

Shri P.Saidalvi
C/o.HTC Office,
Dhola Junction,
Bhavnagar District.

.. Petitioner

Versus

1. Union of India
(Notice to be served
through the Chairman
Railway Board, Rail
Bhavan, New Delhi.
2. The General Manager,
Western Railway
Churchgate, Bombay.
3. The Divisional Rail
Manager, Western Railway,
Bhavnagarpara.

.. Respondents

ORAL ORDER

20/1/1989

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

Heard Mr.N.J.Mehta and Mr.R.M.Vin learned advocates
for the applicant and the respondents. Mr.M.M.Xavier,
learned advocate for the respondent No.5 also heard.

The petitioner's case is that he was promoted
to the post of IOW from SOW on 1.11.1982. He is sought
to be reverted to SOM and posted at Dhola on 12.4.1988
and on 26.4.1988 he is sought to be transferred to Veraval
by the impugned order. The purpose of this transfer is
merely to accommodate Shri Bhagwan Narayan who is not even
called for the test for Mistry and the plea taken by the
respondent is that he was earlier posted in Dhola and as
he has experience of management of water supply problem
he will be more useful at Dhola. In fact according to
the petitioner this involves a triangular transfer which
is against the administrative interest and Shri Bhagwan
was sent for training of carpenter and according to the
petitioner he was not even called for a suitable test for
SOM and as for the experience of water supply problem
as carpenter he has no expertise and so far as experience
of the problem at Dhola is concerned, the petitioner has
been earlier at Dhola for several years and can claim as

much experience as is required for the purpose. The petitioner has been transferred within 12 days of his joining. According to him, he is transferred merely to accommodate Mr. Bhagwan and since the motive behind transfer is the accommodation of Mr. Bhagwan, it can be regarded as malafide.

After hearing the learned advocates, it must be stated that there is no such malafide about the transfer but the administrative exigency for which he has been posted at Dhola is not apparent and it is even less clear why it could not be anticipated when the petitioner was initially posted at Dhola. This is an after thought, as he believes, he has been posted not on account of any fresh dawning of light due to administrative interest. It must also be considered that no direct malafide on the part of any individual has been established and we do not interfere into areas which is grey in the sense that while there might be special circumstances regarding the impugned order or its justification, the test to be applied is whether it is with arbitrariness or malafide or ulterior purpose, so that it calls for any interference by judicial review of the order. We are not persuaded that the petitioner has established his case to the extent required for our interference with the order of the respondent authorities ^{who may} examine afresh whether the need for the petitioner to be sent to Veraval continues since April and whether there are other circumstances which arise in which the need for Mr. Bhagwan may not now be required to the same extent. If so, the respondent authorities could review it at their own initiative and to do the needful for the impugned orders of transfer. Such an exercise be done within a period of one month of the date of this

order but if thereafter no change in the orders are called for according to their judgment we would not consider it necessary to interfere with the impugned orders. Subject to the above observations, the interim relief to continue for one month of the date of this order after which the impugned order be implemented unless review has been done. With this observation and direction, the case is disposed of.

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

a.a.bhatt