

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

Ahmedabad

O.A./C.A. No. 173 1988

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K. S. Kathiri Applicant(s)Xavier m.m  
VersusUnion of India & Ors. Respondent(s)

Govt of India

Sr. No.	Date	Orders
	10.3.88	Transfer (Copy served)
	29/4/88	Pl. issue Pending admission notice to respondent.
	2/5/88	— RPAD received from respon. no: 2, which is kept with off 87/88. — RPAD received from respon. no: 3.
	2/5/88	— RPAD received from respon. no: 3. — RPAD received from applicant.
	2/5/88	Mr. Xavier present. Mr. Vin files statement. Adjourned to 5-5-88. Adm. Admitted. Off. 2-5-88.
	5/5/88	Mr. A. M. Shargel for Mr. Xavier requests time. Mr. R. M. Vin has no objection. Allowed, adjourned to 16-6-88 for admission.
	5/5/88	PMages 5/5 off. 5-5-88

C. T. MANIAR

Deputy Registrar,

Central Administrative Tribunal

AHMEDABAD

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CORAM : HON'BLE MR. P.H. TRIVEDI : VICE CHAIRMAN

11/3/1988

Heard Mr. Xavier M.M. and Mr. R.M. Vin learned counsel for the applicant and the respondent respectively. Mr. Xavier states that the impugned transfer order dated 8-2-1988 transferring the petitioner from his present office ~~is~~ Divisional Medical Officer, Bhavnagar para in another office is punitive in nature and has been made when he was undergoing disciplinary proceedings against him. The petitioner was working in the present post for three years but he ~~is~~ is not transferable in terms of the rules which he promises to produce. The transfer is prejudicial to him and he is prepared to take the consequences of the disciplinary proceedings.

The petitioner is being transferred from one post to another in the same town and it is not established whether there will be any material inconvenience or prejudice to the enquiry which will be caused by ~~way~~ <sup>disposal</sup> of transfer. The learned counsel for the petitioner has <sup>Cited</sup> quoted SLJ 480 Guhati High Court, ATR-304 Principle Bench, Delhi. The learned advocate states that in the circumstances of the transfer is likely to be prejudicial, however in this case the transfer is not a substitute for disciplinary proceedings nor is the respondents trying to escape ~~fixing~~ <sup>with</sup> of the charges against the petitioner and therefore it is not clear how the petitioner can take plea that he will be prejudiced by virtue of the transfer. However, since the petitioner states that his post is not transferable and the learned advocate promises to show necessary government instructions in this regard, at this stage notice may be issued <sup>for</sup> pending admission on the respondent <sup>why</sup> for the application be not admitted. Reply within 45 days. The case is adjourned to 29-4-1988 for admission.

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman  
Hon'ble Mr. P.M. Joshi .. Judicial Member

16/06/1988

(3)

Heard Mr. M.M. Xavier learned advocate for the petitioner. The petitioner has admittedly been in the post from which he is transferred some time in 1976 and is sought to be transferred to another post in the same station. The competence of the transferring authority has not been disputed and the fact that the petitioner is transferable is admitted. The transfer order is sought to be impugned only on the ground that the petitioner <sup>Mogera</sup> could not satisfy an officer for which he is transferred. The respondents in their reply have stated in para 11 that the petitioner was not found at the place where he claimed he was engaged. This matter was sought to be inquired by framing charges and therefore the ground that the respondents are avoiding a formal inquiry cannot be sustained. There is no malafide nor any element to vitiate order established. The petition is therefore summarily rejected.

*Mr. H. Trivedi*

( P H Trivedi )  
Vice Chairman

*P. M. Joshi*  
( P M Joshi )  
Judicial Member

\*Mogera