

(1966) 10 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction case No. 948 of 1965

Employers in relation to Bejdih Colliery of Equitable Coal Co. APPELLANT
Ltd.

Vs

Madan Chatteraj and Others RESPONDENT

Date of Decision : 14-10-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 15, 9A

Industrial Employment (Standing Orders) Act, 1946 — Section 13A

Citation : AIR 1967 Patna 435 : (1968) 16 FLR 115 : (1967) 1 LLJ 589

Hon'ble Judges : R.L. Narasimham, C.J;K. Sahai, J

Bench : Division Bench

Advocate : Ranen Roy and Karuna Nidhan Keshava, for the Appellant; B.C. Ghose, A.C. Mitra, N.N. Mukherji and T.K. Das, for the Respondent

Final Decision : Allowed

Judgement

Sahai, J.—The Equitable Coal Company. Ltd. (hereinafter referred to as the Company), has, as employer in relation to Bejdih Colliery, filed this application under Articles 226 and 227 of the Constitution with the prayer that the award, dated the 31st May, 1965, made by the Presiding Officer, Industrial Tribunal (Central) at Dhanbad (hereinafter referred to as the Tribunal), in Reference No. 77 of 1963, published in the Gazette of India, on the 17th July, 1965, be called up and quashed.

2. Shortly stated the facts, which are not in dispute, are as follows: Madan Chatteraj (opposite party No. 1) has been in the employ of the petitioner company for about twenty years as underground time-keeper in the scale of a clerk in Grade II. He was first posted in Valadih Sand Station from where he was transferred to Bejdih Colliery. He was then transferred to Dhemo Main Colliery, and, ultimately, again to Bejdih Colliery. The principal duties of a time-keeper are to maintain attendance, prepare wage-sheets, etc. i. e., to perform duties mainly of a clerical nature.

3. On the 7th February, 1968, the Agent of the Company, Mr. Tanaja, passed an order (Annexure A), transferring Chatteraj to Ranipur Colliery to act as a clerk in the same grade. He directed that the transfer should come into effect as early as possible and "not later than the 18th February, 1963". He sent copies of it to the Managers of Bejdih and Ranipur Collieries and to the Chief Mining Engineer. The Manager of Bejdih Colliery conveyed this order to Chatteraj by his letter dated the 14th February, 1968 (Annexure B), saying also that the transfer order should be given effect to from the 18th February, 1968. Chatteraj received this letter on the 17th February. He did not ask for time to join his post at Ranipur Colliery; but, on the 13th March, 1963, he sent an application (Annexure C) to the Chief Mining Engineer, requesting him to reconsider the order of his transfer to Ranipur Colliery and to transfer him instead to Methani Colliery.

The ground which he gave was that Methani was closer to his house, and that his posting to Ranipur would cause him various troubles, such as additional establishment education of children, disruption of normal family affairs, etc. The Chief Mining Engineer sent a reply dated the 14th May, 1963 (Annexure D). It was stated in that letter that the name of Chatteraj was removed from the roll of Bejdih Colliery and put on the roll of Ranipur Colliery with effect from the 18th February 1963, that he was being marked absent there, that he had incurred liability for disciplinary action in refusing to carry out the Agent's lawful order and in being absent without leave or authority, but that, as a last chance, he was allowed time until the 22nd May, 1963, to join his post at Ranipur Colliery. It was further stated that, if he carried out the order, no disciplinary action would be taken against him.

4. Chatteraj did not comply with the order of transfer but continued to remain absent from work without leave. The Assistant Secretary of the Colliery Mazdoor Congress (opposite party No. 2) approached the Conciliation Officer (Central) at Asansol in connection with this transfer by a letter (Annexure E) dated the 18th June, 1963. When attempt at conciliation failed in spite of the company's offer that opposite party No. 1 could join at Ranipur Colliery as an underground time-keeper instead of a general clerk, the Government of India, by its order (Annexure H) dated the 23rd September, 1963, referred the dispute to the Tribunal.

The question formulated for adjudication was put in the schedule and is as follows :--

"Schedule".

"Whether the management of Bejdih Colliery of Messrs Equitable Coal Company Limited, Post Office Dishergarh, is justified in ordering transfer of Shri Madan Chatteraj, Underground Time Keeper, from Bejdih Colliery to Ranipur Colliery as a Clerk? If not, to what relief is he entitled?" Evidence was adduced before the Tribunal which also heard the parties. By its award dated the 31st May, 1965, the Tribunal answered the reference in favour of the workman, and directed that he

should be "reinstated to his previous job as Underground Time Keeper at Bejdih Colliery and he will also get his back wages from 19-2-1983 till the date of his reinstatement with continuity of service and all other benefits and advantages. ...". The Company has, therefore, filed this application in this Court.

5. It was pleaded on behalf of the workman and the Union before the Tribunal that the lands of opposite party No. 1 were acquired at the instance of the company, and hence an undertaking was given to him that he would always be posted at places near his house. It was alia alleged on their behalf that there was a difference between Chatteraj and Mr. Tanaja about the allotment of work when the latter was the Manager of Dhemu Main Colliery, and that, when he became the Agent of the Bejdih Colliery, he took revenge by passing an order of transfer of Chatteraj to Ranipur Colliery which is at a distance of about 23 miles from his village home. The Tribunal has considered these allegations, and has held that there is no substance in them. The Tribunal's finding thus is that the order of Mr. Tanaja was not mala fide, and that there was no undertaking or assurance given by the management to Chatteraj as alleged him.

6. There are three grounds on which the Tribunal has given its award in favour of the workman. They are as follows :--

(1) Reasonable notice of transfer had to be given to the workman under the second proviso to Standing Order No. 26, and that this was not done.

(ii) The first proviso to Standing Order No. 16 lays down that a transfer should not cause any prejudice to the workman's wages and conditions of service. The wages have not been affected in this case; but the transfer of Chatteraj as a general clerk, according to the original intention of the management, amounted to change in the nature of his work, and, as such, in the conditions of his service.

(iii) There was an assistant time-keeper named Bolaram Patra at Bejdih Colliery. He was junior to Chatteraj. The conduct of the management in transferring Chatteraj to Ranipur Colliery in preference to Bolaram Patra was unfair and unjustified. It showed prejudice on the part of the management, and it also showed a determination on its part to get rid of Chatteraj by transferring him to Ranipur Colliery.

7. I propose to consider these grounds in the order in which I have mentioned them but, before I do so, I wish to make some general observations. The entire machinery for conciliation and for adjudication by a Tribunal in case of failure of conciliation is meant to promote industrial peace and harmony. It is, therefore, absolutely essential that an industrial dispute should be decided with such care that neither party should feel that undue leverage has been given to the other side. If a party suffers from a grievance that its rights and powers are being wrongly curtailed and restricted, that may lead to frustration which will not be conducive to peace and harmony in the industry.

In short, a Tribunal cannot act as a benevolent despot. In J. K. Iron and Steel

Company, Ltd. v. Iron and Steel Mazdoor Union (1956) 1 Lab LJ 227 their Lordships considered the ambit of a Tribunal's authority. Relying upon AIR 1949 111 (Federal Court) and State of Madras Vs. C.P. Sarathy and Another, they said that it was settled law that the scope of an adjudication under the Industrial Disputes Act was much wider than that of an arbitrator making an award. Bose, J., who delivered the judgment of the Court, further observed :

"All the same, wide as their powers are, these tribunals are not absolute and there are limitations to the ambit of their authority. In The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi, this Court held by a majority that though these tribunals are not Courts in the strict sense of the term have to discharge quasi-judicial functions and as such are subject to the overriding jurisdiction of this Court under Article 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions Those provisions invest them with many of the trappings" of a Court and deprive them of arbitrary or absolute discretion and power. There is, in our opinion, an even deeper reason which is hinted at in the judgment of Mahajan, J. (as he then was), at page 500 where he says that "benevolent despotism is foreign to a democratic Constitution" That, in our opinion, is the heart of the matter".

8. Ground No- (i)--I may start by quoting Standing Order No. 26 :

"26. All workmen are liable to be transferred from one department to another or from one station to another or from one Colliery to another under the same management provided such transfer does not cause any prejudice to their wages and and other conditions of service and provided that reasonable notice is given of such transfer".

Admittedly, Bejdih Colliery and Ranipur Colliery are under the same management. Under this standing order, therefore, it is entirely within the discretion of the management to transfer a workman from one colliery to the other. As the Tribunal has rejected the allegation that an undertaking or assurance relating to transfer was given to Chatteraj, he could not legally object to a valid order of his transfer.

The first question, therefore, which requires consideration is whether Chatteraj could refuse to carry out the order of his transfer on the ground of shortness of notice. In this connection, the Tribunal has not attached importance to a vital point, i. e., that the Agent passed his order on the 7th February, 1963. This was to be effective from the 18th February. The distance between the two places is one of about 23 miles only. This notice of eleven days was therefore, more than sufficient. The Agent could not know at the time when he passed the order that information relating to it would reach Chatteraj through the Manager of the Bejdih Colliery so late as the 17th February. The reason why the Manager of Bejdih Colliery communicated the order of transfer by letter written so late as the

14th February, 1963, does not appear from the record; but even four days" notice cannot be held to be unreasonable. If Chatteraj, having received the notice of transfer on the 17th February, considered that he could not join his post at Ranipur Colliery on the 18th, it was open to him to ask for further time. If the management had refused such a request, it might be said that it acted unreasonably and did not give the workman sufficient time to join the post to which he was transferred.

9. As it is, Chatteraj remained absent from duty without obtaining leave for about a month until the 17th March, 1963, when he sent an appeal to the Chief Mining Engineer. The only request which he made in that appeal was that he might be transferred to Metham Colliery, i. e., a place other than Ranipur Colliery. The Chief Mining Engineer said in his letter dated the 14th May, 1963 (Annexure C) that this request could not be acceded to, that Chatteraj had made himself liable to disciplinary action but that no such action would be taken if he joined at Ranipur Colliery by the 22nd May. The Tribunal has expressed the opinion that this letter is quite independent of the original letter of transfer; but that is obviously an error. The entire episode forms one transaction. The order of transfer was passed the workman made an appeal; and the Chief Mining Engineer passed his order. The order dated the 7th February is undoubtedly the original order of transfer; but the date of joining as given in that order stands modified by the order of the Chief Mining Engineer dated the 14th May.

10. Mr. Mitra, has appeared on behalf of the workman, has argued that, if Chatteraj had joined at Ranipur Colliery on the 22nd May, he would not have been given his back pay from the 19th February to the 21st May, This question does not arise because he did not join his post as ordered, nor did he apply for grant of his back pay. I may add, however, that it is impossible to know what attitude the management would have taken if he had made a prayer for payment of his wages; but the manner in which the Chief Mining Engineer voluntarily said that no disciplinary action would be taken against him gives an indication on that the management might not have been unreasonable.

11. The requirement for giving reason-able notice of transfer as provided for in Standing Order No. 26 cannot be a technical or ceremonial requirement so that if, by chance, the workman receives the notice late, the transfer order will automatically stand vitiated even though the workman makes no prayer at all for grant of time to effectuate the order. I do not think that there is any justification in principle for holding that the order of transfer in question became void simply because the workman concerned received it only a day before it had to be given effect to. As I have said, the Agent was not at all unreasonable in giving eleven days" time, nor was the Manager unreasonable in giving four days" notice. Besides, the date of joining was later extended by the Chief Mining Engineer. In my judgment, therefore, the Tribunal has Committed an error of law apparent on the face of the record in holding, in the circumstances of this case, that the notice was not reasonable, and that the order of transfer was vitiated.

12. Ground No. (ii).--The only point which has to be considered in connection with this ground is whether the conditions of service of Chatteraj were altered to his disadvantage on his transfer from the post of underground time-keeper to the post of a general clerk. I may mention that it was the employers' lawyer who stated before the Tribunal that Chatteraj was to join at Ranipur Colliery as a general clerk which was also a post in grade II. The Tribunal has observed that the work of a time-keeper is "entirely different" from that of a general clerk, that a man working as time-keeper for several years "is not expected to do a different work", i.e., to work in the capacity of a general clerk, and that a change of work will certainly prejudice "the condition of his service in that he may not be able to do the work of a general clerk which may ultimately result in his dismissal due to his inefficiency".

In my opinion, these observations are without any foundation, legal or otherwise. It may be true that the work of an underground time-keeper is different from that of a general clerk; but nothing on the record has been pointed out to us which can be the basis of a finding that the general clerk's work is "entirely different. The Tribunal has given the example of a typist, and has said that a general clerk cannot be appointed to be a typist unless he knows typewriting. This is perfectly true. A person can be appointed as a typist only if he knows typewriting. That is a particular skill which is needed. In my opinion the Tribunal has completely misdirected itself, What it should have considered was (1) whether the work of a general clerk was more onerous than that of an underground time-keeper and (2) whether it was necessary for a general clerk to possess a particular skill which a time-keeper was not expected to possess. Unless it could answer one of these two questions in the affirmative, there would be absence of a basis for the finding that there was change in the conditions of service. A workman cannot be confined to one particular kind of work for ever. In the ordinary course, the employers may desire to promote him. They may think that such a promotion will be deserved by a workman only if he did different kinds of work. That would necessitate his transfer from one post to another in which he has to do a different kind of work. Such transfer cannot be held to be adverse to the workman concerned unless the post to which he is transferred requires more onerous work or any particular skill. It is a mere surmise on the part of the Tribunal to think that Chatteraj cannot do the work of a general clerk, and that if he is posted as such a clerk, he may subsequently be charge-sheeted and dismissed on the ground of inefficiency. This legal error of the Tribunal is, therefore, apparent on the face of the record.

13. In this connection, I may refer to the case of Bata Shoe Co. Ltd. Vs. Ali Hasan and Another, . In that case, one Jamuna Prasad was granted the same pay but was transferred from the personnel department to the purchasing department. Their Lordships did not consider this to be an alteration in the conditions of his service to his prejudice.

14. While dealing with this ground, the Tribunal has stated :

" I am, however, not impressed with the argument that as he was living near his home and he had given all the properties to the Company there was an implicit undertaking to provide him with an employment near his village which was a condition of his service."

This observation strengthens the view that no change in the conditions of service of Chatteraj was to be effected by reason of his transfer to Ranipur Colliery.

15. I may add that the Company agreed before the Conciliation Officer that Chatteraj could join at Ranipur Colliery as underground time-keeper. Hence, the grievance that he was being transferred to the post of a general clerk was removed. The offer was repeated even before the Tribunal; but it has failed to consider this in connection with this ground. In my opinion, the dispute relating to this matter became non-existent due to the offer.

16. Ground No. (iii)--Neither any provision of law nor any authority has been brought to our notice in support of the proposition, which the Tribunal has propounded, to the effect that a senior underground timekeeper cannot be transferred in preference to a junior underground time-keeper. It is entirely for the management to distribute and place its employees at different places in charge of different work in such a way as to derive the best advantage. All that it has to see is that the standing order in this respect is not infringed. It is certainly not at all desirable or possible for the Tribunal to take upon itself the powers and duties of administration which the management of a company undoubtedly has. It is in the course of administration and for the benefit of the company that the management passes orders of transfer. Reference may be made in this connection to *Bareilly Electricity Supply Co., Ltd. v. Sirajuddin* (1960) LabIC 556 . In that case, their Lordships of the Supreme Court have observed:

"Transferring a cooly from one department to another is a matter of internal arrangement and industrial tribunals should be very careful before they interfere with the orders made in the discharge of the management function in that behalf. The argument that the appellant did not give any reason for this re-transfer though there was hue and cry against it seems to us to be wholly beside the point."

17. In *Canara Banking Corporation, Ltd. v. Vittal* (1963) LabLJ 354 the dispute was between a Bank and an employee. The matter was, therefore, governed by the Sastri award. Das Gupta, J., who delivered the judgment of the Supreme Court stated that there was no dispute that the directions of the Sastri award amounted to "standing orders" and were binding upon the Bank. His Lordship quoted one of the directions in the award, which is as follows :

"We direct that in general the policy should be to limit the transfers to minimum consistent with the banking needs and efficiency. So far as members of the subordinate establishment are concerned, there should be no transfers ordinarily and if there are any transfers at all, they should not be beyond the language area of the person so transferred. We further direct that even in the case of

workmen not belonging to the subordinate staff, as far ; possible, there should be no transfer outside the State or the language areas in which the employee has been serving except, of course, with his consent."

His Lordship then observed :

"It is necessary to remember in this connection that a bank which has branches in different parts of the country has to distribute its total man-power between these different branches in accordance with the needs of these branches and with an eye to its business interests. To attain the best results it becomes necessary to transfer workmen from one branch to another. The best interests of the bank may require at times that the transfer should be made outside the State or the language area in which a particular workman had formerly been employed. We have found above that the right of the bank to distribute its workmen not belonging to the subordinate staff to the best advantage, even though this may involve transfers outside the State or the language area in which a particular workman had been serving, was left unimpaired by the Sastri award, except that such transfers have to be avoided, if they can be avoided without sacrificing the interests of the bank. The management of the bank is in the best position to judge how to distribute its man-power and whether a particular transfer can be avoided or not. It is not possible for industrial tribunals to have before them all the materials which are relevant for this purpose and even if these could be made available, the tribunals are by no means suited for making decisions in matters of this nature. That is why it should ordinarily be proper for industrial adjudication to accept as correct any submission by the management of the bank that an impugned transfer has been made only because it was found unavoidable. The one exception to this statement is where there is reason to believe that the management of the bank resorted to the transfer mala fide, by way of victimisation, unfair labour practice or some other ulterior motive, not connected with the business interests of the bank."

The Banks' power of transfer is restricted by this Sastri award; but the restrictions so imposed are not applicable in the case of collieries. It is manifest, therefore, that the observations made by Das Gupta, J., are fully attracted in the facts and circumstances of this case. It is also abundantly clear that there is no question of mala fide in this case. As I have already mentioned, the Tribunal has held that Mr. Taneja has not passed the order of transfer on account of any difference between him and Chatteraj. It has condemned the conduct of the management as unfair and unjustified and as showing prejudice only because of its opinion that a senior should not have been transferred in preference to a junior. The entire basis of the observation disappears because, as I have said, there is nothing to compel the management to transfer a Junior workman before it transfers a senior workman. As Das Gupta, J., has said, it is for the management to distribute its manpower to the best advantage. The position will, of course, be different in the case of a retrenchment.

18. Mr. Mitra has stated that, although the company was not bound to give a

reason for transfer of Chatteraj, it has given a reason for the transfer, and that reason is false. In this connection, he has referred to paragraph 3 of the company's application which appears to suggest that the transfer of Chatteraj was made because there was surplus staff at Bejdih due to exhaustion of Dishergarh Seam and lower output. He has also referred to an observation in the award where the Tribunal has dealt with exhibit M-7 before it. It runs "Exhibit M-7 is an order dated 21-3-1964 passed by the Agent transferring certain persons from one colliery to another from which it appears that one Shri Dharendra Nath Roy. Underground Time-keeper, was transferred from Methani to Bejdih Colliery on 1-4-1964.

Learned Counsel has argued that, if there was lower output and exhaustion of seam at Dishergarh, there could be no transfer to Dharendra Nath Roy, as Underground Timekeeper to Bejdih Colliery. This argument loses sight of the fact that the order of transfer of Chatteraj was made on the 7th February, 1963, and the order of transfer of Dharendra Nath Roy was made on the 1st April, 1964, more than a year later. The circumstances may well have changed in this long period, a fresh seam may have been discovered. We do not know the circumstances, and hence it is difficult for me to come to the conclusion that the reason given by the company in paragraph 3 of its application is incorrect.

19. Mr. Mitra has also referred to *National Radio Corporation v. Their workmen* (1963) 1 LabLJ 282 (SC). In that case, a concern had one existing factory, and then it started a new factory. It transferred workmen from the earlier factory to the factory which was newly started. The Industrial Tribunal directed retransfer of the concerned workmen to the old factory. The finding which it arrived at was that the management had not acted bona fide in passing the orders of transfer. This order was upheld by the Supreme Court. The facts of that case are clearly distinguishable from the facts of the present case because, in that case, there was a finding that the orders of transfer were passed due to hostility of the management against the concerned workmen, and were, therefore, not bona fide.

20. In view of the reasons which I have given above, it is clear that the conclusion of the Tribunal is erroneous and is based upon manifest errors of law. I would, therefore, allow the application and quash the award. In the circumstances of this case, there will be no order for costs.

21. I wish to note at this stage that there was a talk of compromise between the parties in the course of the hearing of the case in this court; but it failed. Mr. Ranen Roy, appearing on behalf of the company, has, however, stated before us that the management of the company has no intention for the present to transfer Chatteraj to Ranipur Colliery, though it reserves its right to transfer him as and when the exigencies of service so require. He has also stated that no disciplinary action will be taken against Chatteraj. It is, therefore, hoped that Chatteraj will be allowed to continue for the present to work at Bejdih Colliery where he was allowed to join by reason of an order of this court, and that no disciplinary action will be taken against him for what he has already done. He will, however, not get

his back wages or any other benefit to which the law disentitles him in view of this judgment.

Narasimham, C.J.

22. I agree.