

72-195120 No.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 75 of 1991
~~TAX No.~~

DATE OF DECISION 3.1.1992

Shri H.A. Naik Petitioner

Shri V.M. Dhotre Advocate for the Petitioner(s)

Versus

Union of India & Ors, Respondent

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

CORAM :

The Hon'ble Mr. A.B. Gorthi

: Member (A)


The Hon'ble Mr. R.C. Bhatt

: Member (J)

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 ?

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Shri H.A. Naik,
B. No.17, Nijaripinj Society,
Near Radhaswami Satsang,
Ranip,
AHMEDABAD

 : Applicant

(Advocate : Shri V.M.Dhotre)

VS.

1. Union of India, through
Director General of Works,
C.P.W.D. Nirman Bhavan,
NEW DELHI.
2. Executive Engineer, (E)
Central Electrical Division,
C.P.W.D.,
Outside Shahpur Gate,
1st floor, Jawahar Saw Mill,
Shahpur,
AHMEDABAD.
3. Superintending Engineer, (COORD)
Coordination Circle,
C.P.W.D., Bldg. No. 9,
Quarter No. 981-83,
S.M. Plot- ANTOD HILL,
BOMBAY -400 037.

: Respondents

(Advocate : Shri R.R.Tripathy for
Shri B.B. Naik)

J U D G E M E N T

O.A.No.75 of 1991

Date : 3 Jan 92

Per : Hon'ble Shri A.B. Gorthi

: Member (A)

By means of this application under Section 19 of the Administrative Tribunals Act 1985, Shri H.A. Naik prays for quashing of the order No.10(1)/ACED/91/1156/87 dated 22.2.1991 whereby respondent No. 2 directed that the applicant be transferred from Ahmedabad to Rajkot.

2, The applicant joined the Central Electrical Sub



Division-I (CESD-I in short) at Ahmedabad in 1963 as an Assistant Operator and was promoted as Operator in 1983-84. A junior colleague of his Shri D.C. Solanki, who was transferred from Ahmedabad to Rajkot in June 1990, by virtue of the fact that his stay at Ahmedabad was longest, requested to be transferred back to Ahmedabad on compassionate grounds and his request was accepted by respondent No.2 who was keen to help the said Shri Solanki. There were no Rules governing the said transfer, but as per extant policy the junior most employee could be transferred if such transfer became unavoidable. The applicant's contention is that he was senior to Shri Solanki and hence his transfer from Ahmedabad to Rajkot is bad in law.

3. The respondents refuted the claim of the applicant by stating that the transfer order was not violative of any instruction and was absolutely in order. Due to the transfer of Civil Aviation Work to National Airport Authority, certain a/number of C.P.W.D. employees, who were willing, were transferred for permanent absorption in the National Airport Authority. The applicant and seventeen other C.P.W.D. employees however expressed their unwillingness for such absorption and hence had to be adjusted within the C.P.W.D. While the authorities could so adjust six employees including the applicant in the posts available at Ahmedabad itself, twelve others including Shri Solanki had to be transferred to other stations within the State of Gujarat. The said transfers were effected in June 1990 on the basis of the employee's longest stay in the station. On a representation by the C.P.W.D. Workers Union, a decision was taken that while transfers already effected would not be rescinded,

future transfer would be governed by the principle that the junior most employee in the station would be liable to be transferred. As Shri Solanki's request for transfer to Ahmedabad on the ground of his ill-health was accepted, the applicant being ^{the} junior most amongst the Operators then stationed in Ahmedabad had to make room for Shri Solanki. The said transfer order neither violated any Rule nor was ~~it~~ issued malafide, so contended the respondents.

4. We have heard Shri V.M. Dhotre learned advocate for the applicant at length. He pointed out that there being no Rules governing the transfer of Operators in C.P.W.D., the applicant could have been transferred only in accordance with the extant policy that the junior most employee only would be liable to be transferred. The contention of the applicant's counsel is that the applicant being senior to Shri Solanki, the transfer was violative of the policy. Further, the transfer was ordered by respondent No. 2 whereas respondent no. 3 alone was competent to do so. Respondent No. 2 who was interested in helping Shri Solanki neither properly verified the genuineness of Shri Solanki's claim for compassionate transfer on medical grounds nor had he carefully examined the question of applicant's seniority vis-a-vis Shri Solanki. The applicant himself was ^a heart patient and is even now receiving medical treatment from the hospital in Ahmedabad. His representation against the transfer, which he made as directed by the Tribunal, was improperly rejected by respondent No.2 who was not the competent authority.

5. The main thrust of the argument by the learned advocate for the applicant was that the transfer order

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violated the policy laid down in Annexure R-4 and the specific direction given by respondent No. 3 to Respondent No. 2 vide Annexure R-5. Annexure R-4 which is a letter dated 28.9.1990 from the Superintending Engineer (Respondent No.3) addressed to The Regional Secretary, All India CPWD Employees Union, Ahmedabad Branch, states inter alia that "A decision was taken that the Junior most staff in the grades should be transferred to out station when the same becomes un-avoidable." Accordingly vide Annexure R-5, which is a letter dated 5.2.1991 from respondent no. 3, a specific direction was given to the Executive Engineer (Respondent No. 2) to check and ensure that the applicant who was to be transferred was indeed the junior most in his grade at Ahmedabad. Dispite this instruction the applicant though not junior to Shri Solanki was transferred. The said argument is ~~is~~ clearly misconceived as the question of inter se seniority of the applicant and Shri Solanki had no relevance to the issue. There is the categorical assertion by the respondent that the applicant was ^{the} junior most amongst the Operators in Ahmedabad at the relevant time and that his transfer to Rajkot became unavoidable in view of the transfer of Shri Solanki to Ahmedabad on compassionate grounds. It is therefore apparent that the transfer order was in accord with the policy decision governing the subject, ~~and~~ though such policy matters are directory in nature and not mandatory. The contention on behalf of the applicant that his transfer was neither ⁱⁿ public interest nor due to exigency of service also deserves to be disallowed in view of the detailed explanation offered by the respondents in justification of the transfer order.


6. In service jurisprudence, it is ^a well settled propo-

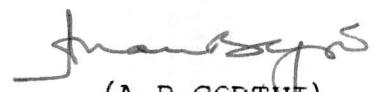
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sition that transfer of a public servant on administrative grounds or in public interest should not be interfered with, unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafides.

7. In the result, we find that the application is without merit and deserves to be dismissed. However, in view of the plea of the applicant for sympathetic consideration of his case on account of his heart disease and other domestic problems, it is expected of respondent no. 3 to objectively examine the applicant's case and take a decision as deemed proper, because we find that the applicant's representation dated 5.3.1991, though addressed to respondent no. 2 should have been more appropriately considered and decided by respondent no.3, who is the competent authority.

8. Subject to our above observations, we dismiss the application without making any order as to costs.


(R.C.BHATT)
Member (J)


(A.B.GORTHI)
Member (A)