

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 610 of 1987
XXXXX

DATE OF DECISION 15-07-1988

Shri D. N. Bhatt Petitioner

Shri R. C. Kodekar 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

(P)

OA/610/87

15-07-1988

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

The petitioner has been transferred by the order dated 4-11-1987 from Veraval to Shillong in Meghalaya State. He is serving in the Intelligence Bureau, M.H.A., Government of India in the Cabinet Secretariat in the pay scale of Rs.85-2-95-3-110 in which he was originally appointed. He was in Kutch from 6-9-1973 and thereafter posted in Veraval. Disciplinary proceedings against him, were started for his misconduct, which have not been yet completed for absence of duty for the period from 2nd February, 1984 to 6th May, 1985. The second disciplinary proceedings were started on 11-4-1984 and this also is not disposed of. In October, 1986 according to the respondents he was to be transferred to Ahmedabad on administrative grounds but the order was not carried out because the proceedings have not been completed. In September, 1987 reports were received from Veraval from the Supervising Officer that the petitioner has assaulted A.T.O. at Veraval and for this reason the decision was taken for his transfer and three other statements. The petitioner relies upon a circular dated 3-11-1987 for posting in any stations categorised in A, B, C, D. Shillong is in category B. A choice is allowed on the completion of tenure by 13th June, 1988. The petitioner considers his posting in Shillong to be as a measure of punishment. The respondents on the other hand stated that the circular referred to is only for ordering the administrative business and does not give rise to any claim or right.

2. On the perusal of pleadings and after hearing the learned advocates we are not impressed by the plea of the respondents. If the petitioner was transferred from Veraval to Ahmedabad, and the transfer was not effected because disciplinary proceedings were pending against him, the same reason fully operates regarding his transfer from Veraval to Shillong because in the mean time the second disciplinary proceedings have been started and they still have not been completed. Government instructions

provide for transfers during the period in which the disciplinary proceedings are pending and there is no reason for which this case is distinguishable. The respondents have brought up the plea that the purpose of transfer is for enforcing discipline and improving morale, and has become necessary because of the alleged assault committed by the petitioner. We were not informed whether any criminal case is instituted against the petitioner. For enforcing the discipline, the respondents have other powers and in any case transfer cannot be resorted to as a measure of punishment. We do not accept in the circumstances in which the petitioner has been placed and which the respondents urge that the employee has been transferred so for administrative exigency.

3. The petitioner has stated that he prefers to go for voluntary retirement. Be that as it may, there is a strong case for not effecting transfer of the petitioner until the disciplinary proceedings are completed.
4. In the light of our above observations we find that the petition has merit. We, therefore, quash and set aside the impugned order dated 4-11-1987. The respondents are free to pass the fresh orders on completion of the disciplinary proceedings. Rule made absolute.

Phew
(P. H. Trivedi)
Vice Chairman

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

4/11/1988

Heard Mr.J.D.Ajmera learned advocate for the petitioners (original respondents). Mr.R.C.Kodaker learned advocate for the respondent (original applicant) not present. He urges that a circular dated 16/4/1969 from the Home Ministry shows that when a Govt. servant is transferred during the pendency of disciplinary proceedings there is no such bar against such a transfer and the proceedings can be continued. This circular could not be produced at the time when the case OA/610/87 was argued and was not on record either but as it is now found there should be no impediment to review the judgment rendered in that case dated 15/7/1988 by taking note of the instructions referred to.

The relevant instructions as shown by learned advocate are reproduced below:

"(2) Procedure to be followed when Government servant is transferred in the middle of disciplinary proceedings - Clarification on the point relating to Rule 12 of the C.C.S. (C.C.A.) Rules, 1965 is given below:

Point raised	Clarification
What happens to the disciplinary proceedings started by a disciplinary authority A in respect of a Government servant when the letter is transferred to the jurisdiction of another disciplinary authority B even though the said Govt. servant continues to be in the same service?	In such cases, it is not necessary for disciplinary authority B to start de novo proceedings by framing and delivering fresh charges to the concerned official. He can carry on with the enquiry proceedings at the point where the transfer of the accused officer was effected. If however, the accused official is transferred to another service, the procedure laid down in Rule 12 (4) (b) of the CCS (CCA) Rules will have to be followed."

It is found that the above instructions are by way of clarification and merely prescribed the procedure by which on transfer the disciplinary proceedings which were pending will be governed. Admittedly this circular was neither on record nor referred to during the hearing but now is brought up. Accordingly, it is not on the ground of mistake or error on the face of the record that the case can be decided in the favour of the applicant in the petition. So far as ground of any other reason on which the review can be raised, that the petitioner is a low paid employee and in the judgment, the ground of administrative exigency has not been made out with reference to the circumstance on which the petitioner was transferred, and therefore there was no other circumstances for justifying the review of the orders referred to. The petitioner has been protected against the transfer only during the pendency of the disciplinary proceedings which were started quite some time ago and which are not completed as stated during the hearing. In the circumstances, I find that no ground is made out for justifying the review of the judgment. The petition is rejected accordingly. In any future transfer, the petitioner may urge the applicability of the circular which was not taken as a ground in the case in which the judgment sought to be reviewed was rendered.

P.H.Trivedi

(P.H.Trivedi)
Vice Chairman