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OA/395/87

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

09/10/1987

Mr J D Ajmera learned advocate for the applicant requests time for filing re-joinder to which Mr B R Kyada for the respondents has no objection. Allowed. Re-joinder be filed before 6th November, 1987. The case be posted on 20th November, 1987 for final hearing.

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(P H TRIVEDI)
VICE CHAIRMAN

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27/11/1987

Heard learned advocates Mr J D Ajmera and Mr B R Kyada for the applicant and the respondents respectively. The petitioner has been transferred from Udaipur to Gandhidham on 13/7/1987 and after he has taken charge there on 19/7/1987 he has been again retransferred from Gandhidham to Udaipur on 24/7/1987. This transfer has been made at his own request. However, retransfer has been ordered because ST/SC candidate Mr. Asharfilal has been promoted to the grade of Rs. 1350-2200 and as he is from Gandhidham, in terms of the policy dated 30/6/1976 at Annexure 'R3' it is sought to retain him at Gandhidham. Attempt has been made to get Shri Jagdishprasad Sharma but he has refused to be transferred to Udaipur and for this reason according to the respondents, there is no alternative to the transfer of the petitioner. The stand of the respondents shows the difficulties in which the respondent authorities have got into but these difficulties have been largely of their own creation. It was obviously possible for them to take into account the impending promotion of Asharfilal and in the light thereof not to transfer the petitioner to Gandhidham. The petitioner would not have to be disturbed at all since there is no obligation on the respondent to transfer him to Gandhidham. However, having done so, we have to examine whether the difficulties to retain the petitioner at Gandhidham are insuperable. A reference to the instructions dated 30/6/1976 has been made. They state that the SC/ST employees should not be transferred to the maximum extent possible and that this has been interpreted to mean that in all cases of transfer, reversion, promotion normally rules will not be implemented to avoid the transfer of the SC/ST candidates to the maximum extent possible. However, it is clear that there is no absolute bar either stated or implied

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regarding transfer of SC/ST candidates. As the person concerned Ashrafilal has to be considered for transfer on promotion to Udaipur either the respondent should find another solution by ascertaining whether it is possible for another person to go to Udaipur or that failing they could transfer Ashrafilal to Udaipur. There is no reason why having transferred the petitioner he need be disturbed before some time elapses. There is no absolute bar which I can find in the instructions regarding policy of transfer of SC/ST candidates in the letter dated 29/11/1977. In view of the above observations, there is sufficient reason to intervene and the application is found to have merit and is allowed. The department is at liberty to arrange future transfer orders in respect of the petitioner in due course.

Phirji
(P H TRIVEDI)
VICE CHAIRMAN

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