

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(L)

O.A. No. 478 of 1990
TAXNO.

DATE OF DECISION 4.3.1992

Shri Yashwant N. Gadhvi Petitioner

Petitioner in Person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri B.B. Naik Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt : Member (J)

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?

(6)

Shri Yashwant N. Gadhvi,
61, Digvijay Flat,
Behind Ganesh Bhuvan,
Jamnagar - 361 005.

: Applicant

(Petitioner in person)

VS.

1. The Agricultural Marketing Adviser
to the Government of India,
H.O. of D.M. I.,
Directorate of Marketing & Inspection,
C.G.O. Building,
NH IV,
Faridabad - 121 001.

2. The Jt. Agricultural Marketing Adviser
to the Government of India,
B.H.O. of D.M.I.,
Directorate of Marketing & Inspection,
New Secretariate Building,
Nagpur - 440 001.

3. The Dy. Agricultural Marketing Adviser,
In-Charge of W.R. of D.M.I.,
Directorate of Marketing & Inspection,
New C.G.O. Building, 3rd floor,
New Marine Lines,
Bombay - 400 020.

4. The Marketing Officer,
Sub Office of D.M.I.,
Directorate of Marketing & Inspection,
Opp. Bedeshwar Mahadev's Temple,
Valsura Road,
Bedeshwar,
Jamnagar - 361 002.

: Respondents

(Advocate : Shri B.B. Naik)

J U D G E M E N T

O.A. No. 478 of 1990

Date : 4.3.1992.

Per : Hon'ble Shri R.C. Bhatt

: Member (J)

Applicant present in person. None present for
the respondents. The applicant has filed this application
under Section 19 of the Administrative Tribunals Act, 1985,
to quash the transfer order dated 8.1.1990 passed by

respondent no.3, the Deputy Agricultural Marketing Adviser, Bombay, transferring the applicant from Jamnagar to Unjha, vide annexure A/1.

2. The applicant has referred to the decision in O.A. No.73 of 1990 previously filed by him against the respondents and decided by this Tribunal on 25.6.1990. Reading the said decision, it is clear that this applicant had challenged the very order dated 8.1.1990, annexure A/1, which he wants to challenge in this petition. The said order in O.A. No.73 of 1990 was challenged on the grounds that it was arbitrary, capricious and unreasonable and that the guidelines issued by the first respondent, Union of India through the Agricultural Marketing Adviser, in this regard had been violated. It was also urged in the previous original application that certain juniors had been retained at Jamnagar while the applicant had been picked up for transfer and therefore it was arbitrary. In short, it was urged in previous original application that there was no earthly reason for the transfer of the applicant from Jamnagar to Unjha. The applicant had also expressed his family circumstances in that application and had requested that he might not be transferred as at the relevant time his mother was seriously ill and was suffering from Cancer and she later on died. The Tribunal, after considering the rival contention urged in that applica-

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tion and relying on the decision of the Hon'ble Supreme Court of India in the case of Union of India & Ors. Vs. H.N. Kitrania 1989 (3) SCC pg. 445 held that the transfer order can only be interfered with only on two grounds, viz. violation of statutory rules or on malafides. The Tribunal in the previous case also referred to the decision in Gujarat Electricity Board & Another Vs. Atmaram Sungimal Poshani 1989 (1) ATC 396 of the Hon'ble Supreme Court of India. Having considered the case law and the grounds urged by the applicant in that previous original application, the Tribunal held that the transfer is an incident of service which is only administrative in nature and as such the plea of prejudice because of the termination has no relevance. The Tribunal held that there were no legal grounds warranting interference with the order of transfer and the application was dismissed. The applicant however, relied on the last para of the judgement of O.A./73/90 in which it was observed that even though the applicant had made representation on 15.1.1990, which was rejected by the first respondent on 12.2.1990, but it was not clear from the order whether the points raised by the applicant in his representation had been considered, and therefore, the dismissal of the application would not bar the applicant from making representation again to the first respondent for reconsideration. The Tribunal observed as under :-

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" When the applicant makes such a representation to the first respondent, it should be considered

taking into account the fact that the applicant has no laboratory experience as also his family circumstances and an order to be passed on merits by the first respondent expeditiously."

The applicant submitted that he being the eldest member of the family has to look after his widowed Aunt and elder brother. At the time of his transfer, his mother was suffering from Cancer and later on died. Anexure A/3 is the office memorandum of the Marketing Officer, Jamnagar dated 9.7.1990. There is another office memorandum dated 9.10.1990 by the Administrative Officer for Agricultural Marketing Adviser to the Government of India, which shows that the representation of the applicant dated 5.7.1990, 23.7.1990 and 30.8.1990 had been carefully considered by the Agricultural Marketing Adviser again after taking into account the fact that the applicant has no laboratory experience as also his family circumstances, but his request for cancellation of the transfer was regretted and has been rejected as there was no substance in his representation. The applicant submitted that he would take exception of the words "There is no Substance in his representation", He submitted that it is an insult to his mother who in fact was suffering from cancer and who died. He interpreted the meaning of the words 'There is no substance in his representation' being not factually correct. He submitted that how and on what ground, the respondents could

say that the facts mentioned in his representation about and his ailing mother, who ultimately died, about the fact that he was the eldest member of the family and had to look after widowed Aunt were factually not correct? The office memorandum dated 9.10.1990, annexure A/4, written by the Administrative Officer for Agricultural Marketing Adviser to the Government of India is not in detail and though not happily worded, the meaning which the applicant attributes to the words "No substance in his representation" does not seem to be correct. It does not mean that the factual aspect that his mother having died after ailment of cancer or he being the eldest member in the family or that he has to look after his widowed Aunt are disputed. What the final order means is that his representation has no substance with regard to his request for cancellation of transfer. The applicant was very much annoyed with the words used in the office memorandum, annexure A/4 dated 9.10.1990, but as I observed above, there was not intention on the part of the respondents to insult the applicant. It would have been better if the respondents had mentioned in that order that the grounds made in the representation for cancellation of the transfer could not be accepted. But the officers passing the order are not judicial officers and therefore appropriate words are. However, it does not mean that there was any intention on the part of the concerned officer to insult the applicant.

3. The applicant has produced other documents collectively at annexure A/5 and also at annexure A/6 and A/7. These are all representations in which the applicant has mentioned that Unjha is a new and important export centre of minor spices and there the analysis of the commodities meant for export is to be carried out, and the posting and transfer of any of other five Junior Chemists would be proper to serve the public interest as they have more and rich experience of analytical work than the applicant. The applicant submitted that when the Directorate itself does not consider so much importance of analytical work of duplicate samples being carried out at Jamnagar and other places and regularly grants the permission to waive off the hundreds of duplicate samples from analysis, there won't be any hindrance in analytical work at Jamnagar. The applicant has mentioned in his application that there is gross favouritism, nepotism and well planned off the screen move/conspiracy. He has alleged in the application that one Shri A.S. Yawalkar, Dy. Agricultural Marketing Adviser, Bombay, i.e. respondent no.3, Shri V.A. Tendulkar, who is now Chief Chemist in Bombay, got the representations of his near and dear five other Junior Chemists considered, though there was no substance in their representation and they were all saved from transfer.

4. The respondents in their reply have contended that

all the representations of the applicant had been duly considered and the order was passed on merits rejecting the applicant's request for cancellation of his transfer vide office memorandum dated 9.10.1990, and the applicant has been relieved off his duty from Jamnagar office. The respondents have denied that the transfer of the applicant from Jamnagar to Unjha in the name of public interest was malafide or violating the statutory rules or result of gross favouritism, nepotism etc. It is contended that the applicant was working as junior Chemist and was transferred and relieved on 31.1.1990 and he was absenting himself, and hence, one Junior Chemist was sent on tour to Unjha during the month of April and May, 1990. It is contended that the workload at Jamnagar demands the presence of five Junior Chemists and hence it was not advisable to depute any one of the Junior Chemists on tour to Unjha. It is contended that since the applicant is not given analytical work so far, it was though appropriate to assign the analytical job at Unjha and basically the applicant is a Chemistry Graduate and his job is to carry out analysis.

5. Having heard the applicant in person, going through the pleadings of the parties and having considered the documents on record, I am satisfied that the respondents have duly considered the representation of the applicant, including the fact that the applicant had no labora-

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tory experience, the representations have been rejected.

The applicant has failed to prove that the respondents have acted in violation of any statutory rules and has failed to prove malafides. Therefore, there is no reason to interfere with the order of transfer ~~of~~ respondent no.3, under challenge, In the result I pass following order :-

O R D E R

The application is dismissed. No order as to costs.

R.C. Bhatt

(R.C. Bhatt)
Member (J)