

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 374/90 & 150/91
~~Ex No.~~

DATE OF DECISION 6-5-1992

Madhukar Jaggiwan Bhatt & Petitioner s
H.R. Sharma,

Mr. M.M. Xavier & Mr. G.A. Pandit, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr.



O.A.No. 374/90

Madhukar Jagjiwan Bhatt,
3-Shrem Nikaten Society,
Jail Road, Bhavnagar.

..... Applicant.

(Advocate: Mr. M.M. Xavier)

V/s.

1) Union of India,
Owning and representing
Western Railway through its
General Manager, Western Railway,
Churchgate, Bombay.

2) Divisional Railway Manager
Western Railway
Bhavnagar Division
Bhavnagar Para

3) Shri Hublal Sharma
Movement Inspector
C/o. Divisional Railway Manager,
Bhavnagar Para.

..... Respondents

(Advocate: Mr. R.M. Vin)

O.A.No. 150/91

H.R. Sharma
C/o. Gulabsingh Gohil,
Bank Colony,
Plot No. B-27,
Bor-Talao Road,
Bhavnagar Para.

.... Applicant.

(Advocate: Mr. G.A. Pandit)

V/s.

1) Union of India, notice to be
served through the General
Manager, Western Railway,
Churchgate, Bombay.

2) Divisional Railway Manager,
Western Railway,
Divisional Office,
Bhavnagar Division,
Bhavnagar Para.

3) Shri L.J. Mathur,
Divisional Office Supdt.,
Divisional Office,
Western Railway,
Bhavnagar Para.

..... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL JUDGMENT

O.A.No. 374 OF 1990

with

O.A.No. 150 OF 1991

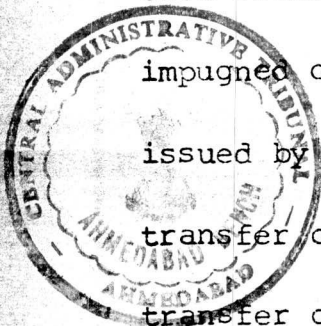
Date: 6-5-1992.

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

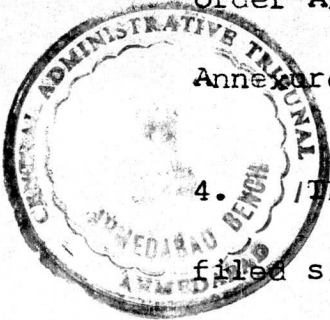
Heard Mr. M.M.Xavier (O.A.374/90) and
Mr. G.A. Pandit (O.A.150/91), learned advocates for
the applicants and Mr. R.M. Vin, learned advocate
for the respondents.

2. These two applications are heard together and
being disposed of by common order looking to almost
identical facts involved and as they are inter-
connected also.

3. The applicant Madhukar J. Bhatt^{of}, O.A.374/90,
working with the respondents railways, has filed
this application under section 19 of the Administra-
tive Tribunals Act, 1985, seeking the relief that the
impugned order Annexure A-5 dated 10th July, 1990
issued by Respondent No.2, cancelling their earlier
transfer order dated 15th June 1990 by which the
transfer order of Shri H.R. Sharma (i.e. applicant
of O.A. 150/91 and respondent No.3 in O.A.374/90)
from Bhavnagar Para to Porbandar and of Shri M.J.Bhatt
from Porbandar to Bhavnagar Para treating as
cancelled and retaining H.R.Sharma, C.D.



MVI Bhavnagar and the applicant M.J. Bhatt as MVI Porbandar, as arbitrary and in violation of extent policy, malafide and to quash the same. The applicant has prayed that he is entitled to continue as a Movement Inspector at Bhavnagar Para and the respondents should enforce the ^{earlier} transfer order Annexure A-4 dated 15th June, 1990. It is the case of the applicant that he was working as Movement Inspector in scale of Rs. 1600-2660 on ad hoc at Porbandar when he was transferred to Bhavnagar Para and Shri H.R. Sharma i.e. applicant of O.A.150/91 who was working as Movement Inspector in scale of Rs. 1600-2660 (RPS) Bhavnagar was transferred to Porbandar. The applicant has already carried out his transfer order to Bhavnagar Para and has resumed on 20th June, 1990 while according to him, the applicant of O.A. 150/91 continued at Bhavnagar Para in excess of cadre until the impugned order was issued. The applicant has mentioned many grounds in his application for implementation of the transfer order Annexure A-4 and quashing the subsequent order Annexure A-5.

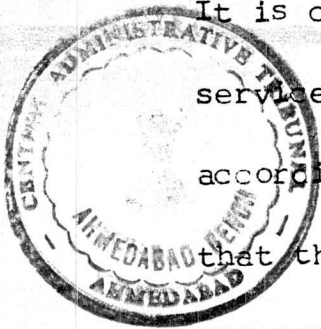


4. / The applicant H.R. Sharma of O.A.150/91 has filed similar application seeking the relief that the impugned order Annexure A dated 28th December, 1990, transferring him to Churchgate Bombay from

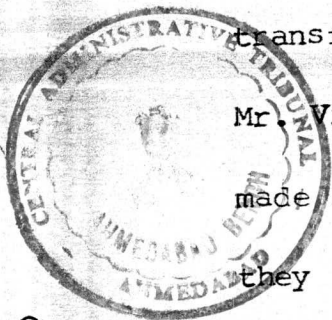
Bhavnagar Para, ^{he} be declared as illegal and unconstitutional, arbitrary, malafide etc. The applicant^{has} alleged in this application that he was transferred to Bhavnagar Para by order dated 11th August, 1989 as Movement Inspector scale 1600-2600 and resumed duty on 1st September, 1989 at Bhavnagar Para and since then he is working at Bhavnagar Para. It is the case of the applicant that he has passed the selection post of Movement Inspector and his name is empanelled for the same from 1.9.1991. It is the case of the applicant that the impugned order is passed in order to harass ^{him} / and to oblige Mr. M.J. Bhatt, the applicant of O.A. 374/90.

5. The respondents have filed reply to both the applications separately denying all the allegations made in the respective applications. They have denied that the impugned order in respect of each applicant is either arbitrary, capricious, malafide or contrary to Article 14 & 16 of the Constitution.

It is contended that transfer is an incident of service and the orders in question have been passed according to law and the respondents have denied that the orders are passed either to favour one applicant or the other and prayed that the application be dismissed.. In the instant case, the recent decision regarding the case of transfer



-- decided by the Hon'ble Supreme Court
- is M/s. Shilpi Boss V/s. State of Orissa
& Ors., AIR 1991 SC p.532. The Hon'ble Supreme
Court has held that the Courts should not interfere
in the transfer orders which are made in public interest
and for administrative reasons unless the transfer
orders are made in violation of any mandatory
statutory rule or on the ground of malafides. Learned
advocate Mr. Xavier, who appears for the applicant in
O.A. 374/90 has submitted that the applicant had not
made any representation to the higher authorities
against the impugned order of transfer and he submitted
that the applicant is prepared to make representa-
tion. He submitted that the interim stay granted
by the Tribunal is still in force. Mr. Pandit, learned
advocate appearing for the applicant in O.A. 150/91
would also make
submits that applicant representation separately.
Both the learned advocates have
submitted that the
respondents should not implement the orders of
transfer till
the representations are disposed of.
Mr. Vin submits that the applicants ought to have
made representations to the higher authorities before
they rush to the Court of law. I agree with the
learned advocate that the applicant ought to have
approached the higher authorities by making
representations earlier.
However, having regard to the facts

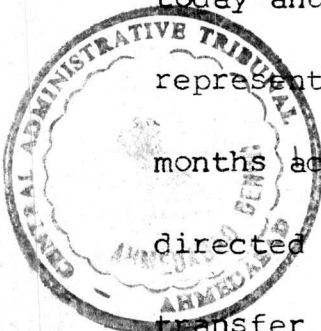


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of these two cases which are inter-connected meaning thereby that the impugned orders passed in both the cases effect the applicants it would be just and proper on the facts of this case to direct the applicants to make representations to the respondents' competent authority regarding transfer and the respondents to dispose of the representations within three months. Hence the following order.

ORDER

The applicant of O.A. 374/90 and applicant of O.A. 150/91 are permitted to make ^{their} Z respective representations regarding transfer to the competent authority of the respondents within 15 days from today and the respondents on receipt of such representations to dispose ^{of} Z the same within three months according to the rules. The respondents are directed not to implement the impugned orders of transfer against the applicant till the representations are disposed of by them. Applications are disposed of accordingly. No orders as to costs.



Prepared by :

Compared by :

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Section Officer (J)

Central Administrative Tribunal,
Ahmedabad Bench.

Sd/-
(R.C.Bhatt)
Judicial Member