

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 1986
TA No. 6

DATE OF DECISION 28.8.1986

B.B. Sakarwala Petitioner

J.J. Yajnik Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

J.D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi

The Hon'ble Mr. P.M. Joshi

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.

(7)

JUDGEMENT

The applicant has sought relief from the Tribunal under Section 19 of Administrative Tribunal Act, 1985, against the impugned order of his transfer from Ahmedabad to Gandhidham. The petitioner was earlier transferred from Ahmedabad to Bombay by order dated 23.6.84. Against this order he filed a Special Civil Application before the High Court of Gujarat and obtained an order to the effect that if within 6 months, thereof, the petitioner is not provided with accommodation at Bombay, it will be open to him to request the authorities to re-transfer him to a suitable place in Gujarat and if he does so, the respondent, were directed by the High Court to consider such a request. It is admitted by the respondents that no accommodation at Bombay could be provided to him and he was transferred to Gandhidham. The applicant has moved to Gandhidham but he has not been provided with any accommodation there also. The applicant has pleaded that there is not enough work at Gandhidham and that a post does not exist against which he can be appointed. The applicant has further pleaded that his wife works in Ahmedabad and according to Government's policy of posting the husband and wife together, he has a claim to be retained at Ahmedabad. The learned advocate for the respondents had been asked to ascertain whether the scope for retaining the applicant against a suitable post in Ahmedabad had been examined, and it has been stated that this ^{posting} has not been possible. The applicant has alleged malafide and conspiracy to harass him, but he has not shown any convincing ground on which he bases his allegations. It is true that

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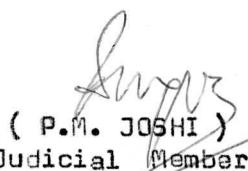
the Government policy is to keep husband and wife together, as far as it is feasible, but as the applicant and his wife are serving in different organisations, the transfer of the applicant at Ahmedabad cannot be regarded, by itself, to be violative of Government policy. The department, in which the applicant is serving, has no other office in Gujarat except at Ahmedabad and Gandhidham. In these circumstances, the transfer of the applicant from Ahmedabad, in which he has been retained for a number of years hitherto, to Gandhidham, cannot be held to be beyond the competence of the authorities. The applicant has relied on the case of State of Madhya Pradesh v/s. Shankarlal and others (1980 I Supreme Court 702) in which it was held that in the case of low paid employees, the powers of transfer should be sparingly exercised and in the case of Dr. N.M. Padhiar v/s. State of Gujarat and Ors. (16 GLT 1968) in which it is observed that transfers which are arbitrarily made, may in some circumstances be regarded as not bonafide and for administrative reasons.

The applicant has been unable to make out any case, that his transfer has been merely for harassment or not based on bona fide reasons of administrative exigency. It is clear that in accordance with the orders of the High Court the department employing the applicant tried to accommodate him in a station in Gujarat, when it was found that accommodation to the applicant at Bombay could not be provided. It is not established that the applicant as of right can claim accommodation from the employer department. As the applicant has been retained at Ahmedabad for quite a long period, he should be prepared to accept a transfer and a posting in Gujarat which itself is a concession given

to him in terms of the orders of the High Court. A request for accomodating him at Ahmedabad on account of the hardship caused to him due to separation from his wife, who is serving as an employee of Government of Gujarat, may be made to departmental authorities concerned, on compassionate grounds, but cannot give rise to an ~~xx~~ enforceable claim for posting him at Ahmedabad or for getting cancellation of his transfer to Gandhidham. The cases cited by the learned advocate for the applicant relate to facts which are material particulars differ from those in this case, ~~xx~~

~~xxxxxx~~ Shanti kumari V/s. Regional Deputy Director (AIR 1981 S.C. 1577) and the case of Kalyanji Khimani V/s. Dist. Panchayat Jamnagar & Ors. (1984 GLH/589) cited by the learned advocate for the respondents Shri J.D. Ajmera clearly lay down that in matters of transfer, unless there are strong grounds proving malafide, the courts should be very reluctant ~~xx~~ to interfere. We accordingly find no merits in the application and dismiss the ~~case~~. We refrain from making any order regarding costs in view of the fact that the applicant has to suffer some hardship by his posting at Gandhidham on account of his not being provided a house there, ~~but~~ we are constrained to observe that this is one of the cases in which the application borders on the frivolous.


(P.H. TRIVEDI)
Vice Chairman


(P.M. JOSHI)
Judicial Member