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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 297 of 1987
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DATE OF DECISION 14-04-1988

Shri Laxmanbhai M. Raval Petitioner

Shri R. V. Sampat Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent^s

Shri J. D. Ajmera 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.

J U D G M E N T

OA/297/87

14-04-1988

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

The petitioner challenges the order dated 11-6-1986 of Director of Tele Communications whereby he is reverted to the substantive cadre of Telephone Operator (TOA) and transferred to Amreli Telecom Division. The petitioner's challenge is on account of the alleged mala fide and arbitrariness in passing this order at the instance of Mr. M. K. Sinha, Telecom District Engineer, Bhuj. He has also controverted the regularity of the order because he was not given any chance to show cause against it. He has also alleged that persons junior to him are being retained in the promotion post when he is being reverted. The petitioner's version is that he had made some complaints against ~~Shri~~ M. K. Sinha, Telecom District Engineer, Bhuj as the result of which there was vigilance enquiry made against him. As a result in victimising the petitioner, a Memo was issued dated 20-5-1986 alongwith a complaint dated 10-5-1986. The petitioner was on leave from 21-5-1986 to 30-5-1986 but, he was reverted from the officiating post of Section Supervisor to TOA and transferred from Bhuj, where his wife is working in another office to Amreli division. This transfer has caused the petitioner financial loss due to reversion and because he is compelled to maintain another establishment and also because he has to be away from his wife. According to the petitioner, the memorandum which he was expected to reply to, contained allegations about complaints which were not genuine, and were false and framed up in order to find an excuse to dislodge the petitioner from Bhuj office. The ground of there being any administrative reasons cannot be genuine because the petitioner was promoted to the post of Section Supervisor only a few months before the impugned order and that post is still vacant. The petitioner claims that he has officiated in the post of Section Supervisor for more than four years. If the transfer was at all considered necessary, there were posts available in Bhuj division itself but, the petitioner was transferred to Amreli Division.

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2. In reply the respondents have stated that the petitioner was allowed time to reply to the memo dated 20-5-1986, a copy of which is at Annexure 'A' to the reply. This memo was served on the petitioner before he went on leave. A report on the complaint was submitted by M.K.Sinha by his memo dated 10-6-1986. The respondent's stand is that the reply was to be furnished by 20-5-1986 but Annexure 'B' to the reply does not state any time limit as referred to by the respondent's reply. The respondent's stand is that the applicant as ad hoc employee, is not entitled to be continued in the promotion post and he is liable to be reverted in his original post and on reversion he has to go to Amreli division to which he belongs. It is contended that the applicant's behavior and work were not found satisfactory. The respondents have denied that the petitioner was serving in the promotion post for four to five years and have stated that the order dated 27-2-1985 shows that he had worked only for $1\frac{1}{2}$ year and that the applicant himself has admitted that he was working on officiating basis. The respondent has also denied that his reversion has been ordered as a measure of penalty without any justifiable reason and that he was paid only Rs.35/- as Supervisory Allowance and so the financial loss to him is not as much as he has made out. The respondents say that the petitioner also is not entitled to continue in his officiating promotion until a regular employee is available. Regarding mala fide, the respondent denies it and alleges that, according to the respondents that is an after-thought the petitioner was in fact proceeded against by way of administrative proceedings and the punishment of stoppage of increment for two years was reduced to that of Censure or warning by the Telecom District Engineer by his order dated 22-10-1986 annexed at Annexure G & H to the reply. A sum of Rs.748-90p was recovered from that which was claimed as medical dues which were not permissible. Rule 37 of P & T Manual annexed at K, according to the reply, permits the transfer from one division to another.

3. The petitioner has relied upon 1984 GLH (UJ) 92, 1984 GLH 181

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for contending that before passing the impugned order, which affects the rights of the petitioner, he should have been allowed an opportunity to show cause. He also relies upon 1983 GLH 509 to show that transfer orders can be punitive if it affects the material position of the petitioner and on 1979(1) SLR 309 which lays down that transfer order which are mala fide and passed more as punishment than for administrative reason are illegal.

4. After perusing the record and hearing the learned advocates, we cannot accept the plea of the respondents that the reversion and the transfer orders are innocent and only motivated for reasons of administrative exigencies. The respondents have asked the petitioner by issuing a memo and annexing a complaint to explain his case but, reverted and transferred him before considering his representation. The reversion and the transfer have caused him material loss. It is not important to decide how much material loss has been caused because even according to the respondents a special allowance of Rs.35/- would not be available to the petitioner. It is also not important how long the petitioner officiated in the promotion post. The petitioner was brought from Amreli Division to Bhuj Division and was allowed the promotion post. It is true that his promotion to the post was of an ad hoc nature and it is also true that the petitioner cannot have a right to continue in the ad-hoc post. If the petitioner's reversion and transfer had been brought about for genuine administrative reasons, the petitioner cannot be upheld in his contention. But, in this case there is no defence that the post was discontinued or was not found necessary or that more senior person or persons who were regularly to be appointed were available. In the circumstances the transfer could be upheld even if it occasions material injury to the petitioner. The personal circumstances of the petitioner exist in which his wife is serving at Bhuj would cause him material injury, although the petitioner cannot have an absolute right to continue at Bhuj merely because his wife is serving at Bhuj. In order to cause reversion involving such material injury without the attendant circumstances in which administrative exigency had clearly arisen for causing it, the petitioner

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should have been asked to show cause why he should not be reverted. This was necessary because it was not an administrative exigency but, an adverse conclusion regarding the petitioner regarding his conduct or his work which brought ^{about} his reversion. It is, therefore, clearly of the nature of punishment. In such a case the petitioner should have been allowed an opportunity to present his case. It is true that the petitioner's conduct regarding making certain claim regarding medical allowance was enquired into. But no notice has been issued to the petitioner on the eve of his reversion asking him to explain the reasons why his continuing at Bhuj in the promotion post was not considered desirable so as to enable him to explain his side of the case.

5. The plea of the petitioner is that a reference of the grievance of two lady staff members referred to in the complaint were not at all serving in Bhuj since last 5 years and neither Vishwanathan nor Mr. Mishra were serving at the relevant time under T.D.E. Bhuj and none of them had signed it, although it concerned them. It is the version of the petitioner that he had made a complaint regarding the acts of corruptions on the part of Mr. Sinha, Respondent No. 3 to the higher authorities and Vigilance authority had commenced an enquiry thereon and having come to know about this Mr. Sinha in order to victimise him, he had concocted a false joint complaint. Of course these allegations are denied by the Respondents. However, the fact of the matter is that Mr. Sinha admittedly sent a report (Annexure 'C') dated 10-6-1986 to the Director Telecom Rajkot wherein he has referred several acts ^{of} serious misconduct on the part of the petitioner which runs into 6 pages and in the concluding portion he has rendered his opinion that the petitioner's conduct is unbecoming of a Government servant in the following words :

"Thus looking to the above facts Shri L.M. Raval is not maintaining office Decorum and behaving in a manner which is unbecoming of a Govt. servant. I request you to refer to my letter of even No. dated 2-5-85 and to transfer him to any of the Division under your Control under para 37 of P & T Man. Vol. IV at an early date as it is feared that if no action is taken to shift him, Shri Chavda may complain to the S/C, S/T, cell of the Directorate, o/o D.G.T. New Delhi or to the leading politicians belonging to the S.C./S.T. as he felt humiliated by the behaviour of Shri L.M. Raval."

6. It is pertinent to note that the petitioner had received a Memo No.Q-1149/II/60 dated 20-5-86 from Mr.Sinha only a day before, he admittedly proceeded on leave. Naturally therefore, the petitioner after resuming his duty at Amreli he submitted his explanation vide his letter dated 15-7-1986. In the meantime, the petitioner was already reverted on the basis of the two reports made by Mr.Sinha without waiting for the explanation of the petitioner. Evidently, therefore, Mr.O.D.Tyagi, Director Telecom Rajkot clearly acted on the report of alleged misconduct submitted by Mr.Sinha. The impugned order of reversion was thus not an order of reversion simpliciter, but amounted to a reduction in rank or punishment as it was directly and proximately founded on the misbehaviour and misconduct stated in the complaint dated 10-5-1986 and the reports made by Mr.Sinha.

7. In Jagdish Prasad Shastri V/s. State of U.P. (A.I.R. 1971 S.C. 1224), it has been held by the Supreme Court that the mere form of the order reverting an officer to his substantive post even though he is appointed temporarily or in an officiating capacity to a superior post is not decisive. If the order is made for a collateral purpose or if in making the order, the officer is actuated by malice, the order is liable to be set aside. Again if the order involves a penalty, even if on the face of it the order does not bear any such impress, the officer prejudiced by the making of that order is entitled to prove that he has been denied the protection of the guarantee under Article 311 of the Constitution or of the protection of the rules governing his appointment. It is true an order of reversion made due to exigencies of the service, on consequence of which an officer who was temporarily appointed or appointed in an officiating vacancy, may not be challenged. But the order passed maliciously or on collateral consideration or which involves penal consequences, or denied to the civil servant the guarantee of the Constitution or of the rules governing his employment, is always open to challenge by appropriate proceedings. Bearing in mind all the facts and circumstances

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of this case we have no hesitation in holding that the impugned order of reversion is made for a collateral purpose and was also actuated by malice and the same is liable to be set aside.

8. In this view of the matter, we hereby quash the impugned order and set aside the same. The Respondents are hereby directed to reinstate the petitioner to his original post with all consequential benefits. It is further directed that the Respondents shall workout the difference of pay of the relevant period and pay the same within three months from today. The respondent authorities are at liberty to transfer or revert the petitioner by fresh lawful orders in circumstances justifying it without the taint of malice or arbitrariness.

There shall, however, be no order as to costs.

P. H. Trivedi
(P. H. TRIVEDI)
VICE CHAIRMAN

P. M. Joshi
(P. M. JOSHI)
JUDICIAL MEMBER