

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(S)

O.A. No. 484 of 1987
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DATE OF DECISION 06-11-1987

Shri P. K. Puri _____ Petitioner

Shri Girish Patel _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondent

Shri J. D. Ajmera _____ 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.

JUDGMENT

OA/484/87

06/11/1987

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

The petitioner joined as Lower Division Clerk on 20-12-1950 in the Canteen Stores Department of the respondent. He earned a number of promotions eventually to the post of Superintendent. He was included in the select list for the post of Assistant Manager by the Departmental Promotion Committee in its meeting on 9-12-1982. He was given officiating promotion on 18-7-1983 as Assistant Manager and was transferred to Jaipur where he took charge on 8-8-1983. He represented that he should be promoted on a regular basis on expiry of his officiating promotion and he apprehended that he would be reverted. He therefore, approached this Tribunal for directions to the respondent General Manager not to terminate his appointment. This Tribunal ordered that he be not reverted until further orders as a measure of interim relief. His adhoc promotion as Assistant Manager was cancelled by an order dated 14-2-1987. As a result of a contempt petition he was continued as Assistant Manager. However, he was sought to be transferred from Ahmedabad to Bombay as Superintendent. He applied for restraining the respondents from such a transfer and on his being successful in it, the petitioner is now sought to be transferred ad hoc to Narangi in Assam which is very far from Ahmedabad. In order to contrive a justification for his transfer H.N.Bhan who was working as Store Keeper at Udhampur in J & K is transferred at Ahmedabad on ad hoc basis on 20-3-1987 but, the retention of the applicant under the Tribunal's order frustrated this design. It is now sought by the respondent to transfer the applicant to Narangi in order to accommodate Shri Bhan who has been promoted merely to harass the applicant. The petitioner therefore, has challenged the order dated September 22, 1987 in which the petitioner at No.10 is transferred as Ad hoc Assistant Manager from Ahmedabad to Narangi on the ground of the order being arbitrary and mala fide and in violation of the transfer policy of the Government in which the applicant is sought to be disturbed before the due period. The respondent has resisted these contentions

and pleaded that the orders regarding the applicant's transfer to Bombay and to Narangi are in public interest due to administrative exigency and not mala fide or improper in any way. The impugned transfer order shows on the very face of it that the petitioner is a part of chain of transfers and not only the petitioner but several other officers have been also transferred on ad hoc or otherwise basis. In fact, the petitioner's transfer to Narangi is caused because of another officer there to be posted elsewhere. So far as Shri Bhan is concerned he has been given ad hoc promotion but there is no vacancy in J & K and he was brought to Ahmedabad only to relieve the petitioner. It is unavoidable that one officer should go to Narangi and it is a matter of the respondent's judgment who should go to Narangi, whether Shri Bhan or the petitioner or any other officer. The respondents have pleaded that being part of the chain of transfer the question of mala fide cannot be urged by the petitioner. The petitioner's transfer to Ahmedabad has admittedly been effective from 13-5-1987 but, there is no vested right to keep the petitioner at Ahmedabad for a minimum period of 3 years and there are a number of cases where persons have been transferred before the period of 3 years. The ad hoc promotions given to the petitioner are for fixed short periods and do not create any right in continuing in the promotion post. Such persons have to accept transfers if they want to continue in promotion posts. Mr Bhan was not brought to Ahmedabad only to harass the petitioner. The petitioner on the other hand has stated that he has been given only short periods of ad hoc promotion as Assistant Manager and this itself creates uncertainty and insecurity and subjects him to only arbitrary action of the respondent.

2. The short point to be decided in this case is whether the transfer of the petitioner to Narangi as Assistant Manager is mala fide or contrary to Government's policy in any way. It is well established that in matters of transfers the competent authorities are fully empowered to exercise their judgment and the courts should not interfere with their orders unless mala fide, arbitrariness or any inconsistency with policy instructions is satisfactorily made out.

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3. The petitioner has contended that he has already been selected by the D.P.C. (Departmental Promotion Committee) while Mr.Bhan is yet not selected by the D.P.C. This contention does not add to the merits of petitioner's case because the appointment and transfer impugned are only ad hoc. During the hearing we asked the learned advocate for the respondent why his purpose cannot be served by the transfer of Shri Bhan to Narangi. If it was intended that one of them should be disturbed, in such a case Shri Bhan who was to receive his first ad hoc promotion may have to be considered as against the petitioner who has served only for a few months at Ahmedabad. We are not satisfied that it is the respondent's judgment in such a case which should be the last word on the subject. The question of mala fide, arbitrariness and inconsistency with the policy of transfer has been raised. There is no vested right to continue in a station for 3 years but to be disturbed before the due period must require proof for administrative exigency. In this case there is no reason why the petitioner has to be transferred from Ahmedabad when he has only completed a few months as Assistant Manager there. We do not find that there is any mala fide but we are unable to state that the action is totally free from the taint of arbitrariness. The allegation of arbitrariness could be ^{repelled} ~~repeated~~ but this has not been done to our satisfaction by the respondent especially, when they had on hand Shri Bhan at Ahmedabad who could also be presented with the choice of ad hoc promotion provided he goes to Narangi or ^P ~~accepts~~ reversion to his substantive post in J & K. We do not state that Shri Bhan alone has to be transferred to Narangi or elsewhere or that the petitioner cannot in any circumstance be transferred to Narangi. However, to repel the allegation of arbitrariness the mere fact that there is a chain of transfer is not sufficient in the circumstances of this case.

5. In the above back-ground we find that the petition has merit and

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direct that the petitioner be allowed his normal period of three years' posting at Ahmedabad. The respondents can transfer him only on clear grounds of administrative exigency which, must be free from arbitrariness and for this it should be shown that the petitioner has not been discriminated against. The petition therefore, has merit. There shall be no order as to costs.

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