

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 461 of 1987 XXX
XXXXXX

DATE OF DECISION 15-07-1988

Shri P. P. Dhanka Petitioner

Shri K. K. Shah Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri N. S. Shevde 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

(A)

OA/461/88

15-07-1988

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

The petitioner has challenged his transfer by order dated 17.06.1988 from Dahod to Sabarmati by respondent No.2, admittedly he belonged to Scheduled Caste.

2. He contends that in terms of the instructions at Annexure 'A/2' he cannot be transferred. The relevant instructions, Chapter XI as per letter Nos. (i) E(SCT)70 CM 15/15/3 dated 19th Nov., 1970 and (ii) E(SCT) 74 CM15/58 dated 14th Jan., 1975 are reproduced.

"1. Transfers :- Subject to the exigencies of service, transfer of Scheduled Castes and Scheduled Tribes employees should be confined to their native districts or adjoining districts or the places where the administration can provide quarters. They should be transferred very rarely and for very strong reasons only."

The instructions provide for exigencies for service to justify the transfer. It enjoins that it can be done very rarely and for very strong reasons. The learned advocate for the respondents requires and he confined that quarters are provided for the respondents as stated in the reply, that at Sabarmati there is a quarter available for the applicant for which they will have to apply on going there. The respondents say that Sabarmati and Dahod are adjoining Railway districts and the applicant says that they are not adjoining Railway districts. As a quarter is available for the petitioner the instructions relied upon by the petitioner cannot be regarded to prohibit the impugned transfer.

3. The impugned order of transfer dated 17-6-1988 is assailed on the ground that it does not give any reasons. The respondents state that orders of the transfer does not require, the reasons to be given but has urged that it has been made in public interest and for administrative

exigency as the petitioner is a Class III employee of the Scheduled Caste. The Government instructions require his transfer outside his native districts to be done very rarely.

4. Learned advocate for the petitioner has cited 1980 S.C.C. (L&S) 1976-77, State of Madhya Pradesh V/s. Shankar Lal and Ors. for supporting the contentions that the low paid employee should not be transferred, except when the compelling exigencies arise; and in 1984(1)(159) E. Kunhiraman Nair V/s. The Superintendent of Post Offices, Cannanore and Ors. of the Kerala High Court for the contents for the reasons to be stated in the order of transfer. The order of transfer is not an order of punishment and not an adverse consequence as a reason of or to result from it. There is no violation of natural justice on that account. There is no warrant for the view that transfer order should expressly state the reasons, or that it has been caused for administrative exigency or for public interest. Such stipulations might be required when the transfers occur to accommodate personal reasons or by request as it would affect prospects of promotions or liability for travelling allowances. In other circumstances there is no requirement of stating that particular transfer has been required for the reasons for administrative exigency or for public interest. It is true that instructions are to transfer rarely Scheduled Caste employees and low paid employees, but there is no requirements that if the competent authorities decides to transfer them there is any condition of communicating them the circumstances of the grounds of transfer as a pre-requisite for such transfer.

5. The petitioner has pleaded that double jeopardy on one hand he has been transferred. On the other hand he has been reverted by orders at Annexure 'A/4', and has stated that therein he was continued in an admittedly on adhoc promotion, by reasons for interim relief earlier given in a case which was discontinued after the judgment in that case. Thereafter the petitioner was reverted and he has urged mala fide on the part of the respondents because although there are vacancies, not filled up, the petitioner still has been reverted from the promotion post. In this case the orders of reversion are not under challenge and we do not

find that on vacating of the said order of interim relief following the judgment in the case if the petitioner was reverted any mala fide arise by the mere fact of the respondents deciding not to continue him in the promotion post.

6. The petitioner has urged that he would suffer on account of certain consequences regarding House Rent, Seniority, Promotion and personal circumstances like his daughter's education etc. The respondents have denied that his seniority will suffer in any manner as the petitioner is continued to borne on the seniority list in the district at Dahod and will have claims of promotion based there. This plea has no validity. There may be some economic/ following the transfer due to his having to take a house and consequences on account of house rent allowances. But for this reason there is no protection against transfer. So far as the personal circumstances like his daughter's education etc., these are normal features of all transfers and the station Sabarmati to which the petitioner is transferred is by no means in a backward area.

7. The petitioner has urged that there are persons senior and junior to him who are not transferred. There is no Rule or instructions that transfer has to follow in any order of seniority. No claim for transfer can be resisted for such reasons. The petitioner claims that he is a workman and he is transferred under cover of following management policy under Rule 7 of the Fifth Schedule of the Industrial Disputes Act, 1947 and such transfers are illegal. He has not raised this plea in this petition but he claims that a new plea can be made, it arises from the facts on record and to detect to the root of the matter as has been decided in P. Benergy Vs. Union of India & Ors. (1986 S.L.R. 171(C.A.T.) Delhi). In this case there is no mala fide as proved as stated below.

8. The mere fact that the petitioner has been transferred from one district to another, does not create the presumption of mala fide on the part of the respondents, nor do the instructions that such transfer should be resorted to be sparingly imply any prohibition against such transfer. The petitioner has stayed for 23 years in one station. It,

therefore, cannot be regarded as a departure ~~from~~^{or} violation of the policy of the government, if he has been transferred to another station where he has been provided with the quarters. The petitioner has pleaded that the mere fact that the respondents have stated that the transfer is not mala fide and that it is in the public interest or due to administrative exigency, does not mean that we should not examine the circumstances justifying such a plea has some force. The circumstances urged by the petitioner do not show that the respondents had any mala fide and the burden of showing mala fide is on the petitioner. There is no inconsistency in urging the ground of public interest along with that of administrative exigency because both grounds can overlap in some circumstances or that urging both grounds show mala fide on the part of the respondents.

9. In matters of transfers Courts have a limited scope for interference. All transfers entitle hardships. Unless mala fide or an arbitrariness are established for which the petitioners have to be put to strict proof, the Government should be allowed to regulate its administration without interference.

10. We find no merit in the petition which is not allowed. There shall be no order as to costs.


(P. H. Trivedi)
Vice Chairman

(8)

M.A.659/1988 in OA/461/88

Per: Shri P.H. Trivedi, Vice Chairman

17-1-90

The petitioner has reiterated the same grounds he has taken. The judgment ^{later} fixed into account the relevant facts and reference to the judgments which ~~are~~ found necessary to rely upon or deal with. The interpretation of the circular has been made with reference to the facts and inference regarding malafide has been drawn. There is no mistake of law or fact ^{manifest} ~~borne~~ on the record. Accordingly rejected.

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