

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 26/5/2001

OA 426/99

1. Bassu son of Shri Himchand.
2. Ramli son of Shri Kala.
3. Nevji son of Shri Pema
4. Ratani son of Khoona
5. Chagan son of Laloo.
6. Alaku son of Suniya.
7. Rana son of Dhanji.
8. Naval son of Motiya.
9. Kesha son of Panji.

Applicants.

Applicants no. 1 to 7 are working under DRM Jaipur (Western Railway), Jaipur and applicants no. 8 & 9 are working under DRM Kota (Western Railway), Kota.

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Engineer (C) II, Churchgate, Western Railway, Mumbai.
3. Divisional Railway Manager, Western Railway, Jaipur.
4. Divisional Railway Manager, Western Railway, Kota.

.... Respondents.

Mr. Rajveer Sharma, Counsel for the applicant.

Mr. T.P. Sharma, Counsel for the respondents.

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THE HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL).

THE HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)



This OA has been filed by the applicants u/s 19 of the Administrative Tribunal's Act with the prayer that respondents be directed to relieve the applicants from Mumbai to their Parent Divisions i.e. Kota Division in respect of applicants no. 1 to 7 and Jaipur Division in respect of applicants no. 8 & 9. They have challenged Order dated 23.6.99 (Annexure A1) stating it to be illegal, malafide and arbitrary and which needs to be set aside.

2. The applicants were engaged as Casual Labourer in the Construction Department and were regularised in Group 'D' vide order dated 4.9.97, issued by DRM Kota in respect of applicants no. 1 to 7 and applicants no. 8 & 9 were regularised by DRM Jaipur. As a consequence of these orders, applicants no. 1 to 7 were assigned lien in Kota Division and applicants no. 8 & 9 in Jaipur Division. It is stated by the applicants that they were ordered to work at Mumbai vide order dated 25.11.98. They are aggrieved by this order on the ground that they are employees of Kota and Jaipur Divisions and they cannot be asked to work in Mumbai. Vide impugned order dated 23.6.99 (Annexure A1), Department has decided to maintain attendance and pay sheet by CPM/JP with CE(C)II/CCG. Their grievance is that they have been chosen arbitrarily and in a discriminatory manner to work in Mumbai. They have made representations with the Department for being sent back to the Parent Divisions but to no avail. Their plea is that many junior persons have been retained in the two Divisions while the applicants have been discriminated against on the pretext that they are surplus to the requirement of the Division.

3. In the reply, the respondents have raised preliminary objections, first on the ground that the applicants have not exhausted departmental remedy and second that they are working in Mumbai and while they have challenged the transfer order before Jaipur bench of the Tribunal. In the respondents' view, Jaipur Bench of the Tribunal has no jurisdiction. They are working under the Deputy Chief Engineer Construction III CCG who has not been impleaded as a party though he is a necessary party to the suite.

4. We do not find any force in all the three objections. The respondents have not brought to our notice

to Mumbai on transfer but no transfer order has been brought to our notice or placed on record. The learned counsel for the respondents was also not able to give explanation as to on what grounds the employees posted at Mumbai are being paid allowances at the rates applicable at Kota and Jaipur Divisions.

11. There can be no dispute regarding competence of the Department to decide how & when to take work from the employees and for this reason Department is competent to issue transfer order. But in the instant case, we have not been shown any order of transfer by which the applicants have been sent to Mumbai. The fact that they are not being paid allowances at the rates applicable to employees posted at Mumbai belies the claim of the respondents that the applicants are in Mumbai on transfer. In the case of transfer, a formal order is required to be issued and the same is to be communicated to the employees. In absence of any transfer order, it is reasonable to conclude that these applicants have been sent to Mumbai to carry out works of the project at Mumbai. This would mean that their Headquarter would continue to remain at their previous places of posting. In that view of the matter, the applicants are entitled to payment of TA/DA for the entire period of stay at Mumbai at the rates applicable to the employees on tour at Mumbai. This of course does not prevent the respondents from making a regular arrangement by issuing a formal transfer order in respect of such of the employees whose services are required at Mumbai. The employees were required to work at any place where construction work is available and cannot have any objection to their being posted as they are surplus to the requirement of their parent Division. It is not their case that the Parent Division has engaged new hands in Group 'D'. We are of the view that they cannot have grievance against those, stated to be juniors, who have for long been working in the Divisions. In the event of transfer of such persons as are required to be sent to Mumbai, rules applicable in the case of transfer shall apply and while being posted at Mumbai, the allowances attached with the basic pay shall be regulated by the rates applicable at Mumbai. Needless to say while deciding the requirement at Mumbai, the Department shall make efforts to

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4. We do not find any force in all the three objections. The respondents have not brought to our notice

or placed before us any statutory provisions or departmental rules provide appeal against such orders of transfer or being ordered to work at another place. Admittedly ~~they hold~~ alien in Jaipur and Kota Divisons. Obviously this Tribunal at Jaipur has jurisdiction in the matter as the applicants have lien on Kota and Jaipur Divisions. Since Chief Engineer (C) II, Churchgate has been impleaded as a party respondent, it is not necessary to implead every subordinate officer and thus Deputy Chief Engineer Construction III is not a necessary party.

5. On the facts, the respondents have stated that the applicants were engaged as Casual Labourers in the S&C Department for ~~the~~ the construction of new assets. In the exigency of work, when work of one project is completed, the labourers are transferred to other project in the interest of Administration. The fact of the applicants having their lien in Kota and Jaipur Divisions has not been disputed. It is stated that staff employed in Construction Department can be transferred as per work requirement. It has also been stated that they have been sent to Mumbai on duty with the benefits admissible as per rules and the same were paid accordingly. The work at Mumbai area of Borivali virar quadrupeling of track has been completed but in September, 1998, the work of VVI VR project has started for which the target of completion has been decided as 30.6.2002 by the Ministry of Railways. Thus the applicants' services continue to be required at Mumbai. The respondents maintain that transfer is an incident of service. The applicants have been transferred to Mumbai in the interest of Railway Administration. The Administration is the best judge to transfer employees in the exigency of work and it has been asserted that the respondents action is as per rules and it does not violate principles of natural justice. It has been explained that juniors of the applicants were already working in the respective division while the ~~the~~ applicants were in Construction Department. As such they can have no grievance against such juniors who are working in the Division. There is no loss to the applicants as their lien on the Division and their seniority has been maintained.

6. Heard the learned counsel for the parties and perused the whole record.

7. The applicants have also filed a rejoinder countering the preliminary objections taken by the respondents. They have also disputed the stand of the respondents that they have been sent to Mumbai on transfer on the ground that no transfer order has been issued. They have further stated that while they are working in Mumbai, they are being paid allowances at the rate applicable to the employees of their Parent Division meaning thereby they are not getting the allowances as are applicable to the employees posted in Mumbai.

8. The learned counsel for the applicant refuted the stand taken by the respondents in their written reply that the applicants have been sent on transfer to Mumbai. He stated that it was evident from the fact that applicants were paid allowances as applicable to employees of Jaipur and Kota Divisions and not at the rates applicable to employees of Mumbai. He also stated that the applicant are also not been treated as on temporary duty at the outstation meaning thereby no TA/DA is being paid to them. He further stated that in the event there was a need for staff in Mumbai, only the junior most persons should have been sent as many of the applicants' juniors have been retained in the respective Division while the applicants have been discriminated against.

9. The learned counsel for the respondents stated that applicants were engaged by the Construction Department and they were continued in that Department. When they were in granted ^{lien} of Jaipur and Kota Divisions being employees of the Construction Department, they cannot have grievances against those who were initially engaged by the Division. He also stated that the Department was within its rights to transfer them to Mumbai where the work is available because they were no more required by the Jaipur and Kota Divisions and the construction work in that area had been completed. It is for the Administration to depute the staff where they are required and they cannot dictate their own terms.

10. We find from this case that facts have not been stated by the respondents in an explicit manner. There is a lot of stress on the point that the applicants were sent

to Mumbai on transfer but no transfer order has been brought to our notice or placed on record. The learned counsel for the respondents was also not able to give explanation as to on what grounds the employees posted at Mumbai are being paid allowances at the rates applicable at Kota and Jaipur Divisions.

11. There can be no dispute regarding competence of the Department to decide how & when to take work from the employees and for this reason Department is competent to issue transfer order. But in the instant case, we have not been shown any order of transfer by which the applicants have been sent to Mumbai. The fact that they are not being paid allowances at the rates applicable to employees posted at Mumbai belies the claim of the respondents that the applicants are in Mumbai on transfer. In the case of transfer, a formal order is required to be issued and the same is to be communicated to the employees. In absence of any transfer order, it is reasonable to conclude that these applicants have been sent to Mumbai to carry out works of the project at Mumbai. This would mean that their Headquarter would continue to remain at their previous places of posting. In that view of the matter, the applicants are entitled to payment of TA/DA for the entire period of stay at Mumbai at the rates applicable to the employees on tour at Mumbai. This of course does not prevent the respondents from making a regular arrangement by issuing a formal transfer order in respect of such of the employees whose services are required at Mumbai. The employees were required to work at any place where construction work is available and cannot have any objection to their being posted as they are surplus to the requirement of their parent Division. It is not their case that the Parent Division has engaged new hands in Group 'D'. We are of the view that they cannot have grievance against those, stated to be juniors, who have for long been working in the Divisions. In the event of transfer of such persons as are required to be sent to Mumbai, rules applicable in the case of transfer shall apply and while being posted at Mumbai, the allowances attached with the basic pay shall be regulated by the rates applicable at Mumbai. Needless to say while deciding the requirement at Mumbai, the Department shall make efforts to

Pick up the junior most in the construction Department from within the Organisation so as to avoid arbitrariness. We of course do not consider it necessary to direct the Department to relieve the applicants from Mumbai or not to declare them surplus from the Parent Divisions as this is within the domain of the Departmental authorities. For this reason we do not find any reason to interfere in the order dated 23.6.99 (Annexure A-1) which is only an arrangement for controlling attendance and preparing pay bills of the labour. This has no effect on their legal rights which shall be determined as per the grounds discussed above.

12. In view of the facts and circumstances, as discussed above, we decide the matter as under:

"The respondents are directed to pay to the applicants TA/DA for the entire period from the date of their being relieved from Jaipur and Kota Divisions to the date they continue to work at Mumbai. The TA/DA rates applicable to the employees working on temporary duty at Mumbai shall apply. The respondents are at liberty to issue a formal order of transfer in respect of the employees who are required to work outside their parent Division at Mumbai for the construction work. The employees transferred shall be entitled to benefits as in the case of transfer. We, however, make it clear that any transfer order now issued shall have effect prospectively and shall have no retrospective application. Parties are left to bear their own costs."

Surf
(A.P. NAGRATH)
MEMBER (A)

Surf
(S.K. AGARWAL)
MEMBER (J)