

(11)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 385 of 1987  
~~XXXXXX~~

DATE OF DECISION 27-11-1987

Shri Abdulrashid S. Pathan Petitioner

Shri K. I. Patel Advocate for the Petitioner(s)

Versus

Sr.Divisional Personnel Officer, Respondent  
Baroda Division & Ors.

Shri N. S. Shevde 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.

(12)

## JUDGMENT

OA/385/87

27/11/1987

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

The petitioner has challenged the orders of his transfer dated 17-7-1987 transferring him from Bharuch to Dabhoi. He does not dispute that his is a transferable post. However, normally teachers are not transferred in the service <sup>which</sup> to/ he belongs. The petitioner himself had joined at Dahod and was transferred to Nandanbar from where he was transferred to Bharuch and he has been serving there since 8/9/1979. The petitioner has challenged his transfer as having been brought about to accommodate one Mrs. P.N.Jadav who has been transferred to Bharuch. The petitioner also contends that the transfer has been brought about by the machinations of Idodara who has been at Bharuch from 23/5/1959. The petitioner contends that if a transfer is to be made there are others who have been at Bharuch for periods much longer than in the case of the petitioner as detailed by him in para 5 of his petition. The petitioner contends that his transfer is brought about for mala fide reasons and was planned as a conspiracy in support of which allegations he has filed a copy of a letter dated 1/7/1982. Learned advocate Mr.Patel has ably argued that in the nature of the case mala fide can only be shown by indirect evidence and the fact that the petitioner is transferred when others who have been longer at Bharuch are retained there and that he is sought to be transferred to accommodate Mrs.Jadav and that this was done after a long period of preparation by interested parties should be sufficient to satisfy that the transfer is mala fide.

2. In reply the respondent has stated that the petitioner has already been retained at Bharuch for a considerable period from

1979 and that Mrs.Jadav reported for duty at Bharuch but the petitioner deliberately left the school by handing over the charge. The petitioner does not suffer by his transfer in his pay and it cannot be said that it is a punishment. The petitioner has relied upon AIR 1986 SC 1955 and this Tribunal's Judgment OA/404/86, 31/87 and 163/87 while the respondent has relied on AIR 1986 SC 1955.

3. It is not disputed that the transfer is an incident of service that in fact the petitioner himself is transferred twice and that Mrs.Jadav has also been transferred from Dabhoi to Bharuch. The only question that remains is whether the transfer is mala fide or arbitrary or otherwise vitiated. The petitioner has done more than seven years of service in Bharuch. Whether he should be transferred or others should have been transferred is a matter of administrative judgment. There is no policy that there should be no transfer of teachers or that the transfer should be on the basis of persons who have done longest period in a station being disturbed first. The petitioner has sought to make out the case regarding a deeply laid conspiracy by a copy of the letter to Mr.Idodara. This letter purports to be from Mr.Gohil to Mr.Idodra but it is dated 1/7/1982. It is too much to believe that a conspiracy so long in incubation has borne results only now. It might be regarded as no more than office gossip and tittle tattle. The petitioner has some grounds for urging compassionate treatment for accommodating him at Bharuch because of his family members' illness. This is best done by the administrative authorities because we do not know whether the substitutes who might be transferred would not have difficulties also.

4. We, however, observe that in the category of teachers, transfer should be resorted to rarely and special consideration should be shown by the respondent authorities that this measure is not

abused for settling personal scores. The petitioner, therefore, should be allowed to file a representation before the head of the department and such representation should be looked into for ensuring that the petitioner is not dealt with un-sympathetically although the impugned orders of transfer might have been within the bounds of competence and legality.

5. Subject to the above observation we find no merit in the petition and reject it. There shall be no order as to costs.

  
( P H TRIVEDI )  
VICE CHAIRMAN

shah/-

Contempt Application No.38/88

(15)

in

OA/385/87

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

21/10/1988

Heard Mr.M.R.Anand and Mr.N.S.Shevde learned advocates for the applicant and the respondents. Learned advocate for the respondent will report how the period of absence will be treated and whether it is counted for pensionary benefits. The case be posted for final hearing on 25.11.1988.

*Phew*  
(P.H. Trivedi)  
Vice Chairman

a.a.bhatt

Cont. Appl. No. 38/88

IN

O.A. No. 385/87

(16)

CORAM : Hon'ble Mr. P.H. Trivedi, Vice Chairman.

13-12-1988

Mr. M.R. Anand, the learned Advocate for the petitioner not present. Mr. N.S. Shevde, the learned Advocate for the respondents requested for time. The case be posted for final hearing on 27.1.1989.

  
(P.H. Trivedi)  
Vice Chairman