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Court : Gujarat

Decided On : Mar-30-1984

Reported in : (1984)2GLR1328

Judge : S.A. Shah, J.

Appellant : indulal G. Trivedi

Respondent : General Manager, Western Railway and ors.

Advocate for Def. : Mr. R. P. Bhatt

Advocate for Pet/Ap. : Mr. P. M. Raval, Mr. Raval

Judgement :

S.A. Shah, J.

1. The short question that arises for my consideration in this petition is whether the order of transfer of petitioner from Surendranagar to Rajkot on account of upgradation of the post and allowing his juniors to continue at Surendranagar is arbitrary and contrary to the practice that has been followed by the Railway Administration. The issue falls within the very narrow compass, whether the Railway Administration can transfer the petitioner from Surendranagar to Rajkot without consideration of the administrative exigencies, by retaining his juniors at Surendranagar.

2. The short facts necessary for deciding the issues are as under: The petitioner was originally recruited as Cleaner by an order dated 10th November, 1952 in the Western Railway and has eventually reached the cadre of Driver-Gr. B which is a non-gazetted post. It appears from the averments in para 7 of the petition that the post of Driver-Gr. B was upgraded as Driver Gr. A(0) because the post of Driver Gr. B is abolished for passenger trains. In the affidavit-in-reply filed by the A.P.O. Rajkot, he has also stated in para 8 thereof that as per the Railway Board's Order cadre of Running categories was re-structured as a result of which 112 posts of Driver Grade B were upgraded to those of Driver Grade A (Ordinary) as per office memo No. EM/830/10 (Running) dated 3-11-1981. These upgradation orders have been given effect from 1-6-1981. The deponent has further stated that when the petitioner was transferred to Surendranagar the other regular Drivers Gr. B were already working there at Surendranagar. Therefore, the petitioner is posted on promotion as Driver Gr. A(0) at Rajkot as per office memo dated 2-11-82. According to the deponent the Railway Administration considered the other persons at Surendranagar senior to the petitioner, not on the real seniority but on the seniority of their working there. However, in para 4 of the affidavit-in-reply the deponent has not disputed that as per the seniority list the petitioner is senior to the persons mentioned by him in para 2 of the petition.

3. As I have stated earlier, the dispute is in a very narrow compass inasmuch as there is no dispute that the petitioner is senior than the persons who have been named in para 2 of the petition. It is not also disputed that the petitioner has been in Driver Grade A(0) not because of any promotion on consideration of merits or otherwise, but the petitioner became Driver Gr. A(0) on account of upgradation of 112 posts as stated by the deponent. Two reasons were given for transferring the petitioner from Surendranagar to Rajkot, namely, that the other persons were working at Surendranagar earlier than the petitioner though they were juniors to the petitioner and that the petitioner was promoted and, therefore, he was transferred to Rajkot. Mr. P. M. Raval, Learned Counsel for the petitioner draws my attention to the policy adopted by the Railway Administration in pursuance of the circular of the Board at annexure-E. He states that the principle which has been enunciated by the Board is applicable whenever such situation arises. In other words when the question of transferring a person arises, not on account of

administrative exigencies, but on account of upgradation of post or curtailment of post, the juniormost employee shall have to go elsewhere if posts are not available at the relevant place.

4. First of all, I am not able to understand as to why the question of transfer arose, because all the posts of Driver Gr. B were automatically upgraded and, therefore, there cannot be any occasion for transfer. Unfortunately, the affidavit filed on behalf of the Railway Administration is not throwing any light on this point, nor Mr. R. P. Bhatt, Learned Counsel for the respondent-Railway is able to say as to why it has become necessary for the Railway to transfer the petitioner from Surendranagar to Rajkot. The impugned order has been produced at annexure-D. A bare look at the order will show that most of the drivers who were promoted to officiate as Driver Gr. A(0) have been retained at the place where they were working. However, the petitioner whose name is shown at serial No. 19 has been shown as working at Rajkot/Surendranagar and has been posted at Rajkot. No other person appears to have been shifted from the station where he has been working. Now, let us consider annexure-E as relied upon by Mr. Raval, Learned Counsel for the petitioner. The circular is in respect of transfer in the event of curtailment of cadre etc., Headquarter office establishment circular No. 322 (No. E 839) dated 25th August, 1966 from GM(E) to all concerned, forwarded through Railway Board's letter No. E(NG) 66 TR 2/20 dated 27-7-66, states as under:

It has been brought to the notice of the Board that the practice of transferring staff in the event of curtailment of a cadre varies from Railway to Railway and even from division to division on the Railway. With the view to bring out uniformity in the matter, the Board desires that, as a general rule, the junior most employee should be transferred first whenever any curtailment in a cadre takes place.

First, whether there is curtailment in the cadre the uniform principle adopted by this circular, on the face of it, is applicable in a case where there is curtailment of cadre. Mr. Raval says that this principle of transferring the juniormost has been applied and adopted in other eventualities also. In other words, similar circumstances arise when there is upgradation of posts and all the incumbents of the upgraded posts cannot be absorbed at a particular station because of limited

number of posts. In such a case also the same principle has been adopted by the Railway to transfer the juniormost employee of that upgraded post. In my opinion this appears to be a relevant principle because it is also the general principle of law that even in a case of retrenchment, last-come-first go principle is adopted. It is not denied in the affidavit-in reply filed by Mr. Maharaja that this principle is not followed by the Railway. The deponent has denied this contention of the petitioner in para 10 of the deposition, but has not stated as to what principle is applicable in such a case.

5. However, let us consider the reasons given by the deponent for transferring the petitioner. The first reason given by the deponent is that though the petitioner is senior, other persons were working at Surendranagar since long and, therefore, they should be treated as senior. I think this argument is totally misconceived. The general principle of transfer is that the persons who were posted for a longer period should be first transferred to another place and not the persons who are there for a shorter period. Secondly, the seniority is not dependent upon the placement of a person at a particular place, but the seniority is governed by the length of service in a cadre. The petitioner is senior to the other persons as mentioned in para 2 of the petition. On such misconceived notion, the deponent cannot treat other persons who are stationed earlier at Surendranagar as senior than the petitioner. Therefore, this reason given by the deponent has no substance.

6. Another reason given that the petitioner has been transferred because he has been promoted to the post of Driver Gr. A. (0) has no merit inasmuch as the petitioner has not been promoted but 112 posts of Driver Gr. B have been upgraded by the Railway Administration. Therefore, the petitioner has been not promoted on merit but has been designated as Driver Gr. A(0) on account of upgradation. Even otherwise also, no other person has been transferred on account of upgradation of the post and no valid reason has been shown as to why the petitioner has been transferred. Mr. Bhatt, Learned Counsel for the Railway Administration has not stated that the petitioner has been transferred on account of any administrative exigencies. He is also not in a position to state as to whether there was curtailment of any post. Even assuming that there was curtailment of

post, the circular at annexure-E is applicable.

7. In view of the aforesaid circumstances, in my opinion, there is no merit in any of the contentions raised by the deponent in his affidavit. No other reasons have been shown as to why the petitioner has been transferred from Surendranagar to Rajkot. The impugned order dated 20-11-1982 at annexure-D, passed by DRM(E) Rajkot, is therefore, quashed and set aside so far as the transfer of the petitioner whose name reflects at serial No. 19 thereof. The petitioner shall continue at Surendranagar till he is transferred on regular basis in accordance with the rules and regulations framed by the competent authority.

8. Now, the petitioner has also filed Civil Application No. 5110 of 1982 alleging that in spite of ad interim stay granted by this Court on 8th December, 1982 in terms of para 15(b) of the petition, the Railway Administration is not sending the petitioner on duty by booking of the train. It is well known that unless order for booking of the train is given, a driver cannot directly go into the railway engine and start doing his job. The petitioner, has, therefore, complained that in spite of the orders of this High Court he has not been given any duty whereby he has suffered loss of running duty allowance which is known as booking. The petitioner has further stated that the Divisional Railway Manager by his message dated 17th December, 1982 has passed an order that the petitioner should not be utilized on running duty till further orders. A copy of the said order is produced at annexure-B to the civil application. He further states that he has submitted a letter dated 19th December, 1982 to the Assistant Loco Foreman requesting him to give him booking duty. He has made several requests as stated in the civil application for assigning him duty, but till this date the petitioner has not been given any duty, resulting into loss of atleast Rs. 25 to 30 per day as running allowance. No affidavit has been filed by the Railway Administration controverting the averments made in the civil application. Mr. R. P. Bhatt, Learned Counsel for the Railway Administration draws my attention to para 13 of the affidavit-in-reply filed by Mr. S. Maharaja, where he has stated that the petitioner has been continued at Surendranagar as per the order of the Court but he has remained on sick leave till the date of filing of the affidavit and, therefore, his stand that he is not taken on duty is not correct. The deponent further stated that the order dated 20-11-1982 was not implemented and

if the petitioner wants to continue at Surendranagar he can do so in his post of Driver Grade-B as if no order dated 20-11-1982 was passed. This contention of the deponent appears to be misconceived. Ad interim order of stay was granted so far as the implementation of transfer from Surendranagar to Rajkot was concerned, and not stay of upgradation of the post. Moreover, for another reason also this averment is misconceived, because the post which was occupied by the petitioner in Driver Gr. B was upgraded to that of Driver Gr. A(0) and, therefore, there was no question of that post remaining vacant where he can join. In this view of the matter it can be said that there is a breach of the order of the Court. But this breach appears to be done unconsciously and not deliberately. Interest of justice, therefore, will be met if the petitioner is given substantial benefit while allowing the petition.

9. In the result the petition succeeds. The impugned order of transfer of the petitioner from Surendranagar to Rajkot is quashed and set aside go for as it relates to the petitioner. The petitioner will be entitled to the salary of the upgraded post with all consequential benefits available to him which will be determined by - the Railway Administration within two months from the date of receipt of the writ of this Court.

Rule made absolute with costs.

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