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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 295 of 1987 ~~1986~~
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DATE OF DECISION 18/09/1987

Umeshchandra Sharma Petitioner

K.G. Vakharia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

B.R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI : VICE CHAIRMAN

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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

J U D G M E N T

OA/295/87

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18/09/1987

Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman

In this case the petitioner challenges the order dated 25th May, 1987 of the respondent NO.2 transferring him from Gandhidham to Marwar Junction on the ground of mala fide and arbitrariness on the part of Shri J.P. Batra who has influenced the authorities to pass the transfer order. The petitioner was earlier transferred as Station Superintendent to Kandla which is at a distance of 14/15 Kms. from Gandhidham. That transfer order was cancelled on the ground that his reliever was not relieved by the Area Superintendent at Gandhidham. Earlier the petitioner had filed a writ petition in the High Court of Gujarat in 1979 challenging his transfer and obtained interim orders against Shri Batra who was then Divisional Operating Supdt., Gandhidham, in which according to him contempt proceedings were filed by him and the General Manager had to tender a written apology. This has caused bitterness in the relations of the petitioner with Shri Batra. At present Mr. Batra is Senior Divisional Operating Supdt., at Ajmer and it is on his recommendation that the petitioner is sought to be transferred from Gandhidham to Marwar Junction. The Petitioner's grouse is that when he was willing to join at Kandla, the orders transferring him there dated 25-3-1987 were cancelled. This cancellation according to him is not in public interest but only to accommodate one Mr. Bhasin. This cannot be regarded either as administrative exigency or to serve public interest. The petitioner has also urged that because he is an active trade union sympathiser the respondent administration is having a grudge against him and is out to harass him. The petitioner does not object to his transfer from Gandhidham as such nor disputes the power, competence or right of the respondent to transfer him but he challenges the impugned transfer order on the ground of mala fide and arbitrariness in the light of his litigation in the High Court and malice on the part of Mr. Batra.

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2. On behalf of the respondent the learned advocate Shri Kyada contended that this is a case of normal transfer. The petitioner's transfer to Kandla could not come up because Mr. Bhasin who was posted there eventually decided to forego his promotion and under the rules applicable in this regard he has a right to do so, if he accepts certain implications and consequences for such refusal to be transferred on promotion. **for** this reason the cancellation of transfer was ordered to accommodate Mr. Bhasin but such accommodation being allowed under the Railway Rules and being in accordance thereof, such cancellation is permissible and in order. The respondent has also disputed the contention of the applicant that he was ready to go to Kandla when he was transferred there because the applicant applied for stay of the transfer dated 5-3-87 and later sought judicial intervention. The applicant in terms of his service conditions being transferable anywhere in the Western Railway cannot pick up a particular station either for being retained there or for being posted there. The respondent has also challenged the contention that the impugned transfer order to Marwar Jn. is mala fide because they have not been ordered by Mr. Batra at all. The respondent has also disputed that the petitioner is being harassed because of being associated with the union activities. The respondent has relied on AIR 1986 SC 1955, GLH 1985 page 372, GLH 1986 page 8, 1981 SC 1577 for establishing that the transfer is an incidence of service and that the courts have no jurisdiction in disputes regarding them and that except in the case of gross abuse of powers and that too on account of mala fide arbitrariness^{or} colourable exercise of power should not be interfered with.

3. During the hearing we have ascertained that the petitioner has been at Gandhidham for a sufficiently long period to be considered for a transfer. The respondent has cited sufficient case law which is well established that in matters of transfer courts should be reluctant to interfere except on ground of gross abuse of power due to mala fide, arbitrariness or colourable exercise **by** the authorities. The impugned orders of transfer are not signed by Mr. Batra and the transfer of the petitioner

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is a part of orders affecting other persons also. There is, therefore, no substance in the charge that Mr. Batra either has acted mala fide or that the impugned orders are caused by arbitrariness on the part of Mr. Batra. The petitioner was earlier transferred to Kandla but that order was cancelled because Mr. Bhasin decided to forego his promotion and the plea of the respondent in this regard is quite satisfactory to show that the cancellation orders were the result of administrative exigencies. In fact the respondents have a proper policy for rotational transfers and circular dated 12-10-1984 clarifies the position regarding the need for such periodic transfers. This, therefore, is clear that the respondents have not only acted without malice or arbitrariness but have sought to implement a policy regarding periodical changes which has been laid down not to affect an individual officer like the petitioner but governs the whole class of such railway servants.

4. We find that the petition has no merit and reject it. There shall be no orders as to cost.

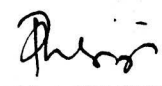

(P.H. TRIVEDI)
VICE CHAIRMAN

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CORAM : HON'BLE MR. P.H. TRIVEDI : VICE CHAIRMAN

18/09/1987

Heard learned advocate Mr. K.G.Vakharia who requests that the operation of the judgment pronounced today in this case be stayed pending applicant appealing against the judgment. There is no merit in the request which is rejected.


(P.H. TRIVEDI)
VICE CHAIRMAN

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Caveat Appln. No.20/87

in

O.A./295/87

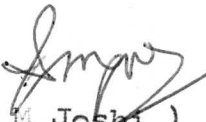
Coram : Hon'ble Mr P Srinivasan .. Administrative Member
Hon'ble Mr P M Joshi .. Judicial Member

26/6/1987

Neither applicant Mr Ramkaran Bale nor his advocate Mr PJ Bhatt were present.

In view of the order passed today in OA/295/87 and also for the reasons stated therein, we reject this caveat application.


(P Srinivasan)
Administrative Member


(P M Joshi)
Judicial Member