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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 404 1986
T.A. No.

DATE OF DECISION 1.12.'86

SHRI N.D. VASAVA Petitioner

SHRI K.S. JHAVERI Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent

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

JUDGMENT

Shri N.D. Vasava, Station Supdt., Anand, was transferred by order dated 1.9.'86 to Dakore. He feels aggrieved by this order because he had forgone promotion by urging reasons of his children's education, house construction, etc. and these reasons being for domestic convenience, under Railway Board's policy circular dated 2.2.'74, he claims that he has a right not to be transferred for one year. This representation dated 21.2.86 was decided upon by orders dated 16.6.'86 debarring the applicant for promotion for one year from 21.2.'86. On receiving the order of transfer dated 1.9.'86, he made a representation dated 12.10.'86 claiming a right not to be transferred and urging that as he belonged to the schedules tribe community, he was given the protection of Railway Board's letters dated 21.12.'85, 14.1.'75 & 8.1.'86, under which he has to be posted even on promotion at his native district or near his native district. He has further urged that although he had not formerly been relieved on 12.11.'86, and his successor viz., Shri Bhatia, according to the impugned transfer orders, proceeded on leave soon after 14.11.'86, when he is supposed to have taken charge of Station Supdt. at Anand. The applicant's plea is that the Tribunal had passed stay orders on 11.11.'86, which have not been carried out and the respondent has committed contempt of the Tribunal.

2. In reply, the respondent has admitted that on account of the applicant's forgoing promotion, he was

debarred for one year from promotion and the Railway Board's instructions regarding not transferring him apply. However, in such cases, it is not contemplated that the applicant should necessarily be retained in the same station. The Railway Board's policy circular referred to, only requires that he should not be transferred away and the learned advocate, Mr. Bhatt, for the respondent urges that this means that he should not be transferred to a station at a great distance away from Anand. The transfer to Dakore in this case cannot be regarded as violative of the policy of the Railway Board because Dakore is only a short distance from Anand. Besides, the learned advocate for the respondent stated that the applicant himself had got fed up of various administrative problems at Anand and in his communication a copy of which has been furnished in the written statement of the respondent and which the applicant has admitted, has stated that the applicant would like that the administration should post him at any station near Anand. This has been accordingly done. The respondent has also pleaded that there has been no violation of the Tribunal's stay order. By the time the stay order was received, the relieving order of the applicant was already effective on 12.11.'86 and the reliever Shri Bhattia, had also joined on 14.11.'86. The learned advocate for the respondent has during the hearing stated that the applicant would be allowed to retain his house at Anand for the academic session so that the hardship regarding the disturbance of his children's education is avoided. Regarding the policy circulars for not transferring officers of SC/ST status, the learned advocate for the respondent has stated that they were in the context of hardship failed on account of renting

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accommodation of such employees, but in this case the Station Supdt. has a Government quarter at Dakore and. he is also allowed to retain his quarter at Anand for the academic session and therefore the impugned orders cannot be challenged on that ground.

3. After hearing the parties and considering their case, we cannot help observing that the applicant has sought to make a mountain out of a molehill. No doubt he claims protection of the Government policy for SC/ST employees, but a transfer from Anand to Dakore is not the type of decision to which the taint of violating Government policy regarding transfer of SC/ST employees can be said to attach. At Dakore, a Government quarter is available for a Station Supdt. and has been promised to the applicant, and at Anand, the learned advocate for the respondent has stated that his quarter would be allowed to be retained by the applicant for the academic session. This is adequate anchorage of any hardship faced by the applicant regarding his children's education or of any inconvenience faced by him in taking over his new charge. The applicant has made too much of the technicalities attaching to the relieving of the charge at Anand. The fact of the matter is that it is the Railway administration as employer which has to decide as in what manner the charge should be transferred and the respondent's action and statement are clear enough that the applicant has been treated as relieved on 12.11.'86 and the reliever has joined on 14.11.'86. The applicant cannot force himself on the employer at a particular station by merely delaying or frustrating the formalities for handing over the charge and taking protection under the cover of such formalities in assuming the position that he continued to be in charge at Anand. To allow this would be to allow

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not only indiscipline but dislocation of administration.

4. The only substantial issue in this case is whether by forgoing his promotion and by virtue of the letter of the respondent that he is debarred from promotion for one year, the applicant has any kind of claim or right for not being transferred from Anand, until the expiry of the period of one year. The respondent has taken a rather self contradictory stand that the impugned order is of the nature of a request transfer. The learned advocate for the applicant is right in stating that not only this is not so, but it was not intended to be so because the order allows the necessary expenditure for transfer to be charged on the basis of its being done for administrative reasons and has not been treated as a request transfer. We find that this is substantially the position. But the respondent is right, we consider, in taking the plea that the applicant himself having reported the circumstances in which he was finding it difficult to work at Anand, there were sufficient administrative reasons for transferring him from Anand and to that extent the applicant may be said to have sought his transfer although when the respondents issued the transfer order it was for administrative reasons rather than as request transfer. The whole course of circumstances in the case supports this stand. The transfer has been brought about, whether the applicant intended it to be so or not, for administrative reasons. The applicant has been put in a position in which it appears that he may not had had objection to his transfer, if it was to Vidyanagar, but he opposed if it is at Dakore. This plea obviously cannot be sustained. At the same time, if the respondent treated transfer to Dakore as administrative and not re

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transfer, it will not be consistent to hold that the bar against promotion for one year should remain operative. As such, the bar for promotion must terminate on the date of the order of transfer.

5. In the result, the application fails and is rejected. We, however, direct that the respondent should ensure the availability of a quarter for the applicant at Dakore and allow the applicant to retain his quarter at Anand for the academic session for his children's education. The bar against promotion of the applicant be terminated from the date of the impugned order. No order as to costs.

P.H. Trivedi
(P.H. TRIVEDI)
Vice Chairman

P.M. Joshi
(P.M. JOSHI)
Judicial Member

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M.A. No.182/86

CORAM: Hon'ble Mr. P.H.Trivedi : Vice Chairman.
Hon'ble Mr. P.M. Joshi : Judicial Member.

25/11/1986

Heard learned advocates Mr.K.S.Jhaveri and Mr.R.P.Bhatt for the applicant and respondent respectively on the alleged contempt of the order of the staying of the transfer dated 11th November'86. Mr.Jhaveri does not press for any decision on this. The miscellaneous application 182/86 stands disposed of.



(P.H.Trivedi)
Vice Chairman.



(P.M.Joshi)
Judicial Member.

*TR/er.