

Transferred (No)

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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 295/1989

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DATE OF DECISION 17.1.1992.

Amarsinh Motiji & Ors. Petitioner s

Mr. J.D. Ajmera, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

a Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

1. Amarsingh Motiji
2. Anantrao Manilal
3. Ramlal Bhikhaji
Working as Watchmen
in IOWC
Bhavnagar Para. Applicants.
(Advocate: Mr. J.D. Ajmera)

Versus.

1. Union of India,
notice to be served
through General Manager,
Western Railway,
Churchgate, Bombay.
2. Chief Engineer (C)
Ahmedabad Broadguage
Railway Station,
Kalupur, Ahmedabad.
3. Executive Engineer (C)
Nr. Irvin Hospital,
Jamnagar. Respondents.
(Advocate : Mr. R.M. Vin)

J U D G M E N T

O.A.No. 295/1989

Date: 17-1-1992.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

This application is filed under section 19 of the Administrative Tribunals Act, 1985, by three permanent Watchmen, who have challenged the impugned order of their transfer produced at Annexure A-2 dated 10th July, 1989 by the Respondent No.3 by which applicant No. 1 & 2 are transferred from Bhavnagar to Ahmedabad and Applicant No.3 has been transferred from Bhavnagar to Ajmer. The applicants have challenged this transfer order on the grounds that this order is contrary to law, arbitrary, mala fide, against policy and circulars of the respondents and is passed with an ulterior motive and to accommodate some other persons favourite to the respondents. They have prayed that the said order of transfer

dated 10th July, 1989 be quashed and the respondents be directed to continue the applicants at Bhavnagar. The respondents have given detailed reply contesting the application on all grounds.

2. Both the parties have filed their written submissions and therefore they have waived the oral submissions and hence this application is disposed of after considering their respective written submission and after going through all the papers on record.

3. The applicants are permanent watchmen of the railway administration and were serving in IOWC Porbandar but the said office was closed as the work was over and the applicants were therefore transferred to Bhavnagar vide order dated 10th March, 1989 and they have joined duty at Bhavnagar. They are working at Bhavnagar as permanent watchmen Class IV servants in Diesel Shed (Stores) of IOWC. According to the applicants, the said project started in January 1989 and the work is likely to continue about five years. According to the applicants, there are seven posts of watchmen in the set up at Bhavnagar where the applicants have been working. It is alleged that two other watchmen namely Bhimji Manji and Samasu Madia are junior to the applicants. It is also alleged that the said two watchmen were transferred from Bhavnagar to Ajmer vide order dated 3rd June 1989 but they did not resume their duty and the said order was cancelled on 23.6.1989. It is alleged by the applicants that they have reason to believe that the said order was cancelled under the influence of said two watchmen

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with the respondents authorities and the said order was passed on irrelevant and extraneous consideration. The ^{impugned} order of transfer produced at Annexure A-2 shows that the applicants are transferred on the ground that they are surplus. The allegation of the applicants is that as the work is recently started and junior persons to the applicants are retained, there is no question to treat the applicants as surplus and ^{to} transfer them. The other ground is that they belong to Class-IV employees and therefore they cannot be transferred and posted at a far distance. It is alleged by the applicants that they are transferred with a view to accommodate two watchman namely Bhimji Manji and Samasu Madia who are junior to them. The respondents have contended in their reply that out of seven posts which were under operation have been curtailed due to no departmental work with Construction of MG (Meter Gauge) Diesel Loco Shed at Bhavnagar and the senior persons who have been detained are also surplus and therefore transfer order was issued. It is contended that the two watchman Bhimji and Samasu are literate and they are also having good knowledge of materials and they are useful for disposal of surplus materials of Viramgam Okha-Porbandar Project and therefore considering their experience, literacy, they are detained there in the interest of administration only. The applicants have not filed Affidavit-in-Rejoinder. They have not cited any circular or rule to show that Class-IV permanent employees can not be transferred except the vague averment in the application that the two watchmen

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Bhimji and Samasu are detained to accommodate them and the applicants are transferred

is not established. The respondents have clearly clarified the position as to why ~~these~~ two watchman are detained and they have also explained that these applicants are surplus.

4. The applicants have alleged in para-3 of the application that the applicants have come to know that with a view to meet with the work at Bhavnagar Para, the respondents are engaging casual labourers as watchmen and therefore this action of the respondents is clearly malafide and based on irrelevant and extraneous consideration. The respondents have denied this allegation. The applicants have not given any details that casual labourers are engaged in their place and therefore this allegation is devoid of any merits. The applicants are also given temporary status from 1st January, 1981 now they are permanent watchman Class-IV servants. It is alleged by them that they made representation to one Mr. K.M. Shah, Deputy Engineer, who came from Ahmedabad about the non-payment of difference of salary and other benefits like transfer allowance and the applicants now believe that their names were noted down by the said officer, who instructed the respondent No. 2 to transfer the applicants from Bhavnagar as they made representation for their legitimate dues and therefore it is the malafide order. Apart from the fact that Mr. K.M. Shah, Deputy Engineer, is not joined as party in this application, the

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mere belief of the applicants that the respondent No.3 transferred them at the instance of Mr. K.M. Shah cannot be believed and there is no material placed by the applicants in support of this very vague allegation of malafide. It is now well settled that malafide must be proved, it must be demonstrated either by admitted proved facts and circumstances obtainable in a given case, mere assertion is not sufficient, therefore, the allegation of malafides about the action of Respondent No.3 on the alleged suggestion of one Mr. K.M. Shah is not only not established but hardly be considered in absence of the material on record.

5. It is also alleged by the applicants that the declaration of the respondents treating the applicants as surplus is against the principles of natural justice and contrary to rules. It is alleged that the action of the respondents is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. The respondents have contended in their reply that the applicants were absorbed against 40% Construction reserved staff and therefore they are permanent employees and liable to be transferred anywhere on any of the 8 Divisions (1) Bombay, (2) Baroda, (3) Ratlam, (4) Kota, (5) Jaipur, (6) Ajmer, (7) Bhavnagar and (8) Rajkot of Western Railway where construction work is in progress. It is mentioned in the written submission by the respondents that by an order dated 30th July, 1985 the applicants were posted against construction reserve posts and their appointment is also

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against the said posts and on that ground also they are liable to be transferred anywhere in Survey & Construction as the said posts are floating posts.

6. I have gone through the detailed written submissions of the parties and I find no substance in the grounds mentioned in the written submissions of the applicants that the impugned order of transfer is contrary to law, arbitrary or malafide or against policy or any other circular or to accommodate the two other watchman.

7. The applicants are permanent watchman Class-IV servants and as contended by the respondents that they are absorbed against 40% construction reserve staff and are liable to be transferred anywhere in eight divisions of Western Railway where construction work is in progress. It is contended that as the applicants are transferred from this place they will not loose seniority, transfer from one unit to another unit or one division to another division the employees seniority will be maintained as of original and will not lose any privilege as regular employees as contended in the reply by the respondents.


8. The decisions in Union of India & Ors. Vs. Sh.H.N. Kirtania, AIR 1989 SC 1774, Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, 1989 SCC(L&S) 393, Mrs. Shilpi Bose & Ors. Vs. State of Bihar & Ors., AIR 1991 SC 532 show that the courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer

orders are made in violation of any mandatory statutory rule or on the ground of malafide. It is also held that even if a transfer order is passed in violation of executive instructions or order, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department because transfer is only an incident of service and not penalty. In the instant case, it is not established that the impugned order is arbitrary, malafide or in violation of any mandatory rule. It is clarified by the respondents that this applicants are surplus staff and they are transferred, more over the impugned order also shows that they are entitled for transfer benefits as per rules.

9. Having regard to all the facts mentioned above, I find no substance in any of the allegation made by the applicants in their application and in their written submissions. The result is that the application stands dismissed.

O R D E R

10. The application is dismissed. Interim relief granted earlier is vacated. Rule is discharged. Application is disposed of with no order as to costs.


(R.C. Bhatt)
Member (J)