



CAT/7/12

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

O.A. No. 265 OF 1989.
~~XXXXXXXX~~

DATE OF DECISION 8-12-1989

SMT. R.V. BODAT Petitioner

MR. G.A. PANDIT Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondent s.

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? *Yes*

Smt. R.V. Bodat,
Postal Assistant,
Himatnagar,
Dist. Sabarkantha.

..... Petitioner.

(Advocate: Mr. G.A. Pandit)

Versus.

1. Union of India,
Notice to be served through
Post Master General,
Gujarat Circle,
Ashram Road,
Ahmedabad.

2. Director of Postal Services,
Vadodara.

3. Superintendent of Post Offices,
Sabarkantha District,
Himatnagar.

..... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.No. 265 OF 1989.

Date: 8-12-1989.

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

In this application under Section 19 of the Administrative Tribunals Act, 1985 the petitioner Smt. R.V. Bodat, Postal Assistant challenges the order of her transfer from Himatnagar to Modasa dated 20.6.89 against which she has submitted a representation dated 3.4.1989 at Annexure A-3 to which she says that she has not received any reply. Her case is that earlier she had requested ~~for~~ transfer from Botad to Sabarkantha Division and at some sacrifice of her seniority in the interest of being posted at Himatnagar where her husband is also an employee in the Tele Communication Department. She has three school going children. Her present transfer is brought about only on the ground of its being rotational and will oblige her to separate from her husband disrupting her married life. She claims that

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the impugned orders go against Government policy of keeping husband and wife together when both are working in the Government and this policy should not be frustrated by mere rotational transfers. She also claims that other persons similarly situated have been favoured and she has been discriminated against and therefore the impugned orders are ultra vires and violative of Article 14 & 16 of the Constitution and arbitrary. She also claims that she belongs to scheduled caste and Government policy is not to transfer them generally or if at all in very rarest of rare cases.

2. The respondent's case is that the petitioner was earlier transferred to Sabarkantha Division at her request in order to enable her to ~~live~~ with her husband and we posted at Himatnagar although she had not even completed three years at Botad. The petitioner was transferred to Sabarkantha Division and was first posted at Modasa from where she was transferred within two months to Himatnagar. The petitioner's claim that she should be continued to be posted at Himatnagar has no basis because the respondent's department is obliged to give her a posting only in Sabarkantha Division but not necessarily to keep her at Himatnagar indefinitely. The respondents also states that the policy of spouses being kept together at the same station does not mean that the wife cannot be transferred but that the husband can also seek transfer to the station in which the wife on transfer is posted. The respondents have distinguished the cases of M/s. Bhavsar and Patel on the ground that Mr. Patel has not put in four years of service at Himatnagar while the petitioner has stayed beyond her tenure there. The petitioner's contention that the member of the scheduled caste communities should not be transferred except in the very rarest of rare cases is

also denied by the respondent as they do not have any such right.

3. The law regarding the scope for judicial review in transfer matters has been set up in several judgments and has crystalized into the position that transfer is a condition and incident of service and except on the grounds of malafide, arbitrariness or colourable exercise of authority should not be interfered with. Malafide is also not to be restricted merely to actual malafide but even is interpreted to be legal malafide in terms of total absence of rationale unequal or discriminatory treatment and arbitrariness or extraneous reasons having been brought to bear on the question of transfer. From the perusal of the reply of the respondent and from the statements made during the hearing it is amply clear that there is no malafide against the petitioner. The question of arbitrary or discriminatory treatment has also not been satisfactorily borne out because the transfer of Mr. Bhavsar or Mr. Patel not having been made has been justified for other reasons by the respondents. The narrow range within which the question raised in this case have to be decided is whether the petitioner enjoys a limited right of protection against transfer by which a separation from her husband who also is working is entailed and if so how to define such limits or the extent thereof.

4. The policy of rotational transfer is not placed before us in the form of any rule or executive instruction or specific Government circulars but it is generally understood that such a policy is adopted because it is obviously desirable that Government employees if transferable should be rotated with due regard to, its being generally not desirable to let them stay in the same place indefinitely and for too long periods, the danger

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of their developing local interests of forming cliques or taking undue advantage of forming relationships of interest with persons with whom they have deal. In effecting rotational transfers care is enjoined upon those who are competent to so decide to make orders to effect changes of transfer sufficiently in advance and after keeping in view the acadamic sessions to avoid disruption of education of their children. It can be appreciated that any individual transfer if interfered with or delayed will cause the transfers to be frustrated and give rise to claims and counter-claims. In effecting such rotational transfers obviously it is necessary to safeguard the interest of special groups like spouse employees who have asked for request transfers, employees who have foregone promotion for continuing to stay at any station or transfers made in appreciation of administrative exigency or public interest. There is no requirement of disclosure of grounds or circumstances of administrative exigency or public interest to the individual transferred or to the public. The fact that there are special interests of groups like scheduled castes or of spouses does not mean they are not subject to the paramount policy of rotational transfer or transfer on the basis of administrative exigency or public interest. While I have been shown rival policies regarding claims based on the petitioner being of member of the scheduled caste or of being a spouse who requested transfer and was allowed it earlier, I do not find any instruction produced by either side that the policy to safeguard the interest of spouses or of scheduled caste representatives is paramount. As has been stated earlier the instruction regarding the transfer of scheduled caste or spouses itself contains provision that it is subject to administrative exigency. In the circumstances I have to fall back upon the justification for

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interference being due to the transfers being proved to have been vitiated with malafide or arbitrariness. In their absence the temptation to interfere with the orders of transfer of grounds of relative convenience of the individual employee and of the administration ought to be firmly avoided lest it take the judges in to the realm of administrative decisions being made by them which they are not in a position to make. The purpose of allowing scope for judicial review and cautioning the Judges as has been done in the judgments of the Supreme Court against exercising writ jurisdiction by Tribunals in matters of transfer or in interfering with the administrative decision regarding transfer is quite clear. If there are sufficiently strong proofs of malafide or arbitrariness judicial intervention is not barred, but we do not have to read between lines or to sit into positions of the administration or those competent to order transfers to ascertain whether if such decision have been made by reasonable men, they would have done as has been done by passing the impugned orders. This is a case in which a lady employee having children, having enjoyed more than her tenure of post at her husband's place of posting ordered to go a place not very far from Himmatnagar. Her earlier request for a change of the division has been allowed in accordance with the policy.

5. Both parties have referred to Rule 38 of the Postal Manual, Volume IV which provides for transfer to accomodate personal convenience in certain circumstances and the instructions therein have been further reinforced in memos dated 23.8.1978, 3.8.78, 1.3.84 & 22.2.79. As there is no dispute regarding the existence of policy of allowing transfers for accomodating personal convenience or by mutual exchange it is not necessary to provide

extracts of such instructions. The dispute is regarding whether the petitioner must accept rotational transfers or can be protected against transfer indefinitely only because she was allowed transfer of the division at a certain stage. No instruction has been shown to the effect that the spouses transferred at their request in order to keep them together with their spouses are protected indefinitely against transfers or are totally exempted from such transfers. The administrative difficulties in allowing such absolute exemption or immunity can well be imagined. This will benefit not only the women employees but also their spouses and it will be argued with some justification that spouses working in Government will be unjustifiably favoured against those who are not in their fortunate position but have substantially the same difficulties like separate households, separation from families, disruption of education for school going children etc. it will therefore be fair to interpret the Government policy in terms of working spouses to be allowed posting at the same place but not indefinitely and to allow their superiors to decide when according to the normal policy of transfers they should be posted where they are considered most useful without limiting such transfers to any rare contingency. If such transfers separate the spouses soon after their request that they be posted in the same station or even before the normal tenure without disclosure of any special circumstances there might be some ground for judicial interference on the basis of any contravention of Government policy. In this case I do not find any such ground as the petitioner is working for more than her normal tenure at Himatnagar. The respondents have transferred her after not only the tenure period is completed but it has been exceeded significantly. The respondent can not be

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charged with any lack of sympathy because the petitioner is transferred only a short distance from the station where her spouses is posted nor can it be vitiated ground of discrimination because no rights of the petitioner are violated.

6. In the result the petition has no merit justifying intervention with the impugned orders dated 20.6.1989. Interim relief earlier given to discontinue. No order as to cost.



(P.H. TRIVEDI)
VICE CHAIRMAN