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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 644 of 1988

DATE OF DECISION 07-04-1989.

Shri A. H. Sharma Petitioner

Mr. R. C. Kodekar Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Mr. J. D. Ajmera Advocate for the Respondent(s)

CORAM :

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

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?

Shri A. H. Sharma,
261/B, Sardarnagar,
Ahmedabad.

..... Petitioner

(Adv. : Mr. R. C. Kodekar)

Versus

1. Union of India, through
The Secretary,
Telecommunication Deptt.,
New Delhi.

2. General Manager,
Telecom, Gujarat Circle,
Ahmedabad-380 009.

..... Respondents

(Adv. : Mr. J. D. Ahmera)

J U D G E M E N T

OA/644/88

Date : 07-04-1989.

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

The petitioner challenges the order of transfer from Ahmedabad in Baroda Division to Surat on the ground that after completion of period of training, he was appointed as a Short Duty Telegraphist and after pursuing his case against transfer on the ground of as being rendered surplus in OA/326/87 and pursuing his remedy through Contempt Application whereby he was permitted to resume at Ahmedabad C.T.O., the petitioner find himself again subjected to an order of transfer outside the division. The petitioner states that there are 45 surplus people and if he is to be transferred on the ground of surplus there is no reason for discriminating against him when his juniors are retained. He has named two juniors who have been posted in Ahmedabad division

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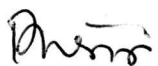
at their request and he cites rules which make these persons junior to him as they have been posted in Baroda division at their request and if on the ground of being surplus transfer is to be effected, the axe must fall on them. The petitioner also challenges that as a transfer is due to change of technology it cannot be regarded as being founded on being surplus.

2. The respondents state that the petitioner along with other surplus persons faces prospects of termination and according to the department's policy to minimise hardship to such persons all such persons were asked to show their willingness to retain their post by accepting transfer to another division. The petitioner has shown his willingness and this is admitted by him and he, therefore, is estopped from challenging the order. So far as the two persons named by him are concerned, one of them is permanent and another of them is quasi-permanent and while they are placed below the petitioner, they cannot be equated with the petitioner by virtue of their superior status compared to the petitioner who is only temporary.

3. We find much force in the respondents' case. The respondents have acted by applying Rule 33 of P&T Manual Vol.IV on the basis of the willingness given by the petitioner. The petitioner's plea that his was under duress cannot persuade us because he knew the choice before him and acted in his own interest. By the terms of his appointment, it was possible to terminate his service at any time with one month's notice as shown by

the letter dated 5-8-1985. As the letter asking for willingness is addressed to all persons who were surplus and the petitioner acted in response to it, there is no force in the plea that he was discriminated against, for being picked up. The petitioner's plea that his juniors are retained also does not appear to have any force because under the petitioner there are only 3 persons according to Annexure A/7 viz. Shri V. C. Mistry who has been transferred, Mrs. M. N. Rana who has also been transferred from another division under Rule 38, which are request transfers and as she is permanent, her case has been properly distinguished from that of the petitioner. Similarly Mrs. M. B. Mehta who also has been transferred to Ahmedabad division under Rule 38 as a request transfer is made permanent from 31-12-1982 and her case has, therefore, been also distinguished from that of the petitioner. We are, therefore, satisfied that there is no unfair discrimination against the petitioner's transfer in this case.

4. We accordingly do not find any merit in the petition justifying any interference with the orders of the respondent authorities which are impugned in this case. There shall be no order as to costs.
Rule discharged.


(P. H. Trivedi)
Vice Chairman

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

12/5/1989

Heard Mr. R.C. Kodekar and Mr. J.D. Ajmera, learned advocates for the applicant and respondents respectively. Mr. Kodekar seeks the review of our judgment rendered on 7.4.1989 in CA/644/88 in terms his interpretation of Rule 38 of the P & T Manual vol. IV (Annexure A-2). The grounds which he has urged for this purpose have already been taken into consideration in the main application and has been disposed of by our judgment referred to and Rule 38 has been specifically dealt with in para 3 of our judgment sought to be reviewed for this purpose. Sufficient grounds have been given in that para for reaching ~~into~~ conclusion in the judgment. No new grounds or any manifest error of fact or law or any other circumstances justifying the review has been established. There is, therefore no merit in this petition and it is accordingly rejected.



(P H Trivedi)
Vice Chairman

a.a.bhatt