65 and to the extent it was referred to/as under:

"Transfer--From industrial post to non-industrial post - Petitioner appointed as work charge helper in Electricity Board - Put in twoyears continuous service - His services regularised - But he was designated as Security Guard - This transfer from the technical post to non-technical post - Against his wishes - Not justified - His case may be reconsidered for the post of helper Grade II."

It was urged on that basis that when the transfer from the technical post to non-technical post against the wishes of the employee is ^{not} justified, ~~it is~~ the transfer of industrial employee to non-industrial unit

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against the wishes of the employees is not justified. But in the absence of the full judgment of the said case, ~~the~~ a copy of the same was not filed in this case, and it is not available in this Bench, it is not possible to know ~~as to~~ the reasons given by the Rajasthan High Court in coming to the said conclusion. But it is clear from the later judgement of the Supreme Court in 1991(2) SCC 209 that ~~the~~ no employee has any right to a post in a particular section in the seniority unit and even though the employee may be entitled to some additional monetary benefits while working in one section of the seniority unit which he may not have if he is transferred to another section in the same unit, the transfer cannot be challenged merely on ~~the~~ ground that on the basis of such transfer from one section to another in the same seniority unit the employee is going to get less income from the date of the transfer. Even assuming that ~~the~~ the views expressed by the Rajasthan High Court in the ~~not in consonance with~~ ~~considered with~~ Aidam Singh's case is contrary to the latter judgment of the Supreme Court, the said decision of the Rajasthan High Court cannot be followed, hence on that ground also there is no need to further discuss with regard to Aidam Singh's case.

15. When transfer is ⁶⁻ prerogative of the employer it is not necessary for the employer to issue a notice to the employees either for evaluating transfer policy changing or for ~~examining~~ the transfer policy, and it follows that no notice need ~~be~~ be given to the employee before he is transferred ~~be~~ from one place to another or

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from one section to another. In such a case the transfer policy or the order of transfer cannot be challenged by alleging that the same is violative of the principles of natural justice when no notice is given.

16. Hence we feel that the respondents have a right to transfer the MT drivers from the industrial sections to the non-industrial sections and as such this O.A. has to be dismissed and accordingly it is dismissed. No costs.

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(A.B. Gorathi)

Member/Admn.

Neeladri
(V.Neeladri Rao)

Vice-Chairman

Dated: 24 th day of June, 1994.

mhb/

Pratap Rao
Deputy Registrar (J)CC

To

1. The Secretary, Govt. of India,
Ministry of Defence, Govt. of India,
New Delhi.
2. The Chief of Naval Staff,
Naval Headquarters, New Delhi.
3. The Flag Officer, Commanding-in-Chief,
Headquarters, Eastern Naval Command,
Visakhapatnam.
4. One copy to Mr. S.L. Chennakesava Rao, Advocate, 4-1-519,
Trop Bazar, Hyderabad.
5. One copy to Mr. N.V. Ramana, Adal. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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COMPARED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(JUDL)

AND

THE HON'BLE MR.R.RANGARAJAN : MEMBER(A)

Dated: 26 -1994.

~~ORDER/JUDGMENT:~~

M.A./R.A/C.A. No.

in

O.A.No. 1269/93.

T.A.No.

(W.P.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with direction

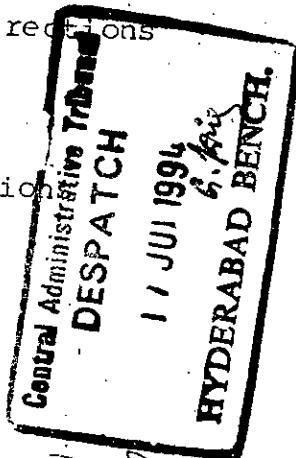
Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.



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