

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~

AHMEDABAD BENCH

O.A. No. 124 of 1989

~~1988~~~~XXXXXXXX~~DATE OF DECISION 12-05-1989Shri R. R. Parikh & Others PetitionerShri C.T.Maniar & Shri D.G.Karia Advocate for the Petitioner(s)

Versus

Union of India & Others RespondentShri J. D. Ajmera Advocate for the Respondent(s)

CORAM :

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

~~The Hon'ble Mr. X~~

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?

Whether it needs to be circulated to other Benches of the Tribunal?

5

- 1) Shri R. R. Parikh
- 2) Shri P. S. Pathak
- 3) Shri Y. R. Mehta
- 4) Shri P. N. Jadeja
- 5) Shri B. V. Chopda
- 6) Shri S. M. Dodiya

All working at Telephone
Exchange, Veraval.....

..... Petitioners

(Adv. : Mr. C. T. Maniar &
Mr. D. G. Karia)

Versus

- 1) Union of India, through
Secretary, Department of
Telecommunications,
New Delhi.
- 2) The Chief General Manager,
Telecom., Gujarat Circle,
Ahmedabad.
- 3) Area Manager, Telecom.,
Rajkot Area,
Rajkot.
- 4) Telecom District Engineer,
Junagadh District,
Junagadh.
- 5) Assistant Engineer,
P. R. X. Maintenance,
Veraval.

..... Respondents

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

J U D G M E N T

OA/124/89

12-05-1989

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

In this case OA/124/89, the six petitioners have joined together in seeking the relief under Section 19 of the Administrative Tribunals Act regarding their transfer from Veraval Sub-Division to Keshod Exchange under Junagadh Circle against leave reserved post vide order dated 15th March, 1989 at Annexure A/1. The substance of their case is that (1) the plea of public

interest taken in the order is contradicted by a plea that they have been rendered surplus and they have cited the decision of the Central Administrative Tribunal, Madras Bench, Alexander Kurian V/s. Director General Marine Fisheries Research Institute, Cochin & Another that mere assertion of transfer in public interest is not validated unless there are specific ground to support it, (2) the transfer policy of the Telecommunication Department is that when there is surplus staff, seniority will be the criteria and when there is a transfer from one to the other station within the same recruitment unit, the officials with the lowest stay at the particular station will be transferred first and that this policy protects them against their transfer, (3) that in fact persons named by them at page-9 of the application have put longer period of service and, therefore, are transferable first but they are not disturbed and instead the petitioners have been transferred.

2. Against this the respondents have stated in their reply that the petitioners have not exhausted their remedy⁽²⁾ that they cannot join themselves in a common application as in service matters each applicant has a separate grievance and cannot join ~~himself~~ himself with others on the plea of merely there being common orders, (3) that if the transfer is resisted the petitioners will be rendered surplus and will have to be retrenched and (4) that the Government's policy vide Memo dated 27-5-1988 on which the petitioners rely has been superseded by the subsequent policy dated 25-11-1988, and the petitioners have

wrongly taken the plea that the persons named by them are liable to be transferred on the lines of the policy applicable to their case. The respondents have given copies of the Memo dated 1-4-1987, 27-5-1988, 25-11-1988 and have also shown how the surplus or shortage position of the staff has been worked out.

3. We must dispose of the preliminary pleas about the petitioners joining themselves in a common application. In this case a common order has been passed and a common plea of interest of service has been taken. On the ground that in these circumstances it will be convenient for the petitioners to agitate their grievance in a common application has force and their joining themselves together for seeking relief cannot be debarred. Another preliminary plea is that the petitioners have not exhausted their remedy. There is no remedy provided by rules for going in appeal against the orders impugned which has been shown to be available by the respondents. This plea, therefore, also cannot be allowed to stand.

4. The petitioners have heavily relied upon the circular dated 27-5-1988 and have referred to our order dated 7-12-1988 in this regard. However, the respondents have produced a copy of the circular dated 25-11-1988 which clearly states that ;

"In supersession of this office circular letters of even No. dated 1-4-1988 and 27-5-88 on the above subject, it has been decided that the following criterion will be followed for transfer of surplus staff:

46

For transfer of surplus staff, whether from one recruitment unit to another or within the same recruitment unit, seniority would be the only criterion, i.e., transfer will be effected starting from the junior most official in the gradation list."

These instructions superseded in terms the earlier instructions dated 27-5-1988. Accordingly, the plea of the petitioners based upon the circular dated 27-5-1988 cannot be held to apply because the impugned orders dated 17-3-1989 and 15-3-1989 are clearly found to be governed by the revised policy circular dated 25-11-1988. The transfer of the petitioners cannot be faulted as being violative of the policy of the Government as existing on the date of the transfer. The plea of the petitioners of the persons named having worked longer than the petitioners at Veraval and their attracting the liability of transfer in preference of the petitioners also cannot, therefore, be allowed to stand.

5. The petitioners challenge that the transfer is in public interest when the respondents have admitted that the transfer is to avoid the retrenchment of the petitioners and, therefore, the transfer orders have violated their rights also does not hold. The respondents have given their reasons and shown ~~them~~ to be consistent with the Government's policy. If the petitioners have gathered experience in their work and if they are found surplus in a particular unit and are required to be adjusted against the shortages in another unit and that they need to be sent to the unit in which there is a shortage, there is nothing to show that their action is not due to their desire to safeguard public interest. also. In such circumstances the perception of the department that

there is need to utilise experienced personnel where they are required, does ~~not~~ not detract from the public interest only because that also serves to protect the continuation of the service of the petitioners. It is true that different terminology is used like exigencies of administrative requirements, interest of public service or offer of an appointment to avoid retrenchment, and the use of the different terminology has different implications. However, there are circumstances in which interest of the employees might be safeguarded alongwith the safeguarding the public interest and if the orders show that the terminology used is for protection of public interest, it does not get invalidated merely because there is an existence of another ground for the impugned orders. We have only to examine whether the impugned orders are totally without the element of public interest which is taken as a ground for the orders. We do not find that the impugned orders suffer from any infirmity.

6. The learned advocate for the applicants has referred to the case of Shri Dharam Pal & Others V/s. Union of India & others(1988) 6 ATC 396 for his plea that when a matter is decided by the Court, Government should suo moto consider cases of all similarly situated persons . This case has no application here when this case is governed by a different Government policy from that governing the case in which the decision was rendered for a case governed by a previous policy. Similarly the reference of the applications to the case of Alexander Kurian Vs/ Director General, Marine Fisheries Research Institute, Cochin & Another (1988) 6 ATC 421 is also not applicable as discussed

RA/88/89

in

OA/124/89

(11)

Coram : Hon'ble Mr. P.H. Trivedi

: Vice Chairman

1/9/1989

Neither the petitioner nor his advocate present.
There is no ground for reviewing the case as shown
by the fact that the circular dated 25.11.88^{on} which the
petitioner relies on the review application in which
he contended that it has not been referred to in the
judgment sought to be reviewed, has actually been considered
discussed and referred to in the judgment dated 12.5.1989
in O.A./124/89. Accordingly, the petition has no merit
and is rejected.



(P.H.Trivedi)
Vice Chairman

a.a.bhatt