

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.402/98

Date of order: 12.4.1999

1. Bhagwan Singh S/o Shri Bhawani Singh, aged about 42 years, R/o 2T/B, Railway Colony, Idgah, Agra, at present employed on the post of Head Booking Clerk, Agra, Western Railway, Kota Division, Kota.
2. Brij Kishore Arora, S/o Shri S.S.Arora, aged about 45 years, R/o T195/C Railway Colony, Idgah, at present employed on the post of Booking Clerk at Agra Fort, Western Railway, Kota Division, Kota.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway, Kota Division, Kota.
3. The Station Manager, Agra Fort, Western Railway, Kota.

...Respondents

Mr.Shiv Kumar - Counsel for applicant.

Mr.T.P.Sharma - Counsel for respondents

CORAM:

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.RATAN PRAKASH, JUDICIAL MEMBER.

Applicants Bhagwan Singh and Brij Kishore Arora herein have approached this Tribunal under Sec.19 of the Administrative Tribunals Act, 1985, to quash the impugned order dated 11.6.98 (Annx.A1) and impugned order dated 23.10.98 (Annx.A1-A qua the applicants transferring them from Agra Fort to Jhalawar and Shyamgarh respectively.

2. Brief facts of the case are that while these applicants were working on the post of Head Booking Clerk at Jhalawar and Shyamgarh respectively on the basis of their name noting Scheme they were

transferred to Agra Fort from their respective place of work.

Applicant No.1 was relieved on 23.1.98 and joined his duty at Agra Fort on 24.1.98 and applicant No.2 joined his duties at Agra Fort on 18.1.98. It is the grievance of the applicant that thereafter the respondents transferred applicant No.1 to Jhalawar and applicant No.2 to Shyamgarh vide impugned order dated 11.6.98 (Annx.A1). The applicants thereafter filed O.A No.224/98 which was disposed of vide order dated 2.9.98 directing the applicants to make representations to the respondents' department within one month from the date of receipt of a copy of the order and directing the respondents to dispose of the representations in terms of the circular letter dated 20.3.98. The respondents accordingly while rejecting the representations made by the applicants have cancelled the earlier orders of posting of the applicant to Agra Fort. The applicants feeling aggrieved have approached this Tribunal again to claim the aforesaid relief.

3. The respondents have opposed this application by filing reply to which the applicants have also filed rejoinder. The stand of the respondents has been that subsequently the respondents' department decided to transfer those employees who are working at a station for more than 10 years in first phase and the applicants were sent back to their original places of working by the impugned order. It has been asserted that the applicants are holding transferable posts, they are bound to follow the transfer order and that they are not entitled to seek any relief in the matter.

4. I heard the learned counsel for the parties and have examined the record in great detail.

5. Vide order dated 23.11.98, an interim direction was issued by this Tribunal staying the operation of the impugned orders 11.6.98 and 23.10.98 qua the applicants which interim directions are still in force.

6. It has been urged by the learned counsel for the applicants that firstly the communication dated 23.10.98 (Annx.A1-A) is a fabricated one as it has been shown to be issued on 23.10.98 whereas there has been an over-writing on the date given under signature of the issuing authority. Secondly, this order dated 23.10.98 is in contradiction to the order issued by the Railway Board dated 20.3.98 as at Annx.A8 which prescribes that officials working on sensitive posts should be allowed to work in the place of posting for a tenure of 4 years. It has been argued that the order dated 23.10.98 issued by respondent No.2 is in violation of the Railway Board's order dated 20.3.98 and hence once the applicants have joined their duties at Agra Fort on the basis of posting on their own request, they should be allowed to work there for the whole tenure of 4 years and that the impugned order should be quashed.

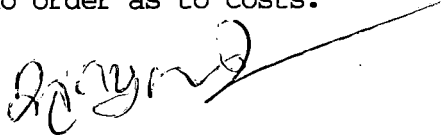
7. As against it the argument of the learned counsel for the respondents has been that the impugned orders have been issued on the basis of policy decision to give first chance for those officers who are in the maximum period at one place i.e. of 10 years or more and hence the action of the respondents in cancelling the posting of the applicants at Agra Fort and posting them again to their original places cannot be faulted.

8. I have given anxious thought to the arguments addressed by both the sides. A perusal of the letter issued by the respondents dated 20.3.98 exhibits that through this covering letter a clarification which has been received to the original order issued by the Railway Board dated 27.9.89 has been circulated. This clarifications provide that the employees holding sensitive posts, to which category the applicant belong, cannot be shifted before 4 years or 5 years. Through this clarificatory letter the concerned authorities have been directed to prepare a list of

2 ✓

such officials who have remained posted on sensitive post for a period of 4 years or more and also to transfer those officials first who have completed 5 years or more on such sensitive post at one station. It appears that the respondents authorities in their anxiety to implement the directions received vide order dated 20.3.98 have cancelled the order of transfer <sup>of the applicant</sup> to Agra Fort where they have already joined their duties in January 98 and working continuously. It is undisputed that the applicants are holding sensitive posts and when once they have been posted at Agra Fort on their own request on the basis of name noting scheme they should not have been shifted before completion of 4 years tenure at Agra Fort. It is always open to the respondent authorities to streamline their function in case of all other officials in accordance with the guidelines received by them from their Head-quarters vide communication dated 20.3.98. In any case the applicants being holder of sensitive posts and have already joined at Agra Fort in January 1998 and have been working there since then they should have been allowed to complete their tenure of posting at Agra Fort. They cannot be sent back again to their earlier places of posting merely on the plea that now it has been decided by the local administration to first shift those persons who have been working more than 10 years at any particular station. In fact the Railway Boards's order in the year 1989 or clarification issued on 20.3.98 does not lay down any such guidelines. Accordingly, the impugned order as at Annx.A1 dated 11.6.98 transferring the applicants from Agra Fort to Jhalawar and Shyamgarh respectively and another order dated 23.10.98 (Annx.A1-A) cancelling their order of posting dated 16.1.98 are hereby quashed qua the applicants. The interim direction issued in this O.A merges in this order.

9. The O.A is disposed of accordingly with no order as to costs.

  
(Ratan Prakash)  
Judicial Member.