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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 89 of 1988 ~~XXX~~
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DATE OF DECISION 22-07-1988

Shri T. S. Ghube Petitioner

Shri P. S. Chari 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.

(13)

J U D G M E N T

OA/89/88

22-07-1988

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

In this case the short question to be decided is whether a head clerk can be transferred from one sub-regional office to another. The petitioner was promoted and transferred as head clerk and posted at Surat on 21-7-1981. From there, he was transferred to Baroda on 8-7-1985. By the impugned order of transfer which he says has not been received by him. He is sought to be transferred to Rajkot.

2. Baroda, Surat and Rajkot are sub-regional offices of which the regional office is at Ahmedabad where the petitioner was serving since 3-10-1962. In the interest of providing better service, sub-regional offices were opened but a policy was adopted by a circular dated 11-11-1980 at Annexure 'A1' the relevant para of which is extracted below.

"As regard Head Clerks, a list of such officials may be prepared in order of seniority and posted to the sub-Regional Office. Most of the officials in this cadre particularly those who get promotion against seniority quota vacancies are in the age group of 35-45. Hence their continuance stay in the sub-Regional office besides entailing hardship would also cause dislocation of their family life. They may, therefore, be brought back after one year on rotation basis unless they are willing to continue in the sub-regional office for all time."

The petitioner has, therefore, challenged the impugned orders of transfer for being violative of this policy, also because other employees have been retained in the sub-regional office as he has mentioned in para 8 of his petition. Not only has he been transferred from Surat to Baroda when he should have been brought back to Ahmedabad but he is sought to be transferred now to Rajkot.

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3. The respondents' contention is that the transfer is an incidence of service and guidelines do not over-ride this basic right of the respondents. The petitioner has refused to accept the service of transfer order communicated through registered letter. The respondents have full power to transfer. Certain other persons named by the petitioners, have also been transferred to sub-regional offices and therefore, there is no right given to the petitioner or protection against any other transfer to sub-regional office.

4. In his rejoinder the petitioner has urged that the facts of those employees who have been transferred from one sub-regional office to another show that there are personal considerations for which they have accepted transfers and that the guidelines are mandatory in their effect.

5. We are not concerned with the petitioner's refusal as urged by Respondents to accept service of the communication sent through registered post. The respondents are free to take action against the petitioner if such refusal constitutes an act of indiscipline and misconduct. The only question is whether their having laid down the guidelines, the transfer is violative of them. The language of the guideline shows that any departure from the practice of bringing them back to regional office after service in the sub-regional office has to be subjected to their willingness to continue in the sub-regional office. Having laid down the guidelines in these terms it is difficult to accept the respondents' contention that even if the petitioner is not willing he can still be liable to be transferred to another sub-regional office. The petitioner has cited the circular of 21-1-1988 in which it is stated that there should not be deviation from or relaxation of the rule of bringing all those who have been posted in sub-regional headquarters to regional headquarters. The power of transfer of an employee within the jurisdiction of the Regional Commissioner is subjected to observance of the instructions issued by the Government in terms of the delegation of the powers in office order dated 23-4-1985.

6. The respondents have contended that the Tribunal has no jurisdiction to interfere in transfer matters. This is no doubt the general principle on which the courts act and restrain themselves in interfering with the orders of administration but it is well established law that when transfers are violative of Government instructions, the courts have reason to interfere. In this case the instructions not only are violated but are found to be mandatory and the respondents cannot be supported in their contention that they can be departed from or breached.

7. Accordingly, we hold that the petition has merit and allow it. The petitioner be not transferred from Baroda to Rajkot unless he is transferred to the Regional Office at Ahmedabad. No order as to costs.


(P. H. Trivedi)
Vice Chairman