

Shri K.B.Renuka
 Chawkidar,
 Ahmedabad Central Sub-Division I
 C.P.W.D., C.A.,
 Ahmedabad.

.. Petitioner

V/s

The Union of India,
 Ahmedabad Central Division,
 C.P.W.D.,
 Jawahar Saw Mill Compound,
 Near Shahpur Police Chowky,
 Ahmedabad.

.. Respondent

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

.. Vice Chairman

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

.. Vice Chairman

Date: 28.8.1987

ORDER

Heard the learned advocates Mr.K.M.Shah and
 Mr.J.D.Ajmera for the applicant and the respondent
 respectively.

The petitioner's case is that he was served the transfer order on 2nd March, 1987 transferring him from Ahmedabad to Gandhidham. He had served at Ahmedabad for a very short period where he had joined only on 11.8.1985 and where there are four other chawkidars who have served there for three to four years. But the ground of transferring him is that he was surplus at Ahmedabad while a post is available at Gandhidham. This prayer cannot be supported merely because he has served at Ahmedabad for a very short period. According to him his seniority should be considered in terms of total length of service as chawkidar compared to other four chawkidars at Ahmedabad. He claims he has higher seniority in these terms and if any chawkidar has been transferred on this ground it should be the junior most of in terms/length of service as chawkidar and not in terms of service in any particular station.

Another ground taken by him is that on account of an incident on 3.1.1987 for a bench broken, he was asked to show cause to which he has replied and the enquiry was conducted but in the meantime he has been transferred. From these circumstances he urges that the transfer is malafide.

The stand of the respondent is that transfer is a matter which has to be decided in public interest on administrative grounds and respondent authorities have full freedom to issue necessary orders in this regard. One post having been found surplus at Ahmedabad it is necessary to transfer a chawkidar from Ahmedabad to Gandhidham where there is vacancy. The respondent authorities have decided to transfer the petitioner. There is no policy or instruction laid down in terms that either the junior most chawkidar according to the length of service as such or the junior most employee in any in any terms of service/particular station requires to be transferred in such a contingency. However the petitioner's grievance is that on account of the short length of stay at Ahmedabad he has been transferred. So far as the malafide is concerned the respondents have resisted the contention stating that the transfer is on account of the post being surplus and that the enquiry against the petitioner has been conducted duly and will take its course. There is no ground for deciding that the transfer has been occasioned by malafide or arbitrariness according to the respondents.

It is clearly desirable that there is a policy and suitable instructions are issued governing the transfer of employees of Class IV; but it is admitted that there is no instruction or policy at present transfer governing of the Class IV employees. It is not disputed that a

post is surplus at Ahmedabad. In these circumstances the respondent authorities have exercised their discretion in transferring the petitioner. Whether the discretion has been exercised arbitrarily or with malafide is a question to be settled. There is no evidence to show that this discretion has been exercised in either malafide or arbitrary manner. It is within the proper domain of respondent authorities to decide whom to transfer in public interest and as the decision has not within the violation of any Circular or instruction, it is not possible to hold that there is any colourable exercise for arbitrariness or malafide in the manner. So far as the transfer order having been made at the time, when the disciplinary proceedings have been started against the petitioner also, there is no reason to believe that the petitioner in any manner because the disciplinary proceedings will take their course and transfer is not a substitute for them.

For this reason the petition has no merit and fails.
No order as to costs.

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