

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH~~XXXXXXXXXXXX~~

(07)

O.A. No./150/89, OA/153/89 ~~198~~~~Tax No.~~

OA/154/89 & OA/155/89

DATE OF DECISION 16-08-1989.

1. Srichand S/o Sadhuran Golani _____ Petitioners

2. Niranjan A. Parekh

3. Suresh J. Chauhan

4. Dinesh S. Chavda

Mr. S. Tripathi & Mr. Girish Patel _____ Advocate for the Petitioner(s)

Versus

Union of India & Others _____ Respondent

Mr. 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?

OA/150/89

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1. Srichand S/o Sadhuram Golani
C-65, Kubernagar, Ahmedabad
working in the office of
Regional Passport Office,
Neptune Tower Building, Ashram
Road, Ahmedabad-9.

.. Petitioner

(Advocate: Mr. S.Tripathi)

Versus

1. The Secretary to the Govt. of
India, Ministry of External
Affairs, Patiala House,
New Delhi.
2. Regional Passport Officer,
Neptune Tower Building,
Ashram Road, Ahmedabad-9
(Advocate: Mr. J.D.Ajmera)

.. Respondents

OA/153/89

1. Shri Niranjan A. Parekh
10/4, L. Colony, Near Sahjanand
College, Polytechnic, Ahmedabad.
(Advocate : Mr. Girish Patel)

.. Petitioner

Versus

1. Union of India, (Notice through
the Secretary, Ministry of
External Affairs, New Delhi.)
2. Chief Passport Officer & Joint
Secretary, Ministry of External
Affairs, Govt. of India,
New Delhi.
3. Dy.Secretary (P.V.) Office of
the Chief Passport Officer,
Ministry of External Affairs
Govt. of India, New Delhi.

.. Respondents

(Advocate: Mr.J.D.Ajmera)

OA/154/89

1. Shri Suresh J.Chauhan
Muni.Health Staff Quarters,
Opp. Shankar Bhuvan, Outside
Shahpur Gate, Ahmedabad.
(Advocate: Mr. Girish Patel)

.. Petitioner

Versus

1. Union of India (Notice through
the Secretary, Ministry of
External Affairs, New Delhi.)

2. Chief Passport Officer,
& Joint Secretary, Ministry
of External Affairs Govt. of
India, New Delhi.
3. Deputy Secretary (P.V.) Office
of the Chief Passport Officer,
Ministry of External Affairs,
New Delhi.
4. Regional Passport Officer,
Neptune Tower, Opp.Nehru Bridge,
Ahmedabad.

.. Respondents

(Advocate: Mr. J.D.Ajmera)

OA/155/89

1. Shri Dinesh S.Chavda
2019, Bhatia Pole, Raikhad
Ahmedabad.

.. Petitioner

(Advocate: Mr.Girish Patel)

1. Union of India (Notice through
the Secretary, Ministry of
External Affairs, New Delhi.
2. Chief Passport Officer & Joint
Secretary, Ministry of External
Affairs, Govt. of India,
New Delhi.
3. Dy.Secretary (P.V.), Office
of the Chief Passport Officer,
Ministry of External Affairs,
New Delhi.

.. Respondents

(Advocate : Mr. J.D.Ajmera)

J U D G M E N T

OA/150/89

with

OA/153/89

with

OA/154/89

with

OA/155/89

Date: 16-08-1989.

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

.. Vice Chairman

These four cases have been heard together
because the facts and law governing them are nearly
identical. Learned advocate Shri Tripathi has adopted
the arguments made by the learned advocate Mr.Girish
Patel and stated some distinguishing features regarding

the application in OA/150/89.

2. At the outset by my order dated 23.6.1989 directions had been given to the respondent to produce certain documents or make certain clarificatory statements within a period of 10 days thereof. Mr. Ajmera, learned advocate for the respondent offered by his petition dated 11.7.89 a further reply by the respondent Regional Passport Officer dated 7.7.1989 to which he was asked to obtain a No Objection Note from the petitioner's learned advocates as the date of the judgment was fixed and in the said orders the time limit of 10 days ^{fixed} was being crossed. Mr. Ajmera has reported that learned advocate Mr. Girish Patel has declined to give no objection note in OA/153/89, OA/154/89 and OA/155/89 while in OA/150/89 to this further reply dated 7.7.1989 the petitioner has filed a further rejoinder dated 12.7.1989. As the cases have been heard together and as directions were issued for seeking clarifications, documents or statements from the respondents it is necessary to adopt a uniform approach regarding the affidavit dated 7.7.1989. After hearing the learned advocates it has been decided that it will not be appropriate to consider any part of this affidavit which is not directly in reply to the queries made in the order of 23.6.1989. All other material should be deemed as extraneous which the respondents are not allowed to introduce at that stage, and as ordered on 26.7.1989 that the portions stated in the order are to be excluded from the consideration of the merits of these cases.

3. All the petitioners are relatively low paid employees in the office of respondent No.2 Regional Passport Officer, Ahmedabad. The petitioner Mr. Golani in OA/150/89 is an Assistant who has been transferred to Patna. He was earlier transferred in July, 1984 to Cochin from Ahmedabad and in August, 1988 he was transferred

from Cochin to Delhi from where he was transferred to Ahmedabad in November, 1988 at his request after about 5 months of his joining his duties at Ahmedabad.

Shri Niranjan A. Parekh, applicant in OA/153/89 was a daily wager at Ahmedabad office in October, 1977 and from 23.12.78 was confirmed as L.D.C. when he was transferred to Bombay. In August, 1979 he was transferred to Ahmedabad. He declined promotion as U.D.C. as it involved a transfer to Madras in July, 1984 but then he got his promotion as U.D.C. He is being transferred to Calcutta by the impugned orders. The petitioner Shri Suresh Chauhan in OA/154/89 belongs to Scheduled Caste, had joined as daily wager in 1976 was confirmed as L.D.C. in April, 1977, was transferred to Bombay in 1981 which he challenged and the order was stayed by the Gujarat High Court and later cancelled. He was again transferred in July, 1984 to Bombay with promotion as U.D.C. In June, 1987 he was transferred from Bombay to Ahmedabad and soon thereafter in February, 1988 he was transferred to Goa on deputation. In April 1988 he was transferred from Goa to Ahmedabad and now by the order dated 10.4.1989 he is sought to be transferred to Bhubaneswar. Shri Dinesh Chavda petitioner in OA/155/89 was appointed as daily wager in 1977, confirmed as L.D.C. in December, 1978 and transferred on deputation to Goa in February, 1988 and in April, 1988, he was transferred from Goa to Ahmedabad and by the impugned order he is being transferred to Jullunder. All the petitioners impugne their orders of transfer, dtd. 6.4.1989 in the case of OA/150/89 and the Telex message at Annexure-A1 in O.A./153/89, OA/154/89 and OA/155/89 which are identically worded. All these orders announce that the petitioners would be relieved on 10.4.1989 and direct them to report to the stations after availing one week

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of joining time. The petitioners challenge the transfer orders on the grounds of malafide to harrass them and in colourable exercise of powers. They rely upon the transfer policy of the Circular dtd 15.9.1982 which according to them has been violated. They have alleged discriminatory behaviour on the part of the respondents by listing persons who have never been transferred. They also urge how seriously they would be invonvenienced on account of various personal circumstances. In the case of Shri Niranjan Parekh in OA/153/89 the petitioner has urged that his wife is an employee of the District Panchayat under the State Government and according to policy of keeping husband and wife together which he has annexed he should be retained at Ahmedabad. In the case of Suresh Chauhan in OA/154/89 he has urged that he belongs to S.C. and according to the circular annexed at A(2) dtd. 24.6.85 he enjoys protection against transfer.

4. All petitioners have urged that the transfer policy dtd. 15.9.1982 requires the strict observation of the policy in terms of the principles stated therein which have been vidated.

5. During the hearing, the transfer policy was discussed in detail by the learned advocates from both sides. For facility of reference the circular dated 15.9.1982 is reproduced below:-

Sub:-Transfer Policy-Administrative Guidelines

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"The Chief Passport Officer, Government of India, Ministry of External Affairs New Delhi has sent a communication regarding the question of evolving a suitable transfer policy which could reflect the administrative requirement while taking into consideration the personal needs of the various officers and staff which was under consideration for some time. This was also discussed at the recent All India Passport Officers' Conference held from April, 14 to 16, 1982 and the basic recommendations contained in that Conference had been considered further and it has now been decided to adopt the following approach while transferring officials in this organisation.

- a) All postings should be on the basis of a roster maintained senioritywise.
- b) Normally no one should be exempted from the roster of postings unless there are very special grounds and these should be immediately brought to the attention of C.P.O. through the R.P.O. and not at the time of actual transfer.
- c) Postings of Group 'C' and 'D' staff should be minimal and limited to a period of one year.
- d) Transfer of Group 'B' officials should be on a rotational basis within the same region for a period of three years.
- e) Transfer of Group 'A' officers should be on a rotational basis on all India basis.
- f) All persons who refuse promotions to avoid transfers, should not normally be promoted at the same station at a later date.
- g) Persons who are about to retire within a period of 1.1/2 years, should not normally be posted and efforts should be made to bring them back to their original place of posting.

C.P.O. has also desired to stress that while every effort should be made to adhere to the above guidelines, it has to be borne by the officer concerned that ours is an all-India service and therefore every officer and staff has to be prepared to move anywhere in India. Furthermore, the above guidelines do not restrict the Government in any way from transferring people on administrative grounds or in the exigency of service. It is also felt that the implementation of the above transfer policy would minimise grounds for reconsideration of postings and transfers and such a policy would give an equal opportunity to all the persons to return to their places of original postings after a reasonable period and also help them in gaining experience of working in other offices.

C.P.O. has desired that the above guidelines should be brought to the notice of all officers and staff for necessary compliance and also sought the cooperation from all officers and staff in implementing the same and also to avoid forwarding of representations every now and then. He has also directed that in case of individuals who are habitually not obeying the transfer orders, an entry should be made in the Annual Confidential Reports.

Sd/-
(S.K.Gudi)
Regional Passport Officer,
Ahmedabad.

It is seen that postings have to be on the basis of a roster which has to be maintained senioritywise

and that postings of group 'C' and 'D' staff to which the petitioners belong should be minimal and for a period limited to one year, that the transfer of Group-B officials should be on a rotational basis within the same region for a period of three years and that the transfer of Group-'A' should be on a rotational basis on all India basis. The circular goes on to stress the all India transfer liability and that the guidelines do not restrict the Government in any way for transfer on administrative grounds or in the exigency of service. During the hearing it was not entirely clear whether the limit of one year for Group C & D staff was to be interpreted in terms of posting them outside their home stations and whether there was an implication that they would be returned to their home stations if they were posted away from them for a period of one year if that was unavoidably necessary. For a harmonious instruction of these guidelines therefore, ^{it} became necessary to ask for documents and clarifications which was ordered on 23.6.1989.

What Mr. Ajmera has sought to furnish, however, by the affidavit dated 7.7.89 is a letter dtd. 14.12.87 and an extract of the communication dtd. 3.7.89. New ground has been taken that the present transfer orders in public interest is based on preliminary investigation report which do not fall under the general category where an officer is transferred at his own request or in public interest after having the required minimum period of stay at a particular station. This part viz. sub-para 4 of para-2 and the entire para-3 of the affidavit must be excluded from consideration as it introduces new facts which were not referred to in the pleadings or in the hearing earlier.

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6. The respondents' case thus left for consideration is that the transfers are in public interest; and that the petitioners being admittedly transferable and transfer being an incident of service it is within the competence of the authorities to make appropriate decisions about such transfer which cannot be challenged in the forum of the Tribunal; that the transfers are a part of a chain which has been necessitated on account of opening of new offices for which the personnel requirement cannot be met otherwise; or for consequential transfers required due to adjustment of posts that there is only one office in Gujarat so that if the petitioner has to be transferred necessarily he has to be transferred outside Gujarat; and that the petitioners' personal circumstances should not outweigh the requirements of public service; further, that the guidelines are merely instructions for assisting the authorities deciding the transfer and the guidelines themselves provide for departure from them when it becomes necessary to do so.

7. The petitioners have relied upon ATR 1986 Supreme Court 1955 B.Vardha Rao Vs. State of Karnataka especially the observations in para-6 in which the position of Class-III and Class-IV employees has been distinguished. The respondents have relied upon Krishna Dev Dutt V. Union of India and another, SLR 1987(3) 624, B.B. Dey V. Union of India, SLR 1986 (2) 289, Shantikumari V. Regnl. Dy. Director, Health Services, Patna, AIR 1981 SC 1577 and D.H. Dave V. Union of India SLR 1987 (1) 211.

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1. AIR 1986 SC - 1955
 2. SLR 1987 (3) - 624
 3. SLR 1986 (2) - 289,
 4. AIR 1981 SC - 1577, and
 5. SLR 1987 (1) 211.

for their contentions that courts should not interfere in transfer orders. The full Bench judgment of this Tribunal in A.T.R. 1988 (2) CAT-116 Kamlesh Trivedi V/s. Indian Council of Agricultural Research and AIR 1986 SC 1955 has been referred to by learned advocates of both parties for supporting their cases.

8. In this back-ground when the facts and circumstances of these cases are viewed, we have to take into account the fact that there is only one office of the respondent-department in Gujarat and transfer of the employees from Gujarat Office has necessarily to be outside Gujarat. Earlier also some of the petitioners have been transferred and a number of them had then implemented the transfer orders. The petitioners do not dispute their liability of transfer. Although it has no force of law, the guideline that the respondents have to restrict the transfers to the minimum extent regulates such transfer and the petitioners are entitled to interpret the policy guide-line so that they can claim that their posting is limited to the period of one year after which they are entitled to be brought back to their home stations. The fact that employees of Class-III category to which the petitioners belong are required by the policy guidelines and by the observations of the courts to be protected against transfers does not confer any immunity from transfer even in terms of the policy guidelines and the decisions of the courts. There is no rule against transfer and, therefore, the orders cannot be said to be violative of any mandatory rule or instructions and cannot be struck down on that ground. There is no support for the contention of the respondents that the communication dated 3.7.1989 or the letter dated 14.12.1987 modify or supersede the policy guideline dated 15.9.1982. Neither of the two, that is Memo dated 3.7.89 or letter dated 14.12.87 presume to lay down any new policy but they merely claim to

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Clarify certain working problems encountered in the day to day experience. The clarifications sought by our orders have not been made available and a decision, therefore, has to be on the basis of the pleadings on the record and the submissions made together with the need for a harmonious constructions of such instructions. Although Roster points have not been clarified, it is legitimate to construe the requirements for such Roster points along with other guidelines in the spirit of their being not absolute prohibition against such transfers even when the Roster points are departed from. There is no requirement on the part of the respondents to pass speaking orders when transfers are made. The petitioners are entitled to make representations against such orders and to invoke the policy guidelines and the respondents are required to consider whether the departure from them is necessary. Transfers are not required to follow any seniority so that any person can claim that he cannot be transferred unless others junior or senior to him are transferred. It is not possible to invoke the plea of discrimination under Articles 14 & 16 when there are no rights vested in matters of transfer. The function of judicial review however, has necessarily to be limited to ascertain whether there is any malafide, arbitrariness, exercise of colourable authority vitiating the order or whether there is any justification on grounds of exigency or public interest. It is not for judges to determine the extent of such justification but to ascertain its existence. In these cases the fact that other offices have to be opened or for reasons of adjustment of posts transfers are required as claimed by the respondents provides the ground for transfers. It is not for courts to decide whether the particular persons to be transferred should be petitioners or others or whether the objectives of transfer could be met by other means.

9. In the case of Mr. Golani in OA/150/89 the petitioner claims to have been disturbed within a period of 5 months of his joining at Ahmedabad. He has not pointed out any rule supporting the conclusion that he enjoys any immunity from transfer on his being posted to Ahmedabad on his own request. Similarly the petitioners who claim protection against transfer on account of belonging to Scheduled Caste or having a working spouse have not established that there is any absolute prohibition against their transfer. At best they are entitled to make representations to the competent authority urging their case either for such authorities for reviewing their orders or for bringing them back to their home stations as early as possible. This also applies to the grounds of personal inconvenience and circumstances requiring compassion as detailed by various petitioners.

10. In the case of Shri D.S. Chavda in OA/155/89 the respondents have merely averred that the transfer orders have been passed keeping in view other administrative aspects. There is not even a vestige of explanation regarding the nature of the administrative exigency occasioned either by the opening of new offices or consequential transfers due to adjustments of post ~~or~~ as has been stated in the reply in other cases. The Courts may not sit in judgment on the adequacy or otherwise of the respondent's assessment of the administrative exigency or public interest or define their nature as a sufficient justification for providing a basis for the transfer orders. The Courts however, can legitimately ascertain the existence of the administrative exigency which has to be to that extent ^{the} ^{to be} explained to establish whether the reason provided was bonafide or fictitious or the phraseology used is empty of meaning. If the Courts are asked not to do this or exclude it from their scope, it is tantamount to negating the function of

judicial review to which such administrative orders have to be necessarily subjected. There is no requirement in law that transfer orders need to be accompanied by any reference to the reasons thereof. However in view of the Supreme Court's observations regarding the special consideration to which class III or class IV employees are entitled, without any explanation. Whatever, especially when it is offered for similarly situated cases, the impugned orders would seem to be wanting in the justification required of them and the petitioner Shri D.S.Chavda is entitled to the relief of being protected against transfer in the impugned orders.

11. In the result it is found that the petitions have no merit except to the extent stated above. Rule made absolute in OA/155/89. However in this case the respondent authority is at liberty to pass fresh orders if they are free from the taint of malafide arbitrariness colourable exercise of authority and if they are based on administrative exigency or public interest. Interim relief in other cases Viz. OA/150/89, OA/153/89 and OA/154/89 to discontinue. The petition in OA/150/89, OA/153/89 and OA/154/89 rejected. Parties to bear their own costs.

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