

CORAM : HON'BLE MR. P.H. TRIVEDI : VICE CHAIRMAN
HON'BLE MR. P.M. JOSHI : JUDICIAL MEMBER

20-4-1988

Heard Mr.K.A. Puj and Mr.J.D.Ajmera learned counsel for the applicant and respondents respectively. The petitioner was transferred by an order of Dy.Director General dated 4-4-1988 from Bhuj on promotion from Grade II to Grade I Clerk but he challenges order of transfer on the ground that although it is a transferable post such a transfer should not be resorted to for poorly paid staff of Class II and III categories. Further, those who have been in the same post for a long period should be transferred first, and on that ground and he should not be transferred. He further alleges that there are extraneous considerations governing his transfer because several allegations have been made which require a regular enquiry. The learned advocate for the petitioner cited ATR 1986 304, ATR 1987(1) 353, ATR 1987 1 SC 396, and ATR 1986 314, in support of his plea that the court should go beyond the ostensible reason for transfer and if it is found that there are taints of arbitrariness, mala fide or any other purpose the transfer should not be held to be valid. Lastly the petitioner states that on humanitarian grounds the transfer should not be upheld. In reply the learned advocate for the respondent states that the transfer has been made by BVJ Bombay and there is no evidence supporting the allegations of the petitioner that there are any mala fide or arbitrariness or collateral purpose behind such a transfer.

While hearing the learned advocates on the question of the admission it was ascertained that the petitioner has been posted at Bhuj altogether since 1976. The petitioner cannot therefore be regarded as having been a prematurely transferred as he has

been in this station for a sufficiently long period. We are unable to see any evidence or any policy or principles in the respondent authorities department in which the petitioner is serving that Class III and Class IV servants cannot be transferred or if at all transferred they have to be transferred in the order of their seniority. So far as the allegations are concerned there is no nexus between such allegations and the transfer which has taken place. It is true that the judgments cited referred to piercing the veb of the circumstances but we have no evidence what ever to establish that the allegations and the transfer have any nexus. This doctrine cannot be stretched beyond reasonable limits. Otherwise, any government employee has only to file complaints to yield a ground for resisting the transfer. We do not find any support in the contention that if the respondent authorities have powers in administrative exigencies to order the transfer and if the post is transferable the Tribunals or the courts should step into the position of the competent authorities and take it upon themselves to judge the propriety of transfers. We do not therefore find any prima facie ground established for admitting the petition.

The petitioner has stated that he had earlier sent a letter dated 10-9-1987 proposing that he may forego promotion if he is to be transferred outside Bhuj. He has not admittedly placed this letter on record or made any averments in his petition. He may file a representation to the respondent authorities offering foregoing a promotion and urging the grounds for not wishing for promotion on transfer and the respondent authorities dispose of such representation on its merits and considerations affecting transfer as the case may be. With these orders the petition is dismissed.

P.H. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN
P.M. Joshi
(P.M. JOSHI)
JUDICIAL MEMBER