

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

09/10/1987

Heard the learned advocate Mr Kodekar for the petitioner and Mr Ajmera for the respondents. The petitioner's case is that he is governed by the terms and conditions of his appointment which are stated in Annexure 'A' by orders dated 5/8/1985. In this orders the petitioner's appointment is only in Ahmedabad Division and following relevant paragraph limits his liability to transfer :-

- "1) The appointment carries with it the liabilities to serve in any part of Division of recruitment. The appointees will be liable for field service within India in time of war and National Emergency. The appointees shall also liable to serve in any part of India in special circumstances.
- 2) The appointment of the above candidates is purely temporary and will be governed by the CCS (TS) Rules, 1965. The appointment of the above candidates can be terminated at any time with one month's Notice given by the appointing authority without assigning any reason. The appointing authority however reserves the right of terminating the services of appointees forthwith or before the expiry of stipulated period of notice by making payment to them of sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof as the case may be."

It has been admitted that the impugned transfer orders purport to transfer the petitioner from outside Ahmedabad Division to Surat which is in Baroda Division. The respondents' contention is that in terms of Rule 37 the respondent has the right to transfer the petitioner even outside the division in which he has been appointed. Further, in F.R.15 the President has the

This para moved in R

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power to transfer a Government servant in certain circumstances.

2. After hearing the learned advocates we find that the appointment letter dated 5/8/1985 recognises the circumstance in which the petitioner could be transferred outside the division. This circumstance render him liable for field service within India in time of War and National Emergency and, further, it is laid down that the appointee is liable to serve in any part of India in special circumstances. The respondent has stated that these terms and conditions do not limit the operation of Rule 37 which is reproduced below :-

"All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen & village postmen and Class IV servants should not except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22."

However, even this Rule 37 states that "unless it is expressly ordered otherwise for any particular class or classes" the liability of officials of the division in any part of India ^{to serve in} ~~can be arise~~. In this case this prescriptive of the letter of appointment ~~does that is it~~ expressly ordered otherwise. Further, the same rule also ~~raised out~~ that this liability to serve in any part of India ^{is} ~~governs~~ the policy regarding transfer orders subject to the following :

Can be
invoked only
by expressly
so ordering

cb

"The transfer should not however be ordered ^{except when} ~~transferable~~ ^{advisable} in the interest of the public service"

In this case the respondents have found some post surplus and in order to accommodate the petitioner they have transferred him from one division to another. This, however, does not satisfy the criterion laid down either in terms of the appointment letter or in terms of Rule 37. The petitioner's willingness to be transferred out of the division in order to accommodate him has not been ascertained and it would appear as if a ^{placing} ~~placing~~ is sought to be imposed upon him. The President's powers in F.R. 15 also do not come into the picture because the powers to transfer the Government servant from one post to another are further limited by the proviso as follows :-

"provided that except -

- 1) On account of inefficiency or misbehaviour or
- 2) on his written request

3. In short the position is that the rights of the petitioner are governed by terms and conditions of his appointment letter read with Rule 37. In the circumstances of the case his claim of not being liable to transfer outside Ahmedabad division deserves to be ^{up} held and his petition has merit. The respondent will, ^{be} of course, free to pass such orders as he is competent to ⁱⁿ the terms and conditions of the letter of appointment regarding ^{confirming} retaining the service of the petitioner giving reasons thereof if required under the Rules.

(Continuing)

4. With these observations, the impugned order is quashed and set aside.

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

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Contempt Petition Stamp No.28 of 1987
in


QA/326/87

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05-02-1988

Seen application dated 11-1-1988 under which it is stated that the respondent authorities have complied with the orders of the Hon'ble Tribunal and, therefore, he requests for permission to withdraw this Contempt Petition, allowed.

The Contempt Petition ^{is} ~~is~~, therefore, ^{stand} withdrawn accordingly and disposed of.


(P H TRIVEDI)
VICE CHAIRMAN

Shah/-