

*On leave Transfer
(Sod)*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

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O.A. No.

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221 of

1990

DATE OF DECISION 28.6.1991

Jagdish K. Joshi

Petitioner

Mr. I.M. Pandya

Advocate for the Petitioner(s)

Versus

Union of India & Anr.

Respondent

Mr. Jayant Patel

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi Vice Chairman

The Hon'ble Mr. R.C. Bhatt Judicial Member

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?

Jagdish K. Joshi,
Telecom Office Asstt.,
O/o.S.D.O. Telecom.,
Gandhidham - Kuchchh
(Advocate-Mr. I.M. Pandya)

.. Applicant

Versus

1. Union of India,
Through
The Chief General Manager
Telecom.,
Gujarat Tele. Circle,
Navrangpura,
Ahmedabad-380 009.

2. Telecom. Dist. Engineer,
Nityanand Guest House Bldg.,
Chhati Bari Road,
Bhuj-Kuchchh.
(Advocate - Mr. Jayant Patel)

.. Respondents

O.A. No. 221 of 1990

JUDGMENT

Dated : 28.6.1991

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

In this application, under section 19 of the Administrative Tribunals Act, 1985, the applicant Shri J.K. Joshi has impugned the order dated 27.11.1989 rejecting his mutual transfer application presented through proper channel. He and Shri S.J. Thakar, T.O.A. had applied for mutual transfer at Bhuj. The applicant was earlier transferred on his application from Bhuj to Gandhidham in the post of Telecommunication Office Assistant (T.O.A.). The applicant now has submitted

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his application for mutual transfer with Shri S.J. Thakar another T.O.A. to Bhuj. This application has been forwarded by S.D.O., Gandhidham on 6.10.1989. On 7.11.1989, both the applicant and Shri S.J. Thakar met respondent No. 2 but received no reply beyond that he was placed on the waiting list. The applicant alleges malafide on the part of respondent No.2. When his application was rejected, he appealed against this decision but received no reply. Thereupon, the applicant submitted his case to Area Manager, Rajkot. Angered by this action, respondent issued a charge sheet to which reply has been submitted by the applicant. The applicant served a legal notice under section 80 of the C.P.C. to which also no reply has been sent. The applicant is on medical leave from 29.11.1989 to 21.1.1990 which period has been treated as leave without pay. This decision, according to the applicant, shows the intention of the respondents to harass him. The applicant's desire for mutual transfer arises from the fact that he is newly married and his wife is serving in the Bhuj Taluka of the Kutch District, which is about 90 kilometers from the present post of the applicant. The applicant states that he is suffering from stomach and spinal troubles and has also an aged mother and his elder brother is insane. The applicant has based his case upon his legal right to obtain a mutual transfer for which instructions have been adduced by him.

2. The respondents' case, merely, is that the applicant has made his demand unreasonably and pursued it improperly. His transfer was earlier allowed for Gandhidham by office memo dt. 25.9.1984 and that was allowed on the ground that the applicant was operated for appendices and had x-ray on his spine taken and the applicant made representation that

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he wanted to stay with his uncle and he wanted to look after his mother who stays at Anjar. Now, he wants to be transferred to Bhuj and on that transfer being kept pending for consideration, he has picked up a quarrel with Telecome District Engineer, Mr. Khan. The applicant has taken frequent leave for which the respondents in the reply have listed the number of days of the leave taken. The applicant's work was found unsatisfactory as he works as Cashier and is required to be present regularly to maintain day to day accounts. According to the reply on affidavit of the respondents, he also is in the habit of taking loans. The applicant has shown insubordination. The position of the respondents is that the applicant's case will be considered in due course. The applicant had already forwarded the reasons of his illness earlier and cannot claim frequent on that ground.

3. In order to pursue his claim, a Govt. servant either has to have justiciable right which must result from his service condition as embodied in the order of his appointment or conditions of service according to the service rules which must be shown to have been violated. Admittedly, the so called rules governing transfers on a mutual basis as shown by the applicant are not statutory rules but mere administrative instructions. Such administrative instructions do not yield any justiciable right to the applicant. They are merely for governing as guidelines, action and decisions of the respondents in dealing with the applications of the Government servants in an appropriate manner. While the Government servants can at all times urge sympathetic consideration of their circumstances and can appeal against

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adverse decision of authority to their higher authorities, there can be no basis for a claim for a right which can be enforced through courts. In this case, no basis for malafide has been laid. The mere fact that the respondents have delayed or have decided to take up the case of the applicant in due course or even that the applicant has been issued with a charge sheet cannot be regarded as malafide. The respondents have shown that due consideration to the circumstances of the applicant was shown in earlier transfer allowed on human consideration due to the ill-health of the applicant and his family circumstances. There is some force in the respondents' contention that such ground cannot be repeatedly urged and due regard has to be paid to the applicant's being disciplined for the performance of his duties.

4. We do not find that the applicant has made out any satisfactory case for our intervention or for establishing that his right has been violated in any manner. No rejoinder has been filed to the reply.

5. In the circumstances, we do not find that there is any merit in the application and reject the same. No order as to costs.

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(R C Bhatt)
Judicial Member

Rej
(P H Trivedi)
Vice Chairman