

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R

C.A.No. 389/1995 : Date of order: 11.10.1995

Inder Lal Meena : Applicant

versus

Union of India & Others : Respondents

Shri R.D.Tripathi, counsel for the applicant
Shri Manish Bhandari, counsel for the respondents

CORAM:

HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL))

The applicant herein Shri Inder Lal Meena has filed this application under Section 19 of the Administrative Tribunal's Act, 1985 to set-aside the impugned order dated 26.6.1995 (Annexure A-1) whereby he has been transferred from Alwar to Neem Ka Thana and has further sought a direction to the respondents not to transfer him from Alwar. Notices were accepted on behalf of the respondents on 29.8.1995 and thereafter the respondents have filed their reply to the OA and the OA was being listed for admission as also for hearing on interim relief. The applicant in compliance of the order dated 9.10.1995 has also filed a rejoinder to the reply filed by the respondents and a copy of which has already been delivered to the learned counsel for the respondents. The pleadings being complete, with the consent of the learned

counsel for the parties arguments on merits also have been heard at the stage of admission.

2. Brief facts leading to this application are that the applicant is a member of schedule tribe and was working as Gateman at Railway Station Alwar. It is the case of the applicant that in the seniority list dated 31.3.1995 (Annexure A-2) published by the respondents, the applicant's name appears at serial No.103. In the said list there is a Note No.2 in which it has been mentioned that employees from serial No.104 to 110 are transferred to R.P.C. and Sikar Unit for being surplus. It is further the case of the applicant that later on the respondents transferred the applicant from Alwar to Neem Ka Thana District Sikar vide impugned order dated 26.6.1995 (Annexure A-1) and through the same order, respondent No.4 i.e. Shri Mohan Lal has been transferred from Achnera to Alwar on the post of Gateman. It is the grievance of the applicant that he has been transferred from Alwar to Neem Ka Thana merely to accommodate respondent No.4 Shri Mohan Lal and as such the impugned order dated 26.6.1995 is illegal, discriminatory and violative of Articles 14 and 16 of the Constitution of India. It has further been averred by the applicant that although the applicant has not been declared surplus in the seniority list dated 31.3.1995 (Annexure A-2) yet transferring him as a surplus is a malafide action on part of the respondents and

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the impugned order transferring the applicant in the garb of administrative exigencies is nothing but illegal and against the principles of natural justice and fair play. His representation made on 14.8.1995 (Annexure A-3) having gone futile, he has been constrained to file this OA to claim the aforesaid reliefs.

3. The respondents have contested the application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents has been that seniority list of the employees are maintained at the Unit level and not at the station level. It has also been averred on behalf of the respondents that although in the seniority list dated 31.3.1995 (Annexure A-2) which relates to Bandi Kui Unit the applicant's name appears at serial No.103, yet the respondents before issuing such seniority order have transferred certain employees on their becoming surplus at a particular station. When this matter was raised by the Union of the Railway Employees that an employee cannot be declared surplus at the strength of the station but they can so be declared surplus on the basis of their seniority list published and finalised on the Unit basis because seniority of such employees are maintained at unit level. Accordingly, to regularise the action of the answering respondents, a seniority list was published and initially or inadvertently

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only employees whose names appears at Serial No.104 to 110 in the seniority list Annexure A-2 were declared as surplus. However when it was found that one Shri Hari Singh whose name appears at serial No.102 has already been transferred as he was found surplus at a particular station but after finding the true position that employees whose names stand at serial No.99 to 103 are also surplus, hence the alleged impugned order dated 26.6.1995 (Annexure A-1) was issued. Respondents have also filed the letter dated 18.4.1995 (Annexure R-1) by which the employees whose names appear from serial No. 99 to 103 were also declared surplus in the seniority list maintained at Bandi Kui Unit. It has also been averred on behalf of the respondents that it is the settled proposition of law that whenever an employee is declared surplus, it should be strictly on the basis of last come first go and as such the applicant and others were declared surplus after drawing a seniority list of the Unit. It has therefore been denied that the action of the respondents in transferring the applicant from Alwar to Neem Ka Thana is arbitrary or in violation of the constitutional provisions under Articles 14 and 16 of the Constitution of India. It has therefore been averred that the application deserves rejection at the admission stage itself.

4. I have heard the learned counsel for the applicant as also the respondents and have carefully gone through the material on record.

5. The only question to be determined in this OA is whether the impugned order dated 26.6.1995 transferring the applicant from Alwar to Neem Ka Thana has not been issued in the administrative exigencies but is malafide and issued for extraneous considerations?

6. The argument of the learned counsel for the applicant has been that the impugned order dated 26.6.1995 (Annexure A-1) has been issued merely to accommodate the respondent No.4 Shri Mohan Lal and that categorising it as have been issued on the basis of the applicant having been declared surplus ^a is disguise to cover their illegal action. It has also been argued by the learned counsel for the applicant that when respondent No.4 Shri Mohan Lal has been posted to Alwar, it cannot be said that there has been no vacancy at Alwar or that there were any grounds to declare the applicant as a surplus personnel. It has also been urged that since the Union of India and Divisional Railway Manager (Estt) Western Railway, Jaipur Division, Jaipur have been made party to the instant OA, it is not necessary that any other personnel/official should be made a party to this OA. In support of his argument, the learned counsel for the applicant has placed reliance upon the judgment of Rajasthan High Court in the case of Hari Mohan Dube Vs. State of Rajasthan, 1989 (1)RIR page 36, Jagat Prasad Yadav Vs. State of

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Rajasthan, 1990(1)RLR 171 and Rajendra Kumar Rawat vs. State of Rajasthan, 1988(1)RLR 315.

7. On the contrary, it has been vehemently argued by the learned counsel for the respondents that firstly the application is not maintainable since the authority by which the impugned order dated 26.6.1995 (Annexure A-1) has been issued has not been impleaded in the OA. Secondly, the ~~.....~~ argument has been that although the applicant alleges malafides on part of the respondents, yet no details and particulars of any such malafides have been given and that too against none of the named or impleaded party in this OA. It has been contended by the learned counsel for the respondents that respondent No.4 Shri Mohan Lal being senior to the applicant as being at serial No.97, ~~.....~~ has been duly transferred from Achne^{-ra} to Alwar. It is urged and denied that the impugned order has been issued to accommodate respondent No.4 for any extraneous considerations. The main argument of the learned counsel for the respondents has been that since the seniority has to be maintained at the Unit level and not at the Station level, the respondents after issuing the order dated 18.4.95 (Annexure R-1) have issued a valid order dated 26.6.1995 (Annexure A-1) since the mistake committed in the case of one Shri Hari Singh has been brought to their notice by the Union of the Railway Employees. In support of his argument, the learned counsel for

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the respondents has cited a decision of Hon'ble the Supreme Court in the case of State of Punjab vs. Chaman Lal Goyal, 1995 SCC(L&S) 541.

8. I have given anxious thought to the able arguments addressed on both the sides and have gone through the authorities relied upon by the learned counsels.

9. A perusal of the order dated 26.6.1995 (Annexure A-1) exhibits that the applicant has been transferred in the interest of administration and merely on the basis of his being declared as a surplus personnel. From the perusal of the seniority list dated 31.3.1995 as also other documents filed in this OA, it is evident that the seniority ~~is~~ is being maintained by the respondent department at Unit level and not at Station level. The action of the respondents therefore in transferring and in declaring the applicant as a surplus employee does not appear to be done on the basis of any extraneous considerations since not only the applicant but also persons falling between serial No.99 to 103 have also been declared surplus vide Annexure R-1 dated 18.4.1995. The argument of the learned counsel for ~~has also been~~ the applicant that this letter dated 18.4.1995 (Annexure R-1) was not received at Alwar Station and in support of which he has filed an endorsement made on his application to the Station Superintendent Alwar ~~with the rejoinder.~~ A perusal of

the endorsement made on the application Annexure A-4 filed with the rejoinder by the applicant simply mentions that the employee had no knowledge of the letter dated 18.4.1995 since it was not available in the office. However, the aforesaid letter has been referred to in the transfer order of the applicant which was issued to the applicant. Even if, it is accepted for arguments sake that this letter dated 18.4.1995 is not available in the office of the Station Superintendent, Western Railway, Alwar, it has no adverse effect on the veracity of the letter dated 18.4.1995. The applicant has not dare to file any affidavit that Annexure R-1 letter dated 18.4.95 is a forged document/letter. A perusal of the letter dated 18.4.1995 (Annexure R-1) exhibits that it has been addressed to all the Station Superintendents that including ~~of~~ Alwar besides to other Subordinate Offices including the Divisional Secretaries of the different Unions of the Railways. It cannot therefore be said that this letter would not ^{have} come to the notice of the applicant. Moreover the impugned order has been issued by the Divisional Safety Officer (DSO) Western Railway, Jaipur ~~who~~ who has not been impleaded in this OA as a party. Any allegation made by the applicant regarding malafide ~~therefore~~ cannot be entertained as the law has been settled by Hon'ble the Supreme Court in the case of State of Punjab and others Vs. Chaman Lal Goyal(supra). In the aforesaid judgment Hon'ble the Supreme Court while dealing about the allegations made against a particular officer

and finding that the charge of malafide was made in a vague manner by the writ petitioner therein observed:

"Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading such person eo nomine so as to enable him to answer the charge against him, the charge of malafides cannot be sustained."

The ratio laid down by Hon'ble the Supreme Court in the case of Chaman Lal Goyal applies with full force in the instant case as well.

10. Accordingly, in view of the settled position of law, the decisions relied upon by the learned counsel for the applicant in the case of Hari Mohan Dube Vs. State of Rajasthan and others (supra) and Jagat Prasad Vs. State of Rajasthan are of no help to the applicant. The judgment of Rajasthan High Court in the case of Rajendra Kumar Rawat Vs. State of Rajasthan (supra) is also not applicable to the instant case because when an application is being filed alleging malafide against an official that particular officer has to be impleaded in the application as has been held by Hon'ble the Supreme Court in the case of State of Punjab and others Vs. Chaman Lal Goyal (Supra).

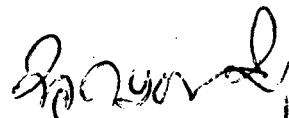
11. For all the aforesaid reasons, I find that there is no merit in this original application and there is no illegality or infirmity in the issuance

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of the impugned order dated 26.6.1995 (Annexure A-1).
The issue framed in this OA is therefore answered in
the negative.

12. The original application being without
any merit and substance is hereby rejected at the
admission stage with no order as to the costs.


11.10.95
(RATTAN PRAKASH)
MEMBER (J)