

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
~~JODHPUR~~ BENCH, ~~JODHPUR~~ JAIPUR
JAIPUR

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O.A. No. 55/93
~~F.A. No.~~

198

DATE OF DECISION 22.2.1993

ARJUN DEO

Petitioner

Mr. P.V. Calla

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS

Respondent

Mr. R.N. Mathur/Manish Bhandari

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. GOPAL KRISHNA, JUDICIAL MEMBER

The Hon'ble Mr.

PER HON'BLE MR. GOPAL KRISHNA, JUDICIAL MEMBER:

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes.*
2. To be referred to the Reporter or not ? *Yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No.*

G.Krishna 22-2-93
(GOPAL KRISHNA)
Judicial Member

J A I P U R

O.A. No. 55/93

Date of Decision: 22.2.93

ARJUN DEO

: Applicant.

Mr. P.V. Calla

: Counsel for the applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. R.N. Mathur)

: Counsel for the respondents.

Mr. Manish Bhandari)

PER HON'BLE MR. GOPAL KRISHNA, JUDICIAL MEMBER:

Applicant, Shri Ajun Deo Grover, has filed this application U/S 19 of the Administrative Tribunals Act, 1985, against the Order No. GM(E)/COG's No. E(C)839/4/18/5 dated 21.1.93 and the Office Order dated 22.1.1993 (Annexure A-1) whereby he was transferred from Kota alongwith the post with immediate effect and posted at CCM's Flying Squad at Ahmedabad.

2. The applicant's averments may be briefly stated as follows:- The applicant was posted as T.T.I. in the office of the D.C.T.I., Western Railway, Kota. The applicant is an active member of a registered trade Union. Presently he is holding the office of Vice-President of the Paschim Railway Karamchari Parishad and Deputy General Secretary of the Bhartiya Railway Mazdoor Sangh. The office of the Union to which the applicant belongs is at Bhimganj Mandi, Kota. It is a registered Union. In the year 1987 while the applicant was working at Kota Division he was transferred alongwith other office bearers of the Union to the Ajmer Division with mala fide intention with the object of curbing down their legitimate trade Union activities. However, the Assistant Labour Commissioner (Central), New Delhi exercising his power under section 33(3) of the Industrial Disputes Act, 1947 (for short, the Act) declared the applicant and some other office bearers of the Union as protected workmen and their transfer from the Kota Division to Ajmer Division was cancelled vide the order dated 11.8.87 (Annexure A-3). The applicant is contesting the cases of workmen in the different labour courts and Tribunals in his capacity of the Vice-President of the Paschim Railway Karamchari Parishad and Deputy General Secretary of the Bhartiya Railway Mazdoor Sangh. The applicant is still a protected workman vide the list (Annexure A-4) sent by the General Secretary of the Union to the Respondent No. 1. The general body meeting

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of the Paschim Railway Karamchari Parishad was held on 2.8.1992 at Agra and the applicant was elected its Divisional Secretary for the year 1992-93 vide the letter (Annexure A-5) dated 7.8.92. However, the applicant was transferred alongwith the post from Kota Division to Ahmedabad vide the impugned order Annexure A-1 and directed to report without availing any joining time without any reason or valid ground of transfer. The applicant was served with a memo dated 3.12.92 (Annexure A-6) for causing unlawful detention of 81 Dn. Agra Fort Passenger train on 14.10.1992 by his own acts and by inducing others to resort to alarm chain pulling etc. It is also averred that the impugned order is bad as it violates the mandatory provisions of the Act. It is neither in public interest nor in the interest of Administration. It is against the interest of workmen who are being represented by the applicant before various courts and Tribunals. The order was passed arbitrarily without consulting the Union. The post itself was shifted only to get rid of the applicant. Applicant being a protected workman the transfer operates as a change in the condition of service and it is punitive in nature as the applicant is more than 55 years of age, his wife is working as a teacher in the Government Middle Girls School at Bhimganj Mandi and a disciplinary enquiry is pending against him. It is also averred that the respondents have withheld the letter dated 21.1.1993.

3. The application has been contested by the respondents on the following grounds. It has averred by them that the list of protected workmen remains alive for only one year as per the provisions of the Act and the rules made thereunder and if the applicant was declared as a protected workman in the year 1987, the same can have no bearing on the present matter. The applicant has been working at Kota Office since long and that it is a settled proposition of law that transfer is an essential condition of service and an employee may be required to be transferred in the exigencies of service. Merely because the applicant is an office bearer of the Union, it cannot mean that he cannot be transferred elsewhere during his service career. The applicant has been transferred in the Flying Squad for administrative reasons. It is alleged that the Ministry of Labour, New Delhi vide Notification No. S/11025/5/76/DIA dated 17.3.77 (Annexure R-2) has decided that the Assistant Labour Commissioner (Central) New Delhi will be the authority in the matter of declaration of office bearers of

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registered trade unions as protected workmen. The aforesaid authority has not declared the applicant as protected workman. Even if any list was submitted by the Union, then merely submission of the list of office bearers is not enough to make the employees 'Protected workmen' unless such a recognition is made by the competent authority. It is not the applicant alone who represents workmen in cases but there are many other union leaders who also represent them before various forums. The present transfer in the Flying Squad has been made in public interest as well as in the interest of administration. In the Flying Squad the employees are usually transferred alongwith the post. Consultation is required in cases of recognised unions. The Paschim Railway Karamachari Parishad is not a recognised union. Transfer cannot be treated as a change in the condition of service when the incumbent is subject to transfer liability. This application does not lie because the applicant did not make any representation regarding his grievance to the concerned authority under Section 20 of the A.Ts Act, 1985, before approaching this Tribunal.

4. I have heard the learned counsel for the parties. I have carefully perused the records.

5. The plea raised on behalf of the applicant is that the impugned transfer suffers from the vice of arbitrariness and mala fide in so far as it is not a simple case of transfer.

~~only~~ ^{only} / The applicant was picked up for transfer alongwith the post because he was engaged in legitimate activities of his union and representing workmen in their cases before various forums. His activities, therefore, irked the concerned authorities and the impugned transfer is an outcome of their displeasure. The learned counsel for the applicant relied on authorities reported in (1990) 13 ATC 532 (Uma Shankar Vs. Union of India and Others) and in A.T.R. 1986 C.A.T. 314 (Prasadilal Sharma Vs. Union of India) which have been duly considered. However, in the present case, no mala fides could be attributed to any of the respondents. It is evident from the record that there are other members of the same Union who are representing workmen in cases before Labour Courts and Tribunals. The applicant has been posted at Kota since 1971, and he has been appearing on behalf of workmen before various forums since long. On this count no mala fides can be attributed to the respondents. An order of transfer need not contain reasons therefor. So far as exigencies of service are concerned, the administration is best suited to judge their

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existence and the scope of Courts and Tribunals to decide whether there are administrative exigencies or not is limited. It is the Administration which is the best judge to see its interest and of the public at large. In the present case, the transfer has nothing to do with the pendency of the disciplinary enquiry against the applicant. The learned counsel for the respondents relied on the case P. Fulgunan and Others Vs. Secretary, Ministry of Communications and others reported in 1989 (11) SLJ (CAT) 377 at page 392 wherein it was observed as follows:-

"26. The contention of Shri Sukuntharaj was that if the applicants had committed any act of omission or commission which could be called misconduct, there were statutory disciplinary rules available with the disciplinary authority for proceeding against them. Instead of taking recourse to that, they chose to transfer the applicants. According to the counsel, there is an implicit admission to this effect in paragraph 7 of the Counter Affidavit. The learned Advocate General had however, pointed out that transfer of a person is not a penalty. If there are complaints against a person, not only disciplinary action can be taken against him, but transfer can also be ordered. In that context, he had drawn attention to the judgement of this Tribunal in S. Sivakumar Vs. The General Manager, Southern Railway (supra). The applicant therein was charged on the basis of certain complaint while he was functioning as Station Master, Nagapattinam. When disciplinary proceedings were still pending, he was transferred to some other station so as to remove him from a sensitive and an important station. It was held by this Tribunal that the order of transfer under such circumstances was not penal in nature. There was no reference in the impugned order to the disciplinary proceedings initiated against the applicant. It was observed by this Tribunal that when a person can even be placed under suspension pending enquiry into the certain charges and since, according to the instructions of Government, in the event of such suspension pending enquiry being prolonged, the alternative of revoking suspension and transferring the individual should be considered, there was no reason as to why in public interest a person should not straightaway be transferred when disciplinary proceedings are separately under contemplation. In these cases, disciplinary action had not been thought of and in order to tune up the services, the respondents had considered that transfer of a few individuals was necessary. According to the respondents, the transfers had been effected in public interest and in the Full Bench of the Central Administrative Tribunal in Kamlesh Trivedi Vs. Indian Council of Agricultural Research (supra), the competent authority may or may not find any truth in complaints, but having regard to the administrative exigency, may be of the view that a more suitable or more efficient person should be posted and for making place for such a person, effect a transfer. Such action was regarded as in order. The same considerations would apply to the facts of this case."

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6. The applicant has been transferred from Kota Division to the Chief Commercial Manager's Flying Squad stationed at Ahmedabad with the approval of the competent authority and the applicant's contention that a copy of the order dated 21.1.93 was not provided to him or the order itself was not conveyed to him does not hold good because such approvals need not be communicated. The applicant has been transferred after a stay of twenty years in the Kota Division to the Flying Squad in public interest. In the circumstances it cannot be said that the transfer was the outcome of any arbitrariness or malafides. There appears to be no intention of the Administration to punish the applicant by way of this transfer.

7. The main challenge to the impugned order of transfer is based on the contention that the applicant is a protected workman within the meaning of sub-section (3) of Section 33 of the Industrial Disputes Act, 1947 (for short, the Act) and his service conditions cannot be altered by transferring him from Kota Division to the Flying Squad at Ahmedabad. Sub-section (3) of Section 33 of the Act reads as follows:-

"(3) Notwithstanding anything contained in sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute -

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.- For the purpose of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office-bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf."

Rule 61 of the Industrial Disputes (Central) Rules, 1957 (for short, the Rules) may be extracted below:-

"61. Protected workman. - (1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer before the 30th April every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union shall be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

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(2) The employer shall, subject to Section 33, sub-section (4), recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen for the period of twelve months from the date of such communication.

(3) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment, under Section 33, sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen:

Provided that where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the Union the number of protected workmen allotted to it:

Provided further that where the number of protected workmen allotted to a union under this sub-rule falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of 'protected workmen' under this rule, the dispute shall be referred to ~~the~~ any Regional Labour Commissioner (Central) or Assistant Labour Commissioner (Central) concerned, whose decision thereon shall be final."

The applicant was also declared as "protected workman" for purposes of Section 33(3) of the Act for a period of only twelve months commencing from 13th April, 1987 vide an order of the Assistant Labour Commissioner (Central), H.Qrs, New Delhi dated 11.8.87. Thereafter on 29.4.1992, a list of "protected workmen" of the Paschim Railway Karamachari Parishad, wherein the name of the applicant figured at ~~Serial~~ ^{Serial} no. 64, was submitted to the General Manager, Western Railway, Churchgate, Bombay vide Annexure A-4. The applicant was elected as the Divisional Secretary of the aforesaid Parishad vide Annexure A-5 dated 7.8.1992.

8. The relevant portion of the Railway Board's letter dated 28.1.85 (Annexure R-2) reads as follows:-

"In terms of Section 33(4) of the Industrial Disputes Act and Rule 61 of the Industrial Disputes (Central) Rules, a maximum number of 100 workmen at rate of one per cent of total number strength of workmen can be declared as protected workmen by the employer who are to be distributed amongst the registered trade unions functioning in the establishment concerned in proportion to their membership strength."

9. The authority to declare "protected workmen" vests in the Assistant Labour Commissioner (Central) New Delhi. In the present case a list of 100 office bearers for declaration as "protected workmen" was submitted to the General Manager, Western Railway, Bombay and a copy of it was endorsed to the Assistant Labour Commissioner (Central) New Delhi but there must be an order regarding recognition of protected workmen for the year 1992-1993. No such order is on the record. Mere submission of list cannot be taken as recognition when the rules clearly say that the recognition has to be made by the employer. In the absence of any such recognition by a competent authority as protected workmen for the purpose of Section 33(3) of the Act for the period 1992-93 it is difficult to hold that the applicant is at present a 'protected workman'. However, the provisions of Section 33(3) of the Act are attracted when any industrial dispute is pending before any forum and during the pendency of such dispute any condition of service is altered to the prejudice of a protected workman who is concerned in such dispute. There is no averment specifically made by the applicant that any industrial dispute is pending in which he is a concerned workman. The impugned transfer has been assailed on the ground that it is against the interest of workmen whom the applicant is representing before various Courts and Tribunals as shown in Schedule A. It is unquestionably true that there are other union leaders, namely, Sri J.P. Gupta, R.C. Singhwal and Shri Srivastava etc. who are not only looking after the grievances of workmen but they are also representing them in cases. The applicant's emolument was not affected or reduced. There was no discharge or punishment of the applicant. I find that there was no alteration in the condition of service to the prejudice of the applicant as the applicant is subject to transfer liability. Reliance is placed on an authority reported in (1986) 4 SCC 131, B. Varadha Rao Vs. State of Karnataka and Others wherein the Hon'ble Supreme Court observed at page 134 as follows:-

"It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post."