

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

C.A.No. 61 OF 1989 with
O.A. No. 263 OF 1989

DATE OF DECISION 19-1-1990.

Shri D.R.Sengal Petitioner

Mr.P.H.Pathak Advocate for the Petitioner(s)

Versus

The Chief Post Master General & 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?

Shri D.R.Sengal
92, A/1, C.H. Sector 29,
Gandhinagar - 382 029.

... Applicant.

(Advocate : Mr.P.H.Pathak)

Versus

1. The Chief Post Master General,
Navarangpura,
Ahmedabad.
2. The Asst. Post Master General (Staff),
Gujarat Circle,
Ahmedabad - 9.

... Respondents.

(Advocate : Mr.J.D.Ajmera)

C.A.No.61/89

with
O.A.No.263/89

J U D G M E N T

Date 19-1-1990.

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

The petitioner Shri D.R.Sengal has applied under Section 19 of the Administrative Tribunals Act, 1985 for declaring the order of transfer of the applicant from Gandhinagar to Bhuj by order dated 19-6-1989 as illegal and for its being quashed and set aside and for a direction to continue him at the same station and to declare that the powers exercised by the Respondent No.2 are in colourable exercise. He claims that he has not completed his tenure as he was promoted on 19-11-1985 from which date he is entitled to remain at Gandhinagar for four years. He claims he is a Scheduled Caste employee and according to the policy of the respondent's department he cannot be transferred to far off places and in the midst of the academic year. The policy guide lines also require that those who are longest in a station have to be transferred first and in violation of it Mr.P.N.Patel who is working

in Gandhinagar for more than four years and who should have been transferred before the petitioner, has been retained. He further contends that his transfer is not in public interest but to accommodate Mr. Raval who was earlier transferred to Rajkot who did not comply with the order and having managed to stay on at Ahmedabad has now been appointed at Gandhinagar at his request and cost. From this the petitioner contends that the petitioner's transfer was not in public interest or due to administrative exigency but for accommodating Mr. Raval. He accordingly challenges the impugned orders on the grounds of being discriminatory arbitrary and in colourable exercise of powers.

2. The respondents denied the Tribunal's jurisdiction and in their reply contended that the petitioner being in the cadre of Asstt. Superintendent and Inspector of Post Office he was liable to be transferred anywhere in the Gujarat Postal Circle. The petitioner has been at Ahmedabad from 26-3-1978 and at Gandhinagar from 27-11-1985. He was posted at Naroda from 17-4-1985 to 26-11-1985 at his own request. The respondents contend that Mr. K.C. Raval who has been appointed in place of the petitioner has already resumed his duty. Further, that transfer orders are issued by the Chief Post Master General and the respondent No. 2 has only conveyed them. The transfer orders dated 19-6-1989 are general transfer orders in which 22 employees have been affected and therefore, there is no question of malafide against the petitioner. Mr. Raval was transferred to the applicant's post because it was vacant and therefore, it is not to accommodate Mr. Raval, that the petitioner was transferred. Regarding Mr. Patel the respondents claim that he has not completed four years' tenure on this post and therefore, there is no arbitrariness or discrimination. The petitioner's transfer orders were issued on 19-6-1989 and Mr. Raval resumed his

duty on 22-6-1989. The petitioner was transferred in and Mr. Raval was posted in the petitioner's vacancy at his the interest of service own cost and request because he had earlier urged to be accommodated. Mr. Patel has been working as ASPO II from 16-4-1987 and therefore, he had not completed four years service in the tenure.

3. Both the parties have cited case-law extensively. The petitioner has cited (1989) (10) ATC 137) R. Nanoo Vs. Divisional Railway Manager Trivendrum and others, (1989) (10) ATC 645) Vs. Bhargava Vs. Advisor to the Administrator Chandigarh Administration, (1982) (1) SLJ 81) Dr. P. Damodaran Vs. State of Kerala and others ; (1972 SLR 910) Shri B. D. Gupta Vs. State of Haryana ; (1989) (11) ATC 250) N. C. Barman Vs. Union of India and others and 1987 (2) ATC 37) Charanjit Lal Vs. Union of India and others. From these cases he seeks to establish that ;

(i) Scheduled Caste employee should not be transferred far away from their native places;

(ii) Administrative instructions are binding on the Government;

(iii) transfer for accommodating respondents in contradiction of the guide-lines for transfer is against law;

(iv) It is not sufficient to merely assert that the action was taken for administrative reasons but natural justice require cogent reasons to be assigned ;

(v) an order of transfer of an officer simply to retain another officer whether in public interest or administrative exigency is held to be malafide and the Court is competent to interfere even if they had no civil or evil consequences would follow from the said order.

4. The respondents have cited (1989 10 ATC 396) Gujarat Electricity Board Vs. Atmaram Sungomal Poshani, (1987 Vol.4, ATC 611 Para 13, 1987 Vol.3, 123) for establishing that

(i) In absence of specific instances of malafide orders of transfers are not subject to judicial review ;

(ii) transfer on administrative grounds while not transferring others though the latter had stayed for longer period than the former are upheld to be legal;

(iii) Apart from rotational transfers the competent authority have a right to order transfers in public interest even without giving them opportunity to show cause against such a transfer;

(iv) transfer is an incidence of service and an employee has no right to be posted at any particular place.

5. On a perusal of the judgments it cannot be said that any particular judgment lays down any rule or principle in any absolute sense for either sanctioning an absolute right on the part of the Government to transfer its employees, or prohibiting such transfers altogether. Each judgment derives its conclusion from specific facts and on the basis of, in some cases, of rules or instructions specifically detailing the circumstances in which the restraint placed or discretion exercised is to be guided. The alignment of the judgments to the facts and circumstances of the present case is of greater importance than going by any particular judgment as clearly various judgments emphasise different aspects of the merits of their cases.

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6. It has not been denied that the petitioner is a Scheduled Caste employee. The petitioner has cited policy dated 12-5-1988 governing transfer at Annexure - II. The relevant extracts on which reliance is placed by him is reproduced below : -

"Para-5 : Officials should not normally be transferred before completion of their tenure."

"Para-10 : Rotational transfer should be issued well in advance before the commencement of academic year i.e., from April to June. Though, transfer in the interest of service can be made at any time as per administrative need and exigency of service, no mid-term transfer be made unless required for administrative reasons without prior permission of the next higher authority."

"Para-12 : Whenever transfer becomes unavoidable for administrative reasons, officials who have stayed longest at the same station should be transferred first. Request register should be consulted before ordering transfers."

7. The petitioner claims to count his tenure of four years from 25-11-1985 which will be over in November, 1989. He claims that Mr. Patel has stayed at Gandhinagar for more than four years or so. The respondent in his counter has stated that the petitioner has been at Gandhinagar from 27-11-1985 and Mr. Patel has been working as A.S.P.O.II from 16-4-1987 and has therefore, not completed four years. On perusing the particulars of service of Mr. Patel, it is found that from 10-5-1982 Mr. Patel has been at Gandhinagar in various capacities. The relevant policy instructions refer to stay at a station and not in a particular post for counting tenure. In a sense both the parties have

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taken self-contradictory stands in this regard. In any case the applicant has completed his tenure by now and has established his case that Mr. Patel has stayed in Gandhinagar much longer than himself.

8. So far as Mr. Raval is concerned the petitioner has been ordered to be transferred on 19-11-1985 from Naroda to Gandhinagar and in June 1989 from Gandhinagar to Bhuj. In the same order K.C. Raval has been ordered to be transferred from Rajkot to Gandhinagar at his own request and cost. To claim in the same breath that the petitioner is transferred in public interest and that Mr. Raval was accommodated at Gandhinagar but that petitioner's transfer was not due to accommodating Mr. Raval without disclosing how the vacancy at Bhuj arose or what was the exigency of the transfer of the petitioner is not to discharge the onus on the respondent regarding the transfer being malafide or arbitrary. In reply the respondents said that Mr. Raval had made a request for transfer to Gandhinagar earlier as he was expecting promotion. This explanation makes it reasonable to interpret that he was accommodated at Gandhinagar in the vacancy caused by the petitioner to be transferred to Bhuj. Accommodating Mr. Raval and retaining Mr. Patel together raises a strong presumption in favour of petitioner regarding discrimination and arbitrariness of the orders.

9. The petitioner has cited instructions dated 24-6-85 and 21-8-1989. The relevant extrancts of which is as below :

"It has been pointed out that SC/ST officers are some-times transferred to far-off places and also places also been stated that these officers are not accepted at their places or postings by the concerned superior officers in some cases."

(Sic)

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These instructions do not prohibit transfers but require it to be clearly shown that the safe-guard of senior officers establishing that to transfer SC officers to far off places was unavoidable. There is nothing on the record to show why the petitioner has to be transferred from Gandhinagar to Bhuj and if a vacancy at Bhuj has to be filled up why Mr. Patel cannot be sent there or why the claim for request of accommodating Mr. Raval are found superior to the same circumstances which are urged by the petitioner.

10. The scope for judicial interference in the transfer matters is no doubt limited to malafide, arbitrariness or colourable exercise of authority. The petitioner has established that the impugned transfer orders go against the policy guide lines. The respondents in their counter or during the hearing have not sufficiently established that the circumstances existed which provided for their resorting to the transfer of the petitioner inspite of his being a SC employee or in the midst of academic session or that the impugned orders are free from the taint or arbitrariness and discrimination. In the circumstances of this case therefore, there is justification for interference with the orders.

In the result the application has merit and the impugned transfer orders are quashed and set aside. Rule made absolute. No orders as to costs.


(P.H. Trivedi)
Vice Chairman