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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 123 of 1988 **X98**
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DATE OF DECISION **8-04-1988**

M.P. Chauhan Petitioner

N.J. Mehta Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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/123/88

8-04-1988

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

Petitioners who work as Lower Division Clerks in the Office of The Joint Chief Controller of Imports and Exports, Ahmedabad challenge the Office Order No.5/88 dated 9-2-88 passed by Controller Administration for Joint/^{Chief} Controller of Imports and Exports, Ahmedabad transferring them to Bombay on the grounds that;

- i) Transferability is not a condition of service
- ii) Transfer will cause immense hardship considering that in Bombay accommodation is not available for such low paid employees.
- iii) Petitioners belong to Scheduled Caste and backward class.
- iv) Other persons with longer period of service at Ahmedabad have not been transferred.
- v) Petitioner No.3 has been only recently transferred from Bombay to Ahmedabad.

They further contend that the fact that some senior employees have accepted the transfer should not be held against them to defeat their case. Learned advocate for the petitioner has cited 1988(6) Administrative Tribunal Cases 421 and 1986 ATC 558.

2. In reply, the respondents contend that the transfer is a condition of service, that transfer has been ordered because the streamlining of the office at Ahmedabad was considered necessary due to complaints received, that the respondent does not have office at many places and therefore according to administrative exigency transfer to Bombay is necessary, that Govt. quarters will be available to the employees under a scheme in which priority is also given, that other employees of similar status have been also transferred and they have accepted the transfer, that the impugned transfer is a part of an office order concerning other employees also and is, therefore, not directed only against the petitioners, that there is no mala fide or arbitrariness in the case and that the Tribunals or Courts should not interfere with the orders of transfer which

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are within ~~A~~ domain of the executive administration.

3. During the hearing learned advocate for the respondent stated that the petitioners are subjects of vigilance inquiry and charges against them are being drawn up.

4. The petitioners are admittedly at Ahmedabad for considerable periods. Petitioners No.1 and 2 have been serving at Ahmedabad Office since 1982. Petitioner No.3 was serving at Ahmedabad but was transferred to Bombay from where after a few months he was transferred back to Ahmedabad at his request. The petitioners No.1 and 2 belong to Scheduled Caste and No.3 belongs to Backward Class. Other L.D.Cs' names Mr. Vasvani who is serving at Ahmedabad since 1979 and Mr. Vohra and Mr. Patel who have been serving at Ahmedabad since 1981 are admittedly at Ahmedabad for longer periods. The respondents' office near Ahmedabad are only at Bhopal and Gandhidham and, therefore, transfer to Bombay has been rendered necessary. There is no direct nexus between the complaints and the transfer of the petitioners as the respondents in their written statement have stated. During the hearing learned advocate for the petitioners conceded that the petitioners are liable to transfer but it is necessary to ascertain whether the order of transfer is fair and reasonable besides being free from the taint of mala fide or arbitrariness. He has heavily relied upon the observation of the Supreme Court in 1986 ATC 558 in this regard. In that judgment the position of the order of transfer being not in public interest but for collateral purpose and with oblique motives thus being vitiated by abuse of powers has been distinguished from such an order *per se* made in the exigencies of services which varies any condition of service to the disadvantage of the Government servant. In this case the petitioners are L.D.Cs. and belong to back ward *or S.C.* and hardship being caused to them by virtue of such a transfer is sufficiently obvious. There is no guideline governing transfer of such categories of Govt. servants in the respondent's office. There is no right accruing to the petitioners to continue in their posts if administrative exigency requires the transfer. There is also no right in terms of rotational transfer or transfer in order of length of service at Ahmedabad. Even in terms of length of service petitioners No.1 and 2

can be said to have remained at Ahmedabad for sufficiently long time for holding that their transfers are not premature. This does not apply to the case of petitioner No.3, who has only been transferred in 1986 from Bombay to Ahmedabad.

5. The learned advocate for the respondent has urged that the respondent authorities are the best judges of the administrative exigencies in the background of which the transfer has been ordered. I have carefully considered the question to the extent to which the tribunal should interfere with the orders of the respondent authorities in such cases. If the orders are vitiated by mala fide or arbitrariness the courts have a right to interfere. The ^{direct} mala fides have not been established and arbitrariness also is not sufficiently established. The transfer orders of the petitioners is a part of a chain of transfer and the petitioners are liable to transfer which is an implied condition and incident of their service. There is also no doubt that administrative exigency is a matter within the domain of the executive. It is for the respondent authorities to decide how best to use the services of the petitioners. We must, however, give due consideration to the fact that the petitioners belong to S.C. and Backward Classes and that they are working as L.D.Cs. The written statement of the respondent glosses over the reasons of transfer of the precise nature of administrative exigencies. It states

"In fact, there were complaints regarding the functions of the staff in the office of JCCI & E, Ahmedabad though the transfer of /the applicants does not have direct bearing with the complaints. It is submitted that it was necessary from the administrative point of view to streamline the working and function of the said office / in the public interest. The transfer of the applicants was made in normal course alongwith other incumbents within the zone under the administrative control of the JCCI&E, Bombay opponent No.3."

One would not be reading unfairly between the lines if it is concluded that the petitioners have for some reasons become problems and are sought to be taken out of Ahmedabad, and if, as a result, some hardship

is caused to them, according to the respondents, they do not seem to regard it to be particularly a matter to be given ~~undue~~ consideration, even if it may be too much to say that they intend to harass the petitioners by such a transfer. Further light was thrown on the motives of the respondents when we were informed that the vigilance inquiries have been going on against the petitioners, that the petitioner No.3 had earlier been subjected to them and transferred from Ahmedabad to Bombay and thereafter to Ahmedabad and that it is in this background that such a transfer under the impugned orders has been proposed. The respondents were asked whether their purpose would not be sufficiently served if the petitioners are transferred by deputation to other offices at or near Ahmedabad under the Government of India if the petitioners are willing to accept the transfer. The respondents were also asked whether it was now necessary to transfer the petitioners if the charges against them for disciplinary inquiry are ready and all relevant evidence for the purpose has been gathered. However, learned advocate for the respondent could only say that transfer to other offices by deputation had not been considered because the petitioners may not accept deputation. The respondent also continued to regard the petitioners' transfer as necessary inspite of the investigation for charges having nearly been completed. In the circumstances of this case, therefore, I have no doubt that the petitioners have not established the impugned transfer as vitiated by direct proof of mala fide or arbitrariness but has sufficiently established that the exercise of power of transfer has been for achieving ^{an} ~~equivalent~~ purpose or due to oblique motives and in terms of the observations of the Supreme Court in E.P. Royappan Vs. State of Tamil Nadu endorsed in the judgment cited by the learned advocate for the petitioner, this would amount to mala fide and colourable exercise of power. Having regard to the relatively poorly paid status of the petitioners and their low status in terms of their belonging to Schedule Caste and Backward Class the transfer order cannot be supported on the ground of administrative exigency.

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

16-5-1988

Heard learned advocate Mr. J.D. Ajmera for the petitioner. He pleads that in our judgement dated 8/4/1988 in OA/123/88 it is stated that there is no direct proof of mala fide or arbitrariness and yet the impugned transfer order has been held to be bad in law and quashed and set aside. While doing so the Tribunal has not referred to and, therefore, not considered the judgements in Shantikumari's case and the judgement of Bombay Bench in OA/378/87 and OA/379/87 dated 9-9-1987 in which it was stated that if there is no illegality or arbitrariness, the Tribunal will not interfere with the routine administrative decisions and that in such case in which there are policy guide lines and such guide lines have not been followed the proper remedy for the aggrieved government servant is to file the representation and it is not for the Tribunal to assume jurisdiction and interfere with the administrative decisions by ~~by~~ granting relief against transfer orders merely because of their not being in accordance with the policy guide lines. We have heard the learned advocate. While the cases referred to by the learned advocate for the respondents may not have explicitly referred to in the impugned judgement, the dictum in them has been fully considered. The judgement itself states the extent to which the impugned transfer orders are vitiated or otherwise by malafide or arbitrariness and relying upon the observations of the Supreme Court in E. P. Royappa v/s. State of Tamil Nadu & Anr. the observations are that while the petitioners have not established the impugned transfer as vitiated by direct proof

of mala fide or arbitrariness, they have sufficiently established that exercise of powers of transfer has been for achieving alien purpose or all due to oblique motives in terms of the observations of the Supreme Court in that case. Accordingly, the issue having been discussed, there is no mistake of fact or law or omission for which the conclusions of the judgment can be brought within the scope for review.

We must clarify that so far as the judgment impugned is concerned, it is only regarding the transfer orders from Ahmedabad to Bombay and there is nothing in the judgment which prevents or restrains the petitioner in this petition from making fresh transfer orders which show circumstances in which the taint of alien purpose of oblique motive is not evident. With this observations, we find that the petition has no merit and reject the same.


(P. H. Trivedi)
Vice Chairman