

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

8

O.A. No. 84/91

~~XXXXXX~~

DATE OF DECISION 17.03.1992.

Abdul Rahim Fakir Mohmed, Petitioner

Mr. J.D. Ajmera Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondent

Mr. R.M. Vin 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 ?

Abdul Rahim Fakir Mohmed,
Behind Gangabai's Chhat,
Nr. Anil Kunj,
Inside at Khoja's Premises,
Petudi Plot,
Porbandar.

..... Applicant.

(Advocate: Mr. J.D. Ajmera)

Versus.

1. The Union of India
through General Manager,
Western Railway, Churchgate,
Bombay.

2. The Station Superintendent,
Porbandar Railway Station,
Porbandar.

..... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL JUDGMENT

O.A.No. 84 OF 1991

Date: 17-3-1992.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard learned advocate Mr. J.D. Ajmera for
the applicant and Mr. R.M. Vin, learned advocate
for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
applicant challenging the order of transfer dated
22nd February, 1991, Annexure A-1, by which he was
transferred from Porbandar to Khijadia Junction
and subsequently modified by the impugned order,
Annexure A-2 dated 20/21st March, 1991 by which he
was transferred to Badhada in the interest of
administration.

3. The case of the applicant is that he is a Porter, Class IV employee, in the Western Railway at Porbandar since last 20 years that his wife has expired long back and he is living alongwith a widowed maternal niece and a widowed sister. The applicant has averred in the application that he has two sons aged 16 and 14 respectively and three daughters aged 11,9 and 5 respectively. It is the case of the applicant that looking to the circumstances of the family and the ages of his children his presence in the house requires and the transfer made by the respondents being unfair and unjust be quashed. The applicant has also mentioned in his application that he is a low paid employee and there are other Porters senior to him serving at Porbandar but he is put for transfer. The case of the applicant is that the transfer order is nothing but a victimisation and the revenge against him. The applicant has produced at Annexure-A, the complaint by him on 23rd September, 1990 to the Station Superintendent. It is alleged that instead of reacting favourably to his complaint he is punished by way of transfer.

4. The respondents have contended that there is no bar against transfer of Class IV servant and the transfer is not against statutory rule or

railway policy. The respondents have contended that the head constable of Government Railway Police had reported against the applicant for unhygienic activities. The respondents have produced at Annexure R-1, the note dated 22nd February, 1991 of Assistant Commercial Superintendent, Bhavnagar Para. The respondents have denied that there is any victimisation or any case for taking revenge against the applicant or taking any action either malafide or arbitrary.

5. The applicant has filed rejoinder controverting the contention of the respondents taken in reply.

6. It is now well settled by the decision of the Hon'ble Supreme Court in Mrs. Shilpi Bose & Ors. V/s. State of Bihar & Ors. AIR 1991 SC p. 532 that the Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. It is further held in this decision that even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the department. In view of ^m ⁿ ~~this~~ decision of the Apex

Court the applicant has to establish as to whether the transfer order was made in violation of any mandatory statutory rule. The learned advocate for the applicant is not able to point out that the transfer order of the applicant was made in violation of any mandatory statutory rule. The other grounds ^{on} ~~of~~ which the transfer could be challenges ^{is} a ground of malafide but in the instant case, the applicant has not mentioned the name of any person who has acted with malice against the applicant. General allegation of malafides against the respondents ~~would~~ not be considered.

7. However, the learned advocate for the applicant submitted that ~~he~~ considering the fact that the applicant is a Porter at Porbandar since 20 years and considering ~~the~~ ^{the} fact ^{that} that generally Porters are not transferred, coupled with the fact that the applicant's wife has expired ^{he} and is living with a widowed maternal neice and widowed sister and has minor children, the respondents should reconsider the case of transfer of the applicant. The applicant has also mentioned in his amended application that the applicant has not given charge of Porter from Probandar Station nor anyone has been posted vise him. Today the learned advocate Mr. Ajmera

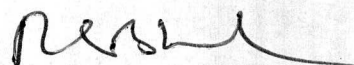
for the applicant under the instruction of his client who is present in the Court room has stated at the bar that even till today no one is posted as a Porter at Probandar vise the applicant. He submitted that the respondents may be directed to consider the financial position of the applicant, the family circumstances of the applicant, who has five minor children residing with him and the fact that till today no one is posted at Porbander vise him and if possible the respondents may after reconsidering the case of the applicant may not disturb him. Having regard to the several circumstances of the applicant and his family, it would be just and proper to direct the respondents to reconsider the case of the applicant. Thus, though I do not quash and set aside the order of transfer, it would be in the fitness ^{in all things} to give directions to the respondents to reconsider the case of the applicant. Hence the following order:

ORDER

The respondents are directed to reconsider the case of the applicant of his transfer, having regard to his family circumstances namely, that he is a widower residing with a widower maternal niece and widower sister and has five minor children residing with him. Coupled with another fact that till today no one has replaced the applicant as Porter at

Porbandar. The respondents may sympathetically consider these aspects and may reconsider the case of applicant about his transfer. The respondents may reconsider the applicant's transfer within three months from the date of the receipt of this judgment. The respondents or the competent authority ^{re} ~~to decide this case of transfer~~ ^{re} ~~and~~ who passed the impugned orders to decide ^{re} ~~this~~ ^{case} The application is disposed of accordingly.

No orders as to costs.



(R.C. BHATT)
Member (J)