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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 468 of 1988 1988
~~XXXXXX~~

DATE OF DECISION 05-08-1988

Shri J. S. D'cruz Petitioner

Shri A. R. Thakkar Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri 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

(8)

OA/468/88

05-08-1988

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

The petitioner has challenged the order dated 16th June, 1988 by which he is transferred from Rajkot to Ghaduli in the District of Kutch. Earlier in OA/471/87 the petitioner had challenged his transfer from Anand to Rajkot. The petitioner's grievance is that soon after his joining on 11th April, 1988 he is being transferred again. He challenges the transfer order as being contrary to a circular of the respondent No.1 which lays down certain guidelines for the transfers. In the case of Class II Officers' transfers before the completion of normal period on one station can only be done with the prior approval of the Board as has not been done in his case. The petitioner has also urged hardship as at Ghaduli there are no English schools for his children to study and that there are persons junior to him who should have been transferred. The petitioner has urged mala fide because his superiors were not happy with the work of the petitioner in dealing with the search and seizure in detection of case against a party. The respondents have challenged the jurisdiction of this Tribunal in matters of transfer and have denied the allegations regarding mala fide or prejudice against the petitioner stating that the petitioner did not play any significant role in the detection as alleged by him and that he is trying to magnify the incident for evading transfer. His transfer has been caused due to exigency of work and as the petitioner has the background of detection and seizure on custom side and is found to have a good record in prevention of smuggling, it was felt necessary to post him at a place sensitive for smuggling. The petitioner has relied upon ATJ 1986(1) 241 Prem Parkash V/s. Union of India, ATR 1987(1) 570 Chiranjilal N. Gurjar V/s. Union of India & Ors., ATR 1987(1) 47 D. H. Dave V/s. Union of India & Ors., ATC 1987(2) 23 B. C. Bohidar V/s. Union of India & Ors., AIR 1981 SC 1577 Shanti Kumari V/s. Regional

Deputy Director, Health Service, Patna Division & Ors., OA/362/87 dated 27-11-1987 Miss Hasumati J. Patel V/s. Union of India and the respondents have relied upon AIR 1981 SC 1577 Shanti Kumari V/s. Regional Deputy Director, Health Services, Patna Division & Ors.

2. So far as the jurisdiction of the Tribunal in transfer matters is concerned, in a number of cases it has been held that when there are allegations of mala fide, arbitrariness or action contrary to policy, courts have a duty to intervene to give relief against oppression in the guise of mere administrative orders. In fact in OA/471/87 of the petitioner's transfer to Rajkot we have declined to intervene on being satisfied that the grounds for doing so were not satisfactorily established and were not adequate.

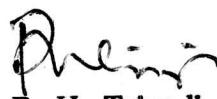
3. In this case, however, we cannot but note that the impugned transfer order of 16th June, 1988 follows almost on the heels of the petitioner joining at Rajkot. We can go along with the respondents' contention that the petitioner has magnified his role regarding search and seizure against a particular party having actuated his transfer from Rajkot to Ghaduli and that there are no mala fide involved. However, the plea that the petitioner is uniquely qualified in the sphere in which he has shown distinguished performance which causes him to be posted at Ghaduli cannot but raise several questions regarding such a plea being genuine. There is no reason why the benefit of guidelines should be denied to the petitioner only because he is regarded as a good worker. The instructions clearly show that the normal period of stay at one station is 3 years. The instructions also clearly state that the transfer should be dealt with in a humane way although departures from the guidelines are allowed. The respondents have not stated anything to reply that the power to transfer Class II officers with the petitioner is before normal term over lies with the Board and in this case the Board has not given its approval. Even without this technical ground the respondents are required to satisfy us regarding the administrative exigencies, even after

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making full allowance for the sensitive nature of the work involved. When an extra-ordinary measure of giving marching orders to an officer who has distinguished himself is given within as short a period as of two months of his joining at Rajkot, the nature of administrative exigencies require some explanation which must be to some extent disclosed in the orders given, and failing that, at least in the reply of the respondents for meeting the challenge of the petitioner. This has not been done and we are, therefore, obliged to draw an adverse ~~in~~ inference regarding the case of the respondents. We are not concerned in this case with the merits of the petitioner's contention regarding his previous postings and transfers. Such postings and transfers have to be justified in the light of the circumstances in which they were caused and do not add to or detract from the merits of the present case. We do not draw any adverse inference regarding the respondents from the facts and circumstances relating to them as narrated in this petition. We have already observed in our judgment in OA/471/87 that morale of the officers in general of the department is not likely to remain satisfactory if there is a strong feeling of resentment regarding unjust treatment given to them. The only thing worse to that can be that certain officers whom the department regards good or distinguished in their performance should have a grievance regarding injustice and unfairness in matters of transfer. We do not find that the respondent authorities have shown any sensitivity to this aspect in passing the impugned orders and we must observe with regret that a definite impression is left that for some reasons the petitioner is being harassed. Both the parties have urged the merits of or difficulties in posting Mr. Kolambekar who is the only other officer of the required grade who can be posted at Ghadli and who is posted at Rajkot according to the respondents only after the petitioner. Mr. Kolambekar is not a party in this case and it is not for us to decide about the merits of his claim to be retained at Rajkot. The respondent authorities are required to arrangements regarding postings and transfers in accordance with the instructions governing this subject. For similar reason we also do not

pronounce upon the merits of the petitioner in comparison to those of his other colleagues to be retained at Rajkot or other stations.

4. With these observations we find that the petition has merit. The impugned order is quashed and set aside. In the circumstances of this case the petitioner be awarded the cost which is fixed at Rs.300/-. We direct that the cost be paid within a period of two months of the date of this order.


(P. H. Trivedi)
Vice Chairman

Transfer

Mr. P. H. Trivedi

(A)

(B)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 362 of 1987
~~XXXXXX~~

DATE OF DECISION 27/11/1987

Miss Hasumati J. Patel

Petitioner

Shri D. M. Thakkar

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri J. D. Ajmera

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr.

JUDGMENT

(S.A)

OA/362/87

27/11/1987

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

In this case the petitioner has impugned the order dated 19/5/1987 posting her at Rajkot and not accommodating her at Ahmedabad. Her challenge is on the ground that there are only two Collectorates namely Baroda and Ahmedabad and on account of a new Collectorate opened at Rajkot recently, the petitioner is not liable to be transferred there. A policy decision dated ~~xx~~ 4/7/1986 has been taken under which it is obligatory for the staff to go to Rajkot on their first promotion for a period of one year and on completion thereof the officers so transferred have a right to be sent back to their respective parent Collectorate. The petitioner was promoted to the post of Office Supdt. vide order dated 3/9/1985, was transferred to Rajkot and after serving there for about $1\frac{1}{2}$ year she was transferred to Ahmedabad on 14/11/1986. Within two months thereof the petitioner was sought to be transferred on promotion as Administrative Officer by orders dated 13/1/1987 but the orders were cancelled on 24/4/1987 on her representation dated 20/3/1987. On 19/5/1987, however, an order was passed transferring her to Rajkot as Administrative Officer although persons promoted along with her were posted in their parent Collectorates. The petitioner has detailed at Annexure 'B' six cases. The petitioner's contention is that all officers similarly situated have been promoted and posted in their respective parent Collectorate but only the applicant has been picked up to go to Rajkot in an arbitrary and discriminatory manner. The policy decision referred to does not provide for second transfer on promotion. The circumstance that requires the petitioner to go to Rajkot has arisen from Mr.Parmar who is working as an Administrative Officer to be transferred vice

applicant in Ahmedabad but Mr.Parmar was earlier transferred to Ahmedabad Collectorate and the orders were cancelled at his request only in April, 1986 as he refused then to go to Ahmedabad. The petitioner has also contended that there are vacancies now and likely to arise in the near future in which she can be retained. In equity the policy should be that the junior most person who is promoted should be asked to go to Rajkot but as it is sought to be implemented, the policy works against senior persons who are arbitrarily sent to Rajkot while junior persons are retained at Ahmedabad.

2. The respondents' contention is that the transfer is an incident of service. If an officer is transferable, the transfer cannot be challenged. In this case there is no bar against the second transfer to Rajkot. The petitioner is being sent to Rajkot only because others who have served their term in Rajkot are required to be brought back. The policy to which reference has been made by the petitioner requires at least one year of service in Rajkot for officers who are transferred there and thereafter officers so transferred are allowed to come back to their parent Collectorate. There is no vacancy at Ahmedabad at the material time when the turn of promotion of the petitioner came about and therefore the petitioner was sought to be transferred to Baroda and now has to be posted at Rajkot. When the petitioner was offered promotion as Administrative Officer there were only two promotees namely the applicant and Mr.Parmar and Mr.Parmar was retained in Rajkot because there was a clear vacancy and the applicant had to be posted at Surat under Baroda Collectorate which order was later cancelled. The respondent in his reply has detailed the reasons why other persons could not be sent to Rajkot. Regarding the availability of vacancy also there is difference in position of the applicant and of the respondent. The applicant has stated that there is one vacancy now

and two vacancies are going to be available before the end of November, 1987 while the respondent states that there is no vacancy now.

3. After hearing the learned advocates we find that the transferability of the officer is not in dispute. There are no allegations regarding mala fide. The only question which remains is whether the transfer is arbitrary or violative of policy or against equity. We do not know what is the status of policy instruction dated 4/7/1986 referred to. It does not appear to be more than the minutes of a meeting called by the concerned Collectorates and purports to be only a working arrangement for the staffing problems of the Rajkot Collectorate. It may not be right to construe the conclusions recorded in this minute as more than such working arrangements. Certainly they cannot over-ride the provisions regarding competent authorities for transferring officers or the transfer liability of the staff available to them under the rules and instructions having the ~~force~~ of law. However, taking these policy instructions as applicable to the case, in view of the petitioner herself having relied upon them and not disputed their applicability, we find that there is no bar in it in terms against posting an officer a second time at Rajkot from Baroda or Ahmedabad Collectorate. The petitioner is a lady officer and lady officers have been allowed a concession in their transfer liability being 50% of the number to be transferred and it is not contended that this number is exceeded. The ratio of officers working in Rajkot Collectorate to be brought back by transferring officers from Rajkot and Baroda Collectorate is also fixed to 1:1. The exceptions regarding transfer liability at para 7 except clause 5 thereof also have no applicability in the petitioner's case. Regarding that clause 5 the genuine reasons which need exercise of ~~discretion~~ is a matter on which a view has been taken and the petitioner has not pursued the question of challenging transfer on account of hardship.

4. It, however, appears from the circumstances narrated during the hearing that the policy is being so operated that at the point of time at which the person is brought back from Rajkot, such of the officers who are due for promotion are placed in the position of either foregoing promotion or having to go to Rajkot with the knowledge and expectation that either those who are senior to them ~~and~~ and who have been promoted at a time when such officers from Rajkot were not due to return, will be retained in their station and also such officers who are junior and who will be promoted in vacancies arising after the point of time of the return of the ⁱⁿ officers from Rajkot will be retained their station. This synchronisation of the date of return of officers at Rajkot and of the officers due to be promoted and transferred to Rajkot leaves much scope for manipulation. Even apart from manipulation, there is a considerable element of the luck of the draw, to say the least. In our view, it is necessary that the policy is reviewed so that uniform principles are equitably laid down regarding the transfer liability to Rajkot and all officers are subjected to this transfer liability failing availability of volunteers so that such ^{the} liability is shared equally. Another alternative might be to induce volunteers to a greater extent and it may be examined how this can be done. If the transfer liability to Rajkot is regarded as transitional problem, the transitional arrangement is required to be more equitably ordered ^{so} and must be ~~so~~ seen to be equitably ordered. We cannot help observing that we are left with a distinct impression that the petitioner is being disturbed far too frequently. She has been brought to Ahmedabad admittedly only in November, 1986 and observes a spell of the normal tenure there and if promotion posts are likely to come about at Ahmedabad as appears to be the case she has a claim to be accommodated at Ahmedabad. Similarly persons to be brought back from Rajkot should also not pick and choose the ^{on} date which they need to come to their parent Collectorate and

there should be a fixity about it. We would not like to involve ourselves in the administrative arrangements which makes this objective feasible and would content ourselves by merely directing the attention of the concerned authorities regarding this aspect of the problem which calls for a review of the policy instructions.

5. In the light of the above observations, we find that Mr. Parmar has a claim to be accommodated in the Ahmedabad Collectorate and the petitioner has a transfer liability to serve in Rajkot but in the circumstances in equity, she has a prior claim to be accommodated in Ahmedabad Collectorate in a vacancy as Administrative Officer as has arisen or might arise before 30/11/1987 in preference to any of her juniors. The option to go to Rajkot may be offered to her juniors in their order of seniority subject to the provisions in the policy dated 4/7/1986 until it is suitably reviewed.

6. With these directions, we find that the application has merit and allow it in part. No order as to costs.

Sd/-
(P. H. TRIVEDI)
VICE CHAIRMAN

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