

(2009) 03 AHC CK 0031
In the Allahabad High Court

Union of India (UOI) and Others

APPELLANT

Vs

Ram Suraj and Another

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Citation : (2009) 3 AWC 2205

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—Heard Sri V.K. Goel for the petitioners at length.

2. The writ petition is directed against the order of the Central Administrative Tribunal, Allahabad (hereinafter referred to as "Tribunal") disposing of the Original Application Nos. 562 and 772 of 2004 of the petitioner-respondent No. 1 (hereinafter referred to as "respondent No. 1").

3. It appears from the record that the respondent No. I was working as P.W. I Selection Grade-Ill in Northern Railway in the pay scale of 6,500 -10,500 in the year 1997 and was posted at Sadalpur, Rajasthan under Bikaner Division of Northern Railway. He submitted an application seeking his transfer from Northern Railway to North Eastern Railway, which was accepted by the competent authority and was communicated to the respondent No. 1 by letter dated 4.2.2000 issued by the General Manager (Karmik), Northern Railway, Baroda House, New Delhi. The aforesaid transfer was on bottom seniority since was allowed on the request of the respondent No. I himself. It directed him to submit his joining in the office of General Manager (P.) North Eastern Railway, Gorakhpur for further posting. The respondent No. 1 was relieved on 28.11.2000. He submitted joining on 4.12.2000. It is said that vide Circular dated 8.2.2000, the Railway Board in the meantime amended the Indian Railway Establishment Manual (in short "I.R.E.M.") by inserting Para 102A in Chapter I Section "B" Sub-

section (1) which provides as under:

102A : Notwithstanding the provisions contained in this Chapter, transfer on request on bottom seniority in the grades having an element of direct recruitment will be permissible against the quota prescribed for direct recruitment, provided that the employee seeking transfer possess the qualification prescribed for direct recruitment to the post to which transfer is sought for.

4. The General Manager (Personnel), however, refused to allow joining to the respondent No. 1. The General Manager (Personnel) U.P. Northern Railway, Baroda House, New Delhi, thereafter, sent a letter on 1st January/February, 2001 referring the matter for approval of the Railway Board and in the meantime, requested the concerned authorities at Gorakhpur to issue a first class duty pass in favour of the respondent No. 1 so as to enable him travel from Gorakhpur to Bikaner. There is nothing on record to show that such Duty Pass was issued. It appears that no decision was taken immediately . but on the other hand, the Railway Board advised that the respondent No. 1 since did not possess the requisite qualification for his appointment as Junior Engineer/PW1 pay scale of 6,500-10,500 as per Para 102A of I.R.E.M. and, therefore, if he agrees, he may be allowed to remain on transfer in the scale of 5,000- 8,000 failing which he may be sent back. The respondent No. 1 did not exercise any option, though he was informed by letter dated 5.7.2000 and 18.7.2000. Ultimately the North Eastern Railway vide its letter dated 26.4.2002 accepted respondent No. 1's transfer and posted him in a single cadre post under T.M.C. Organization under Executive Engineer, Gorakhpur as Section Engineer/T.M.C. in the pay scale of 6,500-10,500. Request was then sent by the General Manager (P.), North Eastern Railway to the Railway Board by letter dated 6.7.2002 seeking its approval for respondent No. 1's posting as Section Engineer/P.W. 1 in the pay scale of 6,500-10,500. The petitioners, however, did not treat the respondent No. 1 on duty from 1.12.2000 to 26/30.4.2002 when he was allowed to join at North Eastern Railway and communicating the same vide letter dated 29.4.2002. aggrieved whereagainst, the respondent No. 1 approached the Tribunal vide O.A. No. 560 of 2004 for treating him on duty during the period from 4.12.2000 to 26.4.2004 and to pay salary and other consequential benefits for the said period. While the aforesaid original application was pending before the Tribunal, it appears that the General Manager North Eastern Railway, Gorakhpur passed another order transferring respondent No. 1 from North Eastern Railway, Gorakhpur to North Railway , New Delhi on 17.6.2004 whereagainst he filed another Original Application No. 772 of 2004. Both the aforesaid matters have been heard together and disposed of by the Tribunal directing that the respondent No. 1 cannot be treated to be unauthorizedly absent from 4.12.2000 to 25.4.2002 and he is entitled for salary besides treating him on duty for the said period.

5. Learned Counsel for the petitioners vehemently contended that the Tribunal

has erred in law in observing that the respondent No. 1 was transferred on 24.2.2000 though in fact the order of transfer was issued on 25.4.2000, which was subsequent to the Railway Board Circular dated 8.2.2000. He submitted that the Tribunal having failed to consider this aspect of the matter has erred in law and the impugned judgment is liable to be set aside.

6. Heard learned Counsel for the petitioners.

7. However, we are not satisfied and, in our view, the judgment of the Tribunal warrants no interference. A copy of the transfer order dated 4.2.2000 has been placed on record as Annexure-1 to this writ petition which reads as under:

S.Ka/283/5/Antar Railway/CA-III/I Dinank 4.2.2000 Mahaprabandhak (Karmik)

Uttar Railway, Baroda House,

New Delhi.

Vishay : Sri Ram Surat P.W. 1. Grade-1 (6,500-10,500) Sadulpur, Bikaner Mandal Uttar Railway Ka Sthanantaran U.Re. me karne ke sambandh me.

Sandarbh : Mahaprabandhak Karmik Uttar Railway Baroda House, New Delhi Ka Patra Sankhya 939E/235/210 P.W. 1./E-IIB-I, Dinank 27.7.99.

Apke Uprokt Sandarbh Patra Ke Sambandh Me Suchit Kiya Jata Hai Ki Sri Ram Surat, P.W. 1, Grade-1 (6,500-10,500) Sadulpur Bikaner Mandal Uttar Railway Ke Anurodh Me Antar Railway Sthanantaran Ko Is Railway Par Adhishashi Abhiyanta/T-T-M/Gorakhpur Ke Antargat Sampad Evan Vetanman Me Saksham Adhikari Dwara Sweekar Kar Liya Gaya Hai.

Chunki Ukt Sthanantaran Karmchari Ke Swayam ke Anurodh Par Sweekar Kiya Gaya Hai Isliya, Inko Tallim Variyata pradan Ki Jayegi Tatha Inhe Sthanantaran Sambandhi Koi Suvidha Deya Nahi Hogi. Yeh Sthanantaran S.P.E./DAR/Satarkata Mamlo Se Mukht Hone Ke Bad Hi Sweekarya Hogi.

Uprokt par Murevai Mahoday Ka Anumodan Prapt Hai.

Laxmi Devi Skadhi/Eg. Krite Mahaprabandhak (Karmik) (English Translation):

Subject : Regarding transfer of Sri Ramsurat, P.W. I, Grade-I (6,500-10,500), Sadulpur, Bikaner Division to Northern Railway.

Reference : Letter No. 939/E/235/210 P.W. I./E-IIB-I, dated 27.7.99 of General Manager (Karmik), Northern Railway, Baroda House, New Delhi.

With reference to your above-mentioned letter this is to inform you : that the request of Sri Ramsurat, P.W. I., Grade-I (6,500-10,500), Sadulpur, Bikaner Division, Northern Railway, regarding: inter railway transfer, the same has been accepted by the competent authority and placed under Executive Engineer/T-T-M/Gorakhpur on equivalent post equal pay.

Since the aforesaid transfer has been accepted on the own request of the

employee, therefore, he shall be given bottom seniority and shall not be given any transfer benefit. This transfer will be accepted after clearance from S.P.E./D.R.A./Vigilance matters.

On the aforesaid, approval of Murevai is already there.

Laxmi Devi Skadhi/Eg.

Krite Mahaprabandhak (Karmik)

8. It is interesting to note that in the Original Application No. 560 of 2004 in para 4.6, the respondent No. 1 pleaded as under:

6. That ultimately applicant's request was accepted and vide order dated 4.2.2000, the opposite party No. 2 was pleased to accept the request of the applicant for inter-railway transfer from Sadulpur (Raj.) to Gorakhpur U. P. transferring him from Northern Railway to North Eastern Railway on similar post and same grade.

9. Reply to the aforesaid averment was given by the petitioners in Para 17 of the counter affidavit, which reads as under:

17. That in reply to the contents of paragraphs No. 4.6 of the petition it is stated that the applicant was transferred from Bikaner Division to Gorakhpur Division and was posted on the Ex-Cadre post of S.E./P. Way in T.M.C. organization because there was no provision of direct recruitment element in the category of Section Engineer P/Way. The petitioner had also the terms and conditions of the transfer order dated 4.2.2000.

10. Again similar plea is contained in Para 4.6 of the Original Application No. 772 of 2004. which reads as under:

6. That ultimately applicants' request was accepted and vide order dated 4.2.2000, the opposite party No. 2 was pleased to accept the request of the applicant for inter-railway transfer from Sadalpur (Raj) to Gorakhpur, U. P. transferring him from Northern Railway to North Eastern Railway on similar post and same grade.

11. This also has not been controverted by the petitioners. It is, thus, evident that the contention and statement of fact of respondent No. 1 that he was transferred from Northern Railway to North Eastern Railway by order dated 4.2.2000 was not at all disputed by the petitioners before the Tribunal. It is in these circumstances the Tribunal has also stated in the judgment impugned as under:

There is further no dispute that on 4.2.2000. (A-2) He was transferred from Northern Railway to North Eastern Railway, Gorakhpur on similar post and grade, with bottom seniority.

12. It is also evident from record that the process of transfer was initiated sometimes in the year 1998-99 and the correspondence was going on which

ultimately resulted in the issuance of letter dated 4.2.2000 for the first time and the subsequent letter dated 25.4.2000 is in effect the reiteration of the order dated 4.2.2000 as is evident from the endorsement made at the bottom in the letter dated 25.4.2000. The Railway Boards Circular dated 8.2.2000 which inserted Para 102A in the Railway Board Establishment Manual, clearly provides that henceforth the transfer of employees on request with bottom seniority in recruitment grades shall be accepted only if the employee possesses requisite qualification for direct recruitment to the relevant post. Para 3 of the Railway Board Circular dated 8.2.2000 stating as said above is reproduced as under:

3. ...henceforth for transfer of employees on request on bottom seniority in recruitment grades the employees should possess the qualification prescribed for recruitment to the relevant post.

(Emphasis added)

13. We also find that in para 4 of the Railway Board Circular dated 8.2.2000, it was provided that the Indian Railway Establishment Manual Vol. I, 1989 may also be amended accordingly as in the advance correction slip Nos. 95 and 96. Issuance of the aforesaid circular, therefore, in our view, by itself does not mean that the Manual stood amended with effect from 8.2.2000 and on the contrary so long as it is not published in the manner provided in law, i.e., either in the official Gazette or in such a manner so that it may be known to all persons concerned the said Circular itself could not have been deemed to have given effect as soon as it is issued. It is well-settled that a provision having force of law must be published and be known to all public concerned in order to give it effect. In *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, the Apex Court considered the importance of publication and held as under:

It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute are not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed.

14. Though no such material has been placed on record by the learned Counsel for petitioners as to when the aforesaid provision was published in the official Gazette or when it was brought to the notice of all concerned parties, but we have no manner of doubt that the transfer order which was already passed in the year 1998-99, approved by the competent authority on 4.2.2000, and communicated to the persons concerned, the same could not have been said to be bad on account of a subsequent amendment in the Indian Railway Establishment Manual by inserting Para 102A pursuant to Railway Board Circular dated 8.2.2000. The learned Tribunal, in our view, has not erred by holding that the transfer of the respondent No. 1 is not hit by provision made by Railway Board Circular dated 8.2.2000. That being so, the petitioners were definitely

guilty of not permitting the respondent No. 1 to join at North Eastern Railway, Gorakhpur. In these circumstances, we do not find any reason to interfere with the judgment of the Tribunal.

15. The writ petition, therefore, lacks merit. Dismissed. No cost.