

Transcriber

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX XXXXX XXXXX~~

O.A. No. 440 of 1990
~~XXXXXX~~

DATE OF DECISION 24.4.1991

Mr. R.K. Jain Petitioner

Party in person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. P.M. Raval for respondent-1 Advocate for the Respondent(s)

Mr. R.J. Oza for respondent - 2.

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?

R.K. Jain,
C-114 Savitri Path,
Bapunagar,
JAIPUR - 302 015.

... Applicant

versus

1. The Union of India through,
Department of Home,
Ministry of Home Affairs,
Government of India,
NEW DELHI - 110 001.

2. The Government of Gujarat through,
Chief Secretary,
Secretariate,
GANDHINAGAR.

3. The Government of Rajasthan through,
Chief Secretary,
Secretariate,
JAIPUR - 302 001.

... Respondents.

O.A. No. 440 of 1990

JUDGEMENTS CITED : (1) ATR 1989 (1) CAT 387- Chimanlal G. Patel v. Union of India & Ors. (Ahmedabad),
(2) ATR 1989 (2) 621- Dhanwant Singh Gill v. Union of India & Ors.
(3) 1989 (11) ATC 310 - S.K. Sharma v. Director General E.S.I. Corpns. (Jabalpur)

O R D E R

Date: 24th April '91

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

... Vice Chairman

In this case, the applicant has asked for relief under Section 19 of the Administrative Tribunals Act, 1985 for direction to the respondents to agree to applicant's transfer of cadre to Rajasthan in public interest and consequential or other reliefs and costs. In the application, his grievance is that the applicant

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has been unable to obtain a decision of the Government of India about his representation dt. 18.12.'89 annexed to the application. The applicant belongs to 1981 batch of the Indian Police Services which he joined on 1.9.'81. He has moved the Government of India respondent No.1 to allocate Rajasthan cadre to him as his wife has been working as a Lecturer there since 1978 but no response has been received to his representation. The applicant was allotted Gujarat cadre in 1982. He joined in it and then represented in 1983 requesting respondent No. 1 through respondent No. 2 for transfer of his cadre. He made attempts to get his wife a job in Gujarat. Thereafter, he had difficulty in getting confirmation and eventually he was discharged from service w.e.f. 1.2.'85 by respondent No.1 by order dt.24.1.1985. The respondents got himself reverted to the State Administrative Service in Rajasthan in which he had retained a lien on his recruitment to Indian Police Service. He challenged the order of discharge and obtained relief from this Bench by its judgement dt. 12.9.1988 by which the order of discharging him was quashed and set aside and the applicant was restored the service in Indian Police Services. He made a representation on 18.12.1989 to respondent No. 1 for change of cadre from Gujarat to Rajasthan on the ground of his wife working with the Govt. of Rajasthan, but the respondent No. 1 has not decided the matter for which he has annexed wireless message at appendix 4 and 5 of the

application. These messages state that the applicant must first report for duty to the Government of Gujarat and a decision on the representation for transfer of cadre which he could make through Government of Gujarat and it would be communicated in due course.

2. A notice was issued on the respondents. Learned advocate Mr. R.J.Oza has appeared for the respondent No. 2 Government of Gujarat but there has been no appearance for respondent No. 1.

3. The applicant was heard in person. His case is that he has a right to a favourable decision about transfer of cadre and that respondent No. 1 has to decide his representation which if delayed beyond reasonable time, the Tribunal has jurisdiction for giving him relief. He has prayed for. He has cited the provision relating to transfers and to the orders which were interfered with by the Tribunal and by Courts on various occasions, in various cases. He has cited the case - (1) ATR 1989 (1) CAT 387- Chimanlal G. Patel v. Union of India & Ors (Ahmedabad), (2) ATR 1989 (1) 621- Dhanwant Singh Gill V. Union of India & Ors. and (3) 1989 (11) ATC 310 - S.K.Sharma v. Director General, E.S.I. Corpn. (Jabalpur). He has also relied upon Rule 5(2) of the Indian Police Service (Cadre) Rules, 1954 which is as under:-

" The Central Government may, with the concurrence of the State Governments concerned, transfer a cadre officer from one cadre to another cadre."

4. Learned advocate Mr. Oza for the respondent No.2 has stated that respondent No. 2 has recommended to the respondent No.1 his application for transfer of cadre from Gujarat to Rajasthan.

5. The applicant has failed to persuade us regarding the merits of his case. Allotment of officers to cadre and the provision for transfer of vadre does not yeild to the applicant any justiciable right which makes it obligatory on the respondents to transfer the applicant or for the Tribunals to interfere in the course of action adopted by the respondents. We notice no offence to any regulation, rules or instruction of the respondents on the basis of which any right can be claimed by the applicant. The cases cited by the applicant relate to the transfer of officials from one station or post to another and are not analogous to the situation of transfer of cadres or governed by the rules governing the allotment of All India Services to various State Cadres. By the very nature of their service, officers of the All India Services are allotted to a specific State Cadre. No rules or regulation governing the manner of allotment of a particular officer to any particular State cadre are shown to us. Varicous consideration must guide the allotment of cadres by respondent No.1 certain instructions regarding quota or a percentage of officers of a State cadre being manned by officers from out side that particular State are adopted. The respondent No.1 has also powers to transfer an officer from one State to another which is subject to the obtaining of the concurrence of the relevant State Governments under Rule 5(2) as cited by the applicant. Once an officer is allotted to a cadre, his transfer to another State cadre, therefore, is governed

only by the requirement of obtaining concurrence of the State Government to which he has been allotted and of the State Government to which he is sought to be transferred. No other requirement is provided in the Rules placed before us.

6. The applicant was at perfect liberty to refuse his appointment in the Indian Police Services or he could have resigned from it when he was allotted Gujarat State cadre. He not only accepted the appointment but joined in the Gujarat State cadre. He therefore, clearly seeks to improve his position after accepting his appointment. In these circumstances, respondent No. 1 quite legitimately and properly has asked the applicant to first join in the Gujarat State before his representation can be considered. It is required by the very rule 5(2) of the Indian Police Services (Cadre) Rules on which the applicant relies that the procedure of obtaining concurrence of the Government of Gujarat has to be followed by the respondent No. 1 even for considering the representation of the applicant. This obviously entitles the respondent No. 1 to require of the applicant to first join the Gujarat State before deciding upon his representation. It is noted that the situation is not that respondent No. 1 has declined to consider or has rejected out of hand the representation for transfer of cadre of the applicant. In fact the wireless messages on which the applicant relies state so in terms that his representation will be decided upon and communicated in due course to the applicant. In these circumstances, it is clear that the applicant cannot come before us at this stage.

7. The applicant has stated that decisions regarding transfer of cadre cannot be made arbitrarily or in a

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manner discriminating against the applicant and are governed by the same principles of being free from arbitrariness malafide or in competence which govern other orders of a similar nature on which decisions of courts and Tribunals have declared the law. As stated above, we have not noticed any arbitrariness or malafide in the action of respondent No.1 or respondent No.2. In fact, respondent No.2 has recommended the representation of the applicant to the respondent No.1 and respondent No.1 has stated that his representation is under consideration.

6. We are not satisfied at all that any service condition has been violated or any right has been established by the applicant for a transfer of cadre. As observed, the applicant has accepted his allotment to Gujarat State and is now seeking to improve upon his position. The ground of his transfer namely that his wife is serving in Rajasthan State since 1978 arose when he accepted the allotment to Gujarat and is therefore, not new. This cannot be urged as a factor which has changed the situation from that which applied before his allotment to Gujarat. The provision of transfer of cadre leaves the matter to the discretion of respondent No. 1 which has to be exercised in the same manner in which executive decisions are to make but which cannot be demanded as a right by the applicant. In fact, we are unable to persuade ourselves that the applicant has any right to obtain a decision on his representation at all.

9. For the above reasons, we find that the application has no merit and is dismissed.

R C Bhatt
(R C Bhatt)
Judicial Member

P H Trivedi
(P H Trivedi)
Vice Chairman