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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI At Ahmedabad.

O.A. No. 12
T.A. No.

1986

DATE OF DECISION 10th July 1986

1. Ambaram Kuberdas Prajapati Petitioner
2.

Shri H.S. Shah Advocate for the Petitioner(s)

Versus

1. Union of India Respondent
2. The Director Postal Servies, Rajkot Region,
Rajkot.
3. The Superintendent of Post Advocate for the Respondent(s)
Offices, Banaskantha Division, Palanpur.

Shri J.D.Ajmera Advocate for the respondents.

CORAM : Mr. Birbalnath.
(A.M.)
Mr. P.M. Joshi
(J.M.).

The Hon'ble Mr.

The Hon'ble Mr.

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 ?



3
Per :- Birbal Nath.

Judgment.

The case set up by the applicant as per the petition dated ~~Jul~~ May 20, 1986, is that the applicant is working as Upper Division Clerk, in the Saving Bank Control Organization at Planpur, where ~~he~~ he was transferred on his own request since December 5, 1984. He has been transferred from Palanpur to Mehsana vide impugned Order dated May 12, 1986, issued by the Director Postal Circles, Rajkot Region, Rajkot. It was alleged that this transfer order is in violation of the guide lines governing the tenure of Upper Division Clerks and is malafide, discriminative and violative of Articles 14 & 16 of the Constitution of India. The applicant has prayed for interim Order to stay the operation for the impugned transfer order. The applicant had been on leave when the impugned ~~Order~~ ^{-order-} was issued and the Tribunal had issued an Order to maintain the status-quo vide its Order dated May 30, 1986.

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2. On behalf of the Postal Administration, it has been averred that the application is not maintainable as he had not exhausted all the departmental remedies u/s 20 of the Administration Act, 1925 and it should be dismissed as premature. It was also maintained by the Department that the applicant was relieved on May 10, 1986 after-noon. It was further averred that the applicant was found indulging in improper behaviour and a large number of officials of Palanpur Office had represented against the behaviour of the applicant. The transfer was however ordered by way of administrative exigency. It was further averred that the interpretation with regard to the tenure of ^{four} ~~one~~ years at one station was not correct, that this tenure was prescribed the maximum and NOT the minimum period, that the transfer was necessary in view of the mis-behaviour of the applicant towards the lady-clerk of the office.

3. The applicant has filed a rejoinder wherein he has maintained that his tenure was for a period of four years at each Station. He has re-affirmed that his transfer was ordered because he had brought some ^mmal-practices to the notice of the Vigilance Department. He has denied that there was any complaint from the Post Master, Palampur, about his mis-behaviour and improper attitude. He has denied that there was any evidence or any report or any complaint whatsoever against him by any lady clerk. He has attached affidavits of three ladies to the effect that he had never used any un-parliamentary or disrespectful language towards them since he has been working there. He has also averred that the transfer of the applicant was made under the pressure of the rival Union and that the transfer has not been made on account of administrative exigency. He has maintained that the transfer was a stigma and the transfer was therefore punitive and no punitive action should be taken against him without giving him an opportunity to defend himself.

4. Mr. H.S. Shah learned Counsel for the applicant has argued the case not only for the interim stay but also for the main application. The learned Advocate for the respondent also argued against the main application. We have gone through the pleadings and the ~~xx~~ records and given our earnest attention to the arguments advanced by the learned Counsel for the parties.



5. The learned Advocate for the respondent has argued that the tenure of four years laid for the staff is the maximum and NOT the minimum. This contention is devoid of merit as a perusal of paragraph no. 9 concerning the tenure of staff of SBCO ICO. It reads as under:-

"Tenure of staff: The Post/Station tenure of the official of the SBCO, ICO and Pairing Units in the office has been fixed as under:

LDCs/UDCs/Supervisory Staff (Head Clerks/JAOs, etc.) .. 4 years in all offices subject to rotation among themselves every year of LDCs/UDCs in offices with more than one LDC/UDC)

(Rule 60 (6c) of P&T Manual Volume IV as amended by DG P & T letters no. 69/4/79 SPB dated 12-11-1981 & 16-12-1981)

From the perusal of the extracted paragraph, it is clear that the tenure is four years. However instructions (5) produced below D.G. P&T letters no. 69/4/79 SPB dated Nov' 12, 1981 and Dec' 16, 1981 reads as under:

"The effort should be not to disturb officials unless in the opinion of the controlling authorities their transfer is necessary in the interest of services and on the other hand, not to hesitate to transfer those whose transfer is necessary in the Departmental interest. It is hoped therefore that the number of officials that may have to be transferred will be a small section at every statute"

It is thus clear that there as tenure of the applicant is four years but the transfer before the expiry of the tenure period can be made in the interest of service and departmental interest. The allegation in respect of malafides and violation of constitutional rights of the applicant are in general terms and no evidence has been produced in support thereof. There is nothing on record to prove that there has been colourable exercise of power.

5. Another important contention raised by the Counsel for the applicant is that the order is punitive and in nature of a stigma. This argument is not borne out on the perusal of the transfer order dated May 12 1986 Annexure 'A'. The order refers to five transfers at their own request and no reason has been accorded for the transfer of the applicant at s. no. 6 of the impugned order. In the absence of any reason in the impugned order no stigma can be said to have been cast; in general the order very clearly states that the transfer ^{has} been made in the interest of service. Though it is clear that the transfer has been made without allowing the applicant to complete four years yet it has been made within the guide lines laid by the Department and in absence of any evidence of malafides, the application is found without merit and is liable to be rejected. The application is accordingly rejected. The parties are left to bear their own costs.

Announced in the open Court.

19/7/86
(Birbalnath)
A.M.

Supre
(P.M. Joshi)
J.M.

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