

Transfers/Posting
(No.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 223 of 1989
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DATE OF DECISION 27.01.1992

Shri Kastur L. Vaghela Petitioner
Shri P.H. Pathak Advocate for the Petitioner(s)
Versus
Union of India & Ors. Respondent
Shri B.R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt Member (J)

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?

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Kasturbhai L. Vaghela .. Applicant
Versus
Union of India & Ors. .. Respondents

O.A. No. 223 of 1989

Present : Mr. P.H. Pathak for the applicant
Mr. B.R. Kyada for the respondents.

J U D G M E N T

Dated : 27.1.1992

Per : Hon'ble Shri R.C. Bhatt .. Member (J)

The applicant serving with the respondents Railway, has filed this application under section 19 of the Administrative Tribunals Act, 1985 for a declaration that the impugned order dt. 1.1.1988 Annexure A-9 by which the applicant who was put to work as T.C. at Jamnagar for six months alongwith his post was sent back immediately to HAP to work as TNC, as illegal and invalid and another order dated 1st March, 1989 produced at Annexure A-2 passed by ADRM Rajkot also as illegal and invalid and inoperative in law and has prayed that the respondents be directed to post the applicant as TTE from the date of last satisfactorily working report submitted by respondent No. 2.

2. The impugned order dt. 1.1.1988 Annexure A-9 was passed by an officer signing for DRM Rajkot. On receiving this order Annexure A-9, the applicant filed O.A./29/88 before this Tribunal alleging that the said order of transfer was passed arbitrarily

because inspite of favourable reports about the satisfactory performance as TC, the applicant instead of being considered for promotion, was being sent to Hapa. It is observed in the judgment in OA/29/88 passed by this Tribunal on 13th January, 1989 produced at Annexure A that only the ground on which the transfer was resisted by the applicant was due to arbitrariness or malafides, but either from the pleadings or in the contention during the hearing, the Tribunal did not find that there is any malafide or ulterior motive. It was also observed by the Tribunal in the judgment that the impugned order dt. 1st January, 1988 under challenge was not in terms of transfer but even if it was so construed, there was no deficiency in competency or of the authority making the order or any other ground for interfering with the said order. It was, therefore, held that there was no ground for interfering with the said order. The Tribunal ^{last but} in one paragraph made some observation and gave directions to the DRM but ultimately held that the application has no merit to the extent mentioned in the judgment and the case was rejected. Therefore, the judgment indicates that the application OA/29/88 in which the applicant had challenged the impugned order Annexure A-9 dt. 1.1.1988 was rejected. The question, therefore, arises whether the applicant is entitled to file the present O.A. challenging the same impugned order Annexure A-9. It is important to note that the Tribunal had not given any right to the applicant to file new O.A. if he was dissatisfied with the

order passed by the DRM on the direction given in the judgment. In this view of the matter, the applicant is not entitled to have a second round of litigation on the same order dt. 1.1.1988 because the application OA/29/88 was rejected.

3. In this case, both the learned advocates for the applicant and the respondents have made written submissions and have waived oral hearing and therefore, this O.A. is disposed of on the strength of their written submission and the documents on record. The applicant in para 1 of the submission has challenged that order dt. 1.1.1988 and subsequent order passed by ADRM Rajkot Annexure A-2 on 1.3.1989 as per the direction given by the Tribunal in OA/29/88. The applicant has given history of his career in para 1 of the written submission. In para 2 of the written submission, the applicant has alleged that the impugned order dt. 1.1.1988 not only transferred the applicant but it was an order of change of the department and promotional avenue of the applicant. The applicant's case as per his written submission para 2 is that the said order dt. 1.1.1988 (which is referred to as 1.1.1989 in which written submission which is admittedly an error) that the respondents have changed the cadre in department of the applicant which was not at all permissible. He has relied on three decisions in support of his written submissions

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that when due to transfer order which affects adversely to the employee, he is entitled to be given an opportunity of being heard which ^{is} a minimum requirement of principle of natural justice. This decision ^{is} Ram Chander v. Union of India & Ors. 1986 SCC (L&S) 383. The second decision is Kehar Singh v. Union of India & Ors. (1989) 9 ATC page 152. It was held in this decision that in absence of a centralised cadre and common seniority list, the Civilian Assistant Security Officer's transfer from his parent branch to another branch was unsustainable. The third decision is Dharam Pal Verma v. Union of India & Ors (1989) 9 ATC page 897 in which it is held that the transfer of an employee whether permanent or temporary outside his cadre without his consent is not permissible. The applicant in his written submission para 3 stated that the case of the applicant is not a simple transfer but it is a case of victimisation and change of cadre. It is also mentioned in para 3 of the written submission that the Tribunal while passing the order in OA/29/88 has ^{not} gone into the merits of the case of the applicant regarding his non-consideration of the case for the post of TT in light of the order passed which is at page 6 of the application. It is mentioned in written submissions that the question of resjudicata does not arise because while disposing the earlier case, the Tribunal has not touched the

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action of non-consideration of the applicant as well as change of his department.

4. The respondents in their written submissions have contended that this OA is a second round of litigation and the principle of promissory estoppel and also principle of resjudicata under section 10 of the C.P.C. is applied. It is contended that the direction given in the previous order in OA is complied with and therefore this application does not survive.

5. I have gone through the judgment in OA/29/88 and I am satisfied that the application was dismissed or rejected on merits. As observed earlier, the Tribunal has observed that the impugned order was in terms of transfer but even if it was so construed there was no deficiency of incompetency of the authority making the order or any other ground for interfering with the said order. After considering the contents of the application OA/29/88, the Tribunal has held "I, therefore, do not find any ground for interfering with the said order", and the last line of the order shows that "the petition has no merit to the extent stated above and the case is rejected". In this view of the matter, the applicant is not entitled to file this fresh O.A. challenging the said impugned order which was under challenge in previous OA/29/88 and the

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principle of resjudicata will apply. In this view of the matter, it is not necessary to refer to the three decisions which are relied upon by the applicant because this OA is not maintainable.

6. The applicant has also challenged the speaking order passed by ADRM Rajkot dt. 1.3.1989 produced at Annexure A-2 on the ground that it is not passed by the respondent No. 2 i.e. Divisional Railway Manager, Rajkot as was directed by this Tribunal but the subordinate authority of respondent No. 2 had passed the order without application of mind and is liable to be quashed and set aside and said that the order is without jurisdiction. In order to appreciate this contention of the applicant, it is necessary to again refer to the direction given by the Tribunal in OA/29/88 which is as under :

" In view of the fact that the petitioner belongs to the Schedule Caste and that he has to be reported for satisfactory performance of his work and that there are on record some report for his work a satisfactory, a note of caution before implementation of the transfer order is due. It would be in the fitness of the case, if the DRM under whose overall performance the petitioner has worked, personally look at all the papers and satisfied himself that none of the subordinate had any ulterior motives which ofcourse is neither disclosed nor established during the contention raised in the hearing or in the pleadings as a double safeguard against any injustice against the petitioner or due to any prejudice against him. It should be possible for the DRM to complete his exercise within a period of one month and only after such an exercise is completed, the order which is impugned be implemented."

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Reading this direction, it is clear that the Tribunal has directed to keep in mind a note of caution before implementation of the transfer order and the DRM had to satisfy himself after personally looking the papers that none of the subordinate had any ulterior motive which ofcourse ^{was} neither disclosed nor established during the contention raised in the hearing or in the pleadings but as double safeguard the DRM ^{had} to satisfy himself against any injustice against the ^{or} petitioner, that none of the subordinate had any ulterior motive nor the order was passed due to any prejudice against the applicant and the DRM was asked to satisfy himself and to complete his exercise within a period of one month and only after such an exercise ^{was} completed, the order was to be implemented. Therefore, the Tribunal left the matter to the DRM to satisfy himself that the impugned order was not the result of any ulterior motive or prejudice against the applicant. No right was given to the applicant to approach to this Tribunal again questioning the exercise of the DRM as per the above direction and hence also this OA is not maintainable. However, the ADRM, Rajkot has gone through the case in detail and has seen all references in the order as per his speaking order dt. 1.3.1989 in which he has mentioned

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that he has examined all records and orders carefully with reference to the order passed by the Tribunal. He has mentioned in the speaking order that since the ADRM is incharge of all the personnel matters of the Division and he exercises the case. The respondents have in their written submissions contended that the representation of the applicant was considered carefully on merit and the decision i.e. a speaking order was conveyed to the applicant which is a legal one. It is also contended in para 6 of the written submission filed by the respondents that so far personal hearing is concerned, it was granted and therefore, it could not be said that the principle of natural justice was not followed before passing the order of competent authority. The applicant has also sought relief that the action of respondents No. 2 and 3 ⁱⁿ not allowing the applicant to resume his duties after the order of this Tribunal and non-payment of salary be declared as arbitrary exercise of powers and the respondents be directed to pay the wages of the said period with 12 per cent interest as the ~~contempt~~ of court and to punish the respondents for the same. Apart from the fact that if the applicant thought that the respondents had committed contempt of court ^{of} /order passed in OA/29/88, he was obliged to take action as per the CAT Contempt of Court Rules, 1986 by

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filing contempt petition and cannot ask this relief and therefore, this relief is rejected as not maintainable. The respondents have contended that the competent authority has passed an order and there is no error of jurisdiction nor is there any error of violation of any rule or principle of natural justice.

7. The applicant has not established that the speaking order which has been passed by ADRM, Rajkot vide Annexure A-2 is an order passed by a subordinate authority. No doubt, the order is passed by Additional Divisional Railway Manager and not by Divisional Railway Manager. The Tribunal had asked the Divisional Railway Manager to make exercise and to satisfy himself that none of the subordinate had any ulterior motive or any prejudice against the applicant in passing the order. The Additional Divisional Railway Manager in his speaking order Annexure A-2 has specifically mentioned that he is in-charge of all the personnel matter of Division and he is exercising the case. Therefore, it cannot be said that though the Tribunal had directed the DRM Rajkot to make exercise while the ADRM has passed the speaking order, the same is not legal or without jurisdiction. It was for the applicant to establish by affidavit in rejoinder

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with the appropriate rule that the ADRM is subordinate authority to DRM. There is no reason ^{not} to rely on the speaking order of ADRM that he is in-charge of all the personnel matters of the division and he exercises the case. Therefore the grievance of the applicant in para 4 of the written submission that the speaking order is passed by subordinate officer is not accepted as the applicant has failed to prove the same. The speaking order passed by ADRM cannot be considered without jurisdiction merely because the Tribunal had asked the DRM to pass the order. Going through the speaking order Annexure A-2 it is clear that the ADRM has considered all the factors and has satisfied himself that the action taken by the administration was in order and that no ulterior motive or prejudice could be attributed to any of the subordinate officers who had dealt with the case and there was no prejudice against the applicant in deciding the case. Therefore, in my view, this speaking order is quite legal, proper and does not require any interference. However, as observed above, the Tribunal had not given liberty to the applicant to agitate the order that may be passed by DRM on completion of exercise and therefore also the applicant is not entitled to challenge the speaking order. The direction of the Tribunal to

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the DRM was only as a note of caution before implementation of the transfer order and if the DRM was satisfied that there was no prejudice or there was no ulterior motive of the subordinate officers in passing the order against the applicant then there was no reason for not implementing the order. So the order was to be implemented and that was the reason why the application ultimately was rejected by the Tribunal. Therefore, reading the judgment in OA/29/88, it is clear that the applicant is neither entitled to have a second round of litigation by challenging ^{the order} Annexure A-9 dt. 1.1.1988 as the same is barred by principle of resjudicata, nor is he entitled to challenge the speaking order and in any view of the matter, examining the speaking order Annexure A-2 dt. 1.3.1989, I find the same as just and legal and proper and hence the present application has no merit and the same deserves to be dismissed.

ORDER

Application is dismissed with no order as to costs.



(R C Bhatt)
Member (J)