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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 129 of 1986
T.A. No.

DATE OF DECISION 9.9.'86

MR. RADHAKISHAN K. VISHNANI Petitioner

MR. P. H. PATHAK Advocate for the Petitioner(s)

Versus

UNION OF INDIA AND ORS. Respondent

MR. R. P. BHATT Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI (Vice-Chairman)

The Hon'ble Mr. P. M. JOSHI (Judicial Member)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

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JUDGMENT

The petitioner, who was working as Chief Enquiry & Reservation Supervisor in Surat, sought on personal grounds, a mutual transfer to Ahmedabad with Shri T. Rajagopal. The Chief Commercial Superintendent allowed the mutual transfer by an order dated 17th September, 1985, posting the petitioner to Ahmedabad, in the same scale of pay of C.E.R.S. under DRM(E)-BRC with following stipulations:

"The mutual transfer order of the above employees is subject to clearance of DAR/B&C/Vig. cases and penalties if any which would be checked up by the Division, concerned before they are relieved."

The petitioner was relieved by the Station Superintendent, Surat, on 16th October, 1985, and proceeded to Ahmedabad, where he reported for duty on the same day, but respondent no. 3 gave allegedly illegal verbal orders refusing the petitioner to let him perform his duties. The petitioner made representations to his superior authorities, but he has not been given any reply. The respondents have not paid the salary to the petitioner from 25.10.'85.

The respondents have taken the stand in reply, that the mutual transfer order was subject to the condition of clearance of the vigilance cases, etc., and as Surat and Ahmedabad are under different divisions, before obtaining the clearance and getting the position, communicated to all concerned, the petitioner was relieved at Surat and proceeded to Ahmedabad. On receiving instructions regarding the non-clearance from vigilance, etc. angle, the Station Supdt.,

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Ahmedabad, did not allow the petitioner to perform his duties on his reporting for duty. An order cancelling the mutual transfer of the applicant adted 8.11.'85 was passed, but could not be served on the applicant because his address could not be ascertained, and, for the same reason payment could not be made to him of his salary for the period until 15.10.'85. The Tribunal had ordered payment of the salary of the applicant from 1.10.'85 to 25.10.'85, and payment was sought to be made and a letter was addressed to the applicant on 16.1.'85, but the applicant did not approach the Pay Master for the payment. However, the payment was made by making special arrangements.


We are constrained to observe that the stand of the respondents reflects considerable arbitrariness. If a major case of disciplinary proceedings involving vigilance matters was pending against the applicant, the competent authorities had full opportunity to take it into account before agreeing to the mutual transfer requested, and the order dated 17th September, 1985, need not have been passed without checking the position in this regard. If the applicant was relieved at Surat without checking whether the conditions of the order were satisfied, it was not the fault of the applicant but of the officer relieving him or the railway authorities, and they should shoulder the blame for it. The applicant has proceeded to Ahmedabad from Surat, at his own expense, and reported for duty. This is absolutely in order and in compliance with the transfer orders and the applicant cannot be faulted for it. If the railway authorities at Ahmedabad, refuse to allow the applicant to perform his duties on the plea that he should not have handed over at Surat and should

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in fact, now, return to Surat, such verbal instructions can only be regarded ^{as lacking} in any authority whatsoever. There are no instructions by competent authorities, who could have given such orders and furnished them to the applicant or even specifically communicated them to the railway authorities at Ahmedabad in writing. The railways have adequate facilities for transmission of instructions and it is not easy to accept that non-production of instructions of competent authorities could have been overlooked by anyone dealing with the case. In the absence of any written instruction to the applicant or to the railway authorities at Ahmedabad, on the basis of which he could have regarded that he was duly ordered to return to Surat, his action in continuing to ask for duties in Ahmedabad to be assigned to him can only be regarded as natural and legitimate in the circumstances. The respondent is relying upon the order of 8.11.'85, cancelling the mutual transfer of 17th September, 1985, but a certified copy of such a cancellation order has not been annexed to the reply of the respondent dated 4.2.'86 or produced before the Tribunal. Even if it is accepted that the orders of mutual transfer were cancelled on 8.11.'85, it is difficult to understand how on 16.10.'85, the railway authorities at Ahmedabad, refused to let the applicant to perform his duties when he reported there. In this case there is no doubt, that while the authorities are free to transfer the applicant to any station, provided such transfer is not violative of policy or instructions governing the subject, it would be unjust to cancel the order which is already implemented. Refusing the applicant to let him perform his duties, or not assigning him any duty after he has reported at Ahmedabad without any valid order, cancelling his transfer

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by competent authorities or without any fresh written instructions from authorities competent to give them and keeping him without work for the period from 16.10.'85 is in our opinion unwarranted, unjustified, arbitrary and highhanded. We, therefore, direct that the applicant be allowed to join at Ahmedabad, in terms of his transfer order dated 17.9.'85 and that his salary be paid accordingly after due adjustment of payment is made. The payment of his dues should be completed within a month. In view of the circumstances stated above, costs be paid to the extent of Rs. 500/- to the applicant by the respondents.


(P. H. TRIVEDI)
Vice - Chairman


(P. M. JOSHI)
Judicial Member