

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 259 of 1986
T.A. No.

DATE OF DECISION 21.10.86

BHIKHA DAYA

Petitioner

SHRI M. C. KAPADIA

Advocate for the Petitioner(s)

Versus

DIV. COMM. SUPDT. & ORS.

Respondent

SHRI M. N. UDANI

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.

Per: Hon'ble Shri P. H. Trivedi, Vice-Chairman

JUDGMENT

The applicant, Bhikha Daya, is a safaiwala serving the respondents for the last 30 years as a Class IV employee, and since last 13 years he is at Wankaner. His wife, Mani Nanji, is also a safaiwala working at Wankaner. They have two children. They belong to Scheduled Caste. The applicant was issued a letter of warning without any inquiry and evidence on account of some allegations regarding his misbehaviour. The applicant was transferred, according to him, on a malafide exercise of power, to Hapa. He seeks to impugne this order on the ground of its being passed arbitrarily without basis due to malafide and in contravention of the Government policy to keep the husband and wife together at the same place as far as possible. In reply, the respondent has contended that the applicant wrongly considers that his duty is only at the station, and he is bound to work wherever he is asked to, and that he has been earlier warned of his bad behaviour. As the order is a simple order of transfer and not by way of punishment, the applicant has no option, except complying with it. The policy of keeping the husband and wife together is not by way of mandatory instructions, but only for accomodating them, as far as possible, and there is no rule prohibiting transfer, nor is there any rule that there is "first come, first go" in matters of transfer.

2. The learned advocate for the respondent has argued that in matters of administration and discipline, the authorities should be left free to make necessary

orders and as far as such orders are within the competence of the authorities passing them and no malafide or arbitrary exercise of powers is involved, the Tribunal should not interfere with them. The learned advocate for the applicant, has stated that the applicant has displeased the functionaries of the respondent, for reasons extraneous to the scope of his duties and they are out to teach him a lesson by causing the greatest dislocation to his family life and his household economy by separating him from his wife and children.

3. We have thought it futile to go into the question of malafide as such. There are many cases in which it has been observed by Courts that malafide is easy to allege, but difficult to prove. There is also no doubt that the circumstances giving rise to such grievances, are likely to be a mixed bundle in which neither party is likely to be entirely in the right. The competence of the authorities to transfer the applicant is not in doubt, but sufficient weight does not seem to have been given to the fact that the applicant is after all a very low paid employee, belonging to the scheduled caste, and if separated from his family, he is likely to find that an untolerable hardship. It is true that the policy of keeping husband and wife together cannot be regarded as mandatory in all circumstances, but on the level of the safaiwala, there seems to be no great difficulty involved, for a large organisation like the Railways, to keep them together at a single station. If the transfer is not for causing hardship and is not by way of

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punishment, it is not easy to understand why the applicant need go to another station, which is as far as Hapa in this case. We are satisfied, therefore, that in this transfer, the hands of the authorities are not entirely clean and we would invite attention of the senior officers of the respondent's organisation, to examine whether in such a case, arbitrary use of power is not clearly being made and to take steps against the officers who might have been guilty of them, after a full inquiry. We find that the exercise of the power of transfer in this case, if not vitiated by malafide, is not free from being arbitrary. The ~~aims~~^{ends} of justice would therefore, be adequately served, if we quash and set aside the orders of transfer and direct that the applicant be retained at Wankaner, or if his transfer is found to be unavoidably necessary, he and his wife are accommodated in a station which is near Wankaner, and that in no case should the applicant be transferred, so as to be separated from his wife, who is also a safaiwala in the respondent's organisation. The application is allowed. No order as to costs.

Pheng
(P. H. TRIVEDI)
Vice Chairman

Jing
(P. M. JOSHI)
Judicial Member