

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 538 of 1987

DATE OF DECISION 24-11-1988

Shri Chimanlal G. Patel

Petitioner

S/Shri B. B. Ozq & K.K.Shah 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?

(a)

JUDGMENT

OA/538/87

24-11-1988

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

In this case the applicant has challenged the order of transfer dated 29-7-1987 by Respondent No.2 Sr. Supdt. of Post Offices at the instance of the respondent No.1 Union of India, Post Master General, Gujarat Circle on the ground that he is Class-IV servant and although transferable, in accordance with the policy governing low paid Govt. servants of Class-IV he should not be transferred. He alleges in his representation dated 14-8-1987 which he has annexed that he has some information against the Sr. Supdt. of Post Offices, in connection with some inquiry against Shri G.A. Trivedi, the then S.S.P. He states that the transfer order is punitive in nature and he has cited certain judgments viz. Velayudhan Vs. Director of Public Instructions, Trivendrum of the Kerala High Court, Mishra & Ors. Vs. B.L. Rastogi & Ors. of the Allahabad High Court and Automotive Manufacturers Ltd. Vs. Nanalal Vakharia of the Gujarat High Court for supporting his plea that the discretion of transfer should be exercised by the authority competent to transfer and not at the instance of any higher authority which should not interfere with the competent authority; that in such transfers 'Last come first go' is a principle which should be followed and that low paid staff should not be transferred out side the city in which they secure the employment. Against this the respondents have urged that the petitioner has been transferred from Bulsar to

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Udavada a distance of hardly 20 Kms; that the Tribunal has no jurisdiction to interfere in transfer orders that in Shantikumari's case 1981 S.C. 1577, the Supreme Court has ruled that in matters of transfer judicial interference is not warranted.

2. The law on transfer matters regarding the scope for judicial interference is well established. When Government servants are admittedly transferable, the question of transfer can only be challenged on the ground of mala fide, arbitrariness or violation of specific Govt. instructions. In this case the petitioner has merely averred that he has some information in connection with such inquiry about a S.S.P. who is now not in Bulsar. It is difficult, therefore, to persuade that this ground has even any tenuous link with the facts of the case and it is not unlikely that this plea has merely been taken to concoct a reason for challenging the transfer order. The applicant has not disputed that he is transferable. He has tried to show that there is arbitrariness in singling him out because his juniors who should have been transferred. We are unable to discover any rule that in transfer matters the order of seniority has to be followed. No rule or instructions have been adduced by the petitioner. In the case of Allahabad Bench judgment cited (Kanhaiya Lal Agarwal V/s. Union of India & Ors. AISLJ 1988(3) C.A.T. 235), it is not shown that the facts are identical with the facts of this case as the petitioner is not transferred in order to avoid any disciplinary proceedings against him; nor has it been shown in the case of Automotive Manufacturers Ltd. V/s. Nanalal Vakharia, the nature of employment was similar as in this case. The

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petitioner's challenge that P. M. G. is an appellate authority and has caused his transfer is also disputed by the respondent. The competent authority has exercised his discretion and the P. M. G. is not an appellate authority. The nature of the administrative exigency has been explained by the applicant in his reply.

3. Accordingly, we find that the Supreme Court's decision in Shantikumari's case is more relevant for the facts of this case. We find that no ground has been made out for our intervening in the matter.

4. The petition has no merit and is, therefore, rejected. There shall be no order as to costs.

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

in

OA/538/88

Coram : Hon'ble Mr. P.H. Trivedi : Vice Chairman
24/2/1989

Heard Mr.K.K.Shah and Mr.J.D.Ajmera learned advocates for the applicant and the respondents. Mr.Shah states that the grounds for reviewing the judgment is firstly because the guideline in Chapter II of Post and Telegraphs Vol.IV para -60 was not taken into account and the Tribunal proceeded on the basis that Class IV employees were transferable when under the said rule they are excluded from the category of transferable officers. Secondly the Tribunal has referred to Shantikumari's case, ~~which~~ not cited. Thirdly the Supreme Court's judgment in which it was stated that Class IV employees should not be transferred has not been referred to. There are some other grounds also which the learned advocate has referred to, which pleadings may not have been taken into account. Learned advocate for the petitioner states that even to-day if the petitioner were transferred back to Valsad, the petitioner would not have any grievance.

We have perused the judgment and do not find that there is any manifest error on the face of the record or on the basis of law or fact ~~in~~ other circumstances which justifies any review. The guidelines produced by the learned advocate was not earlier placed on record. The fact that the Class IV employees should not be transferred has been referred to in the judgment in terms of low paid staff, that para 60 referred to ~~in~~ states that certain posts should not ordinarily be occupied by the same officials but does not referred to any bar either of holders of those posts or any

other posts regarding their liability of transfer.

The fact that low paid staff should not be transferred in order to avoid any hardship to them has already been taken into account in the judgment. The learned advocate for the respondent had cited Shantikumar's case and even if he had not, there is no reason why that judgment should not be taken into account. In the light of these observations, no merit found in the review petition and it is accordingly disposed of.

No order as to costs.

P.H. Tripathi
(P.H. Tripathi)
Vice Chairman

a.a.bhatt