

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
N.E.W. P.D. BENCHO.A. No. 364 OF 1989.
~~PAKONK~~

DATE OF DECISION 8-12-1989.

SHRI PREMJI JIVAN JAMARIA Petitioner

MR. K.K. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

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?

- 2 -

Shri Premji Jivan Jamaria,
Post & Telegraph Department,
Porbandar,
Rajkot Division.

..... Petitioner.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India, through
The Secretary,
Department of Post,
Dak Tar Bhavan,
New Delhi.

2. Assistant Postmaster General,
Ahmedabad,
Gujarat Circle, Ahmedabad.

3. Superintendent of Post Offices,
Porbandar.

Respondents.

(Advocate: Mr. J.D. Ajmera)

JUDGMENT

O.A. No. 364 OF 1989.

Date: 8-12-1989.

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

1. In this petition No. O.A. 364 of 1989, the petitioner is aggrieved by the order dated 18.8.1989 passed by the Assistant Postmaster General transferring him to Surat from Porbandar division. The impugned transfer order states that the Chief Postmaster General, Gujarat Circle, Ahmedabad has ordered the said transfer under Rule 37 P & T Manual Volume IV in the interest of service with immediate effect and the order states that the petitioner should be relieved immediately under office arrangement and directed to join as driver M.M.S. Surat. The petitioner's case is that he being a driver and of service in Class III is very low paid and is generally not transferred and can be regarded as

non-transferrable on the ground of his appointment being initially on a temporary basis and also on the ground of Supreme Court's observations that low paid class III and IV employees are not to be transferred except in very rare cases. Secondly, the terms of the transfer order itself shows that the authority competent to transfer has acted under the instruction of superior authorities and the level at which orders have been issued namely Chief Postmaster General is too high a level to be expected to deal with such cases of Class III and IV employees. Thirdly, the petitioner claims that the post of driver in Porbandar is still vacant while there is no urgency for him to be transferred to Surat where drivers can be easily appointed without such long range transfers effected. The order therefore is clearly a screen to cover up ulterior reasons for getting rid of the petitioner from Porbandar. The petitioner has explained these alleged reasons in terms of examinations in which he had appeared and the results of which has not declared and regarding which certain malpractices have been alleged in which a disciplinary enquiry was held against him and a punishment was given but the petitioner has not been supplied with the marksheets in spite of his application and of payment of fees for it. The petitioner claims that he is an active union worker and the authorities are acting with malafide intention in his case because of his union activities. The petitioner have been issued with the chargesheet under Rule 16 of the CCS (CCA) Rule 1965 on 3.2.1969 about which he has given his reply and without considering the penalty of censure has been given to him. He, therefore, claims that there is double jeopardy as for the same facts and circumstances and the charges, penalty has been given and a punitive transfer has been ordered. The department has issued a notice for

the enhancement of punishment of censure but no order has been passed.

2. In his reply, the petitioner also claims that he has rendered satisfactory service for which he has attached a certificate. In reply the respondents have taken the ground that the petitioner being a class III servant is transferable and that no immunity from transfer exists because of certain policy guidelines and also because of the observations of the Courts which have to be aligned with the facts of the case. The Chief Postmaster General has ordered under Rule 37 of P & T Manual Vol. IV and the competent authority namely Assistant Postmaster General has issued the same. The petitioner has been at Porbandar since 16.9.1980 and he having rendered about 9 years service is even otherwise due to be transferred. The respondent has denied that petitioner has rendered satisfactory service because various communications have been made by his superior officers about his conduct and their letters have been referred to in the reply but during the hearing it was admitted that these letters have not been furnished to the petitioner. Regarding the examinations about which the petitioner agitated his grievance against the respondent that there were malpractices in which the petitioner was involved and after a chargesheet was issued against him, penalty was imposed and therefore no principle of natural justice was violated. The question of supply of marksheets does not arise because the result of the examination has been withheld. Because the Director of Postal Service considered that the punishment of censure was inadequate, the decision to enhance the punishment is sought to be taken in accordance with the rules, after a notice is served upon the petitioner. The fact that the Chief Postmaster

General is higher authority does not preclude him to examine facts of the petitioner's case and decide about the transfer. In fact because of the application of the mind at the higher level so far as the petitioner is concerned, it can be claimed that the examination of public interest and administrative exigency has taken place.

3. Learned advocate for the petitioner has relied upon Rules 66 of P & T Manual Vol. III in which the policy is laid down that a person against whom disciplinary proceedings have been sought should not be transferred out of the jurisdiction of the disciplinary authority is being violated by the impugned orders. The respondents have also relied upon Rule 66 which reads as under :

"As far as possible, after the irregularities on the part of official have been detected and disciplinary proceedings against him are contemplated he should not be transferred out of the jurisdiction of the disciplinary authority who is to conduct the departmental proceedings even though it may sometimes be found desirable to transfer the official to an outstation within the jurisdiction of the same disciplinary authority. If an official in the selection grade in a different division is also considered to be responsible for lapses etc. which would justify departmental action, the question of his transfer to the division where the fraud or loss has occurred and where all the records etc. would be available for inspection, should be examined and where necessary the circle office addressed for necessary action."

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In reply to the querry whether this rule was amended the respondents have stated that the rule have not been amended. There is no decision regarding review of the punishment or revival of disciplinary proceedings. Accordingly, the protection of Rule 66 is not available to the petitioner. Learned advocate for the respondent has relied upon (1989) 10 Administrative Tribunals Cases, p.396, Gujarat Electricity Board & Anrs. V/s. Atmaram Sungomal Poshani.

4. The first question to be settled is whether the petitioner is transferrable. The petitioner claims to be permanent Government servant and belongs to Class-III category. The respondent's contention that therefore he is transferrable cannot be seriously disputed. It is however important to note that the policy restraints placed on transfer of Class III servants. Rule 37 and 37 A in this regard have been relied upon by both the parties and are reproduced.

Rule 37

"All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interest of the public service. Postmen, village postmen and Class IV servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22."

Rule 37 A

"Transfers should generally be made in April of each year so that the education of school going children of the staff is not dislocated. In emergent cases or cases of promotion this restriction will naturally not operate."

There is no express exclusion from the liability of transfer for the Class III Government servants to which the petitioner belongs. The need to justify the transfers in the interest of public service has been underlined.

5. The various observations and decisions of Courts cited by the learned advocates of both sides only bring out the considerations which must govern the Courts in the judicial review of transfers but clearly these considerations have to be aligned to the facts and circumstances of each case to judge whether the diverse circumstances in which malafide, arbitrariness or colourable exercise of authority are sufficiently established and call for the intervention of the Courts. Without such alignment of facts the observations and

considerations weighing with the Courts in the decisions cited it would not be possible or proper to adopt the reasons given in specific judgments for the purpose of this case.

6. Has there been non-application of the mind ? The Assistant Postmaster General has issued the orders and the orders state that they have been passed by the Chief Postmaster General. The orders take the plea of public interest. In the reply the respondents have mentioned that the petitioner has engaged in malpractices and has been given the punishment but is considered sufficiently undesirable for the Chief Postmaster General to order his removal to Surat. The reply states that there is sufficient material on record before the Chief Postmaster General to transfer the petitioner from Porbandar to elsewhere in public interest and this material is in confidential documents and therefore not produced along with the reply. At this stage therefore it can only be concluded that the C.P.M.G. had material on record from which he was satisfied that a transfer was necessary. It cannot be held that there was any non-application of mind.

7. Can this be regarded a ground of transfer which is therefore vitiated by malafide ? This is largely a question of facts. In the case of Mohammad Hanif V/s. Union of India and Ors. (1989) 9 A.T.C. p.78 transfer on the basis of unverified allegations it was held to be devoid of genuine administrative interest and hence bad. In (1989) 10 A.T.C. p.137, Nanoo V/s. Divisional Railway Manager, Trivandrum & Ors. transfer of a scheduled caste/scheduled tribe employees to another place from which another employee was transferred to the former employees station was found to serve no particular administrative interest from which arbitrariness and malafide were

inferred. In (1989) 10 ATC p.177, M. Yoosuf v/s. Regional Director, Meterrological Centre, Madras & Ors., the scope of judicial review intervention was discribed as being limited to orders being malafide, punitive and discriminatory, arbitrary or for colourable reasons outside the scope of public interest. In 1981(1) Supreme Court Cases p. 702, State of Madhya Pradesh v/s. Shankar Lalnand & Ors., the court questioned the propriety of transferring employees of getting small emoluments. In All India Service Law Journal, 1988(1) Vol.III, p.186, Gummadi Ankineedu v/s. The Director, Indian Council of Agricultural Research, when the petitioner was transferred to Shillong where no work concerning the subject in which he was a specialists was carried out, it was held that the transfer is not in public interest. Even if the transfer of the petitioner from Porbandar is held to be for his subverting office discipline and thus giving any ground of public interest of administrative exigency, the scope of a valid transfer, the Courts may not enter into the domain of judging the adequacy or relevancy of the material for the competent authorities who have to decide whether there was sufficient public interest or administrative exigency but only to dispel the charge of malafide or arbitrariness to show that such authorities had valid grounds to act as they did. The Courts may not judge the sufficiency but must be satisfied regarding the existence of material for dispelling the charge of malafide or arbitrariness.

8. The learned advocate for the petitioner has urged in the rejoinder that under the Industrial Disputes Act, Schedule V, Item 7 it is unfair labour practice to transfer the petitioner. In the facts and circumstances of the case whether Industrial Disputes Act is applicable to P & T Department ? The item referred to above is relevant only when malafide in the transfer is established. Then only their transfer becomes unfair labour practice.

9. The petitioner has also taken the ground that the impugned order has not been implemented. I am not impressed by this plea. The respondent has sufficiently established in their reply that the order was communicated to the petitioner and then it was sent by Registered A.D. and was returned back and that the Postmaster, Porbandar tendered it to the applicant who read it and accepted it but did not sign receipt and also did not sign the charge report. The respondents have relied upon (1989) 10 Administrative Tribunals Cases, p.396, Gujarat Electricity Board & Anrs. V/s. Atmaram Sungomal Poshani in which service of registered letter and presumption of refusal to accept the registered letter when arises have been discussed. We cannot find that the respondents have not served the letter to the petitioner which in any case is sufficiently found to have been within his knowledge. The respondents have heavily relied upon (1989) 11 Administrative Tribunals Cases, p.269 in which the Supreme Court have ruled that it is not open for the Tribunal to interfere in transfer and held that the High Court was not justified in entertaining a writ petition of the transferred employee. This case cannot be cited for excluding the scope of judicial review although no doubt it is restricted as stated in that judgment, and when it is established to be so covered there is scope for judicial intervention.

10. In this case it is found that the petitioner was subjected to an enquiry in that the charges were proved and the punishment was given. His superiors have sought the punishment to be revised and a severer punishment to be imposed. This might have happened according to the normal practice in very few cases but

it can not be denied that the relevant rules empower the superior authorities to regard the question whether the punishment is sufficient and to take a view that if it is not sufficient steps be taken for increasing it. In doing so however they have to be governed by a procedure which enables the delinquent Government servant to defend himself before a severer punishment is decided upon. The respondents have not yet reached a stage for doing so and if there is any illegality the Government servant will have his rights. In the meantime if the Chief Postmaster General on perusal of the records has come to a conclusion that the transfer of the petitioner to Porbandar is necessary or justified for administrative exigency or public interest, I do not see how the mere fact that an officer of high office has taken such a view or that on the existence of material such a view could be taken, by themselves cause an inference as regards their malafide or the transfer being regarded as punitive. Administration should not be handicapped by judicial intervention in such matters if it has to retain any discipline and for effective action. It is not seen how the rights of the petitioner are violated if his superiors consider that the transfer is justified or necessary in such circumstances. Disobedience to such orders cannot be allowed any premium when rights are not violated. The burden of proof of establishment of malafide or arbitrariness is to be strictly discharged by the proof and mere averments will not suffice for raising a presumption against the respondents in such matters. Any conclusion regarding malafide having been established cannot be lightly drawn in such circumstances.

Par

(16)

11. Accordingly it is found that it is not sufficiently established that the impugned orders are bad and merit any interference. The petition is accordingly rejected. No order as to cost. Interim relief earlier given stands vacated.

R. H. Tripathi

R. H. Tripathi

SHRI VEDI)
VICE CHAIRMAN