

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL  
AHMEDABAD BENCH

O.A. No. 374/90 & 150/91  
Tax No. *✓*

DATE OF DECISION 6-5-1992

Madhukar Jagjiwan 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.  
(Advocate: Mr. M.M. Xavier)

..... Applicant.

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.

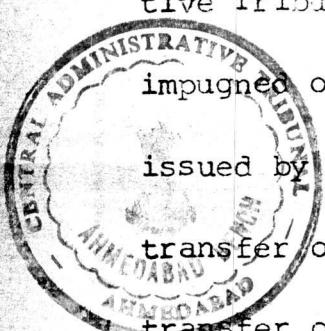
Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

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, 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, O.A. 374/90



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 earlier respondents should enforce the 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, 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 applications be dismissed. In the instant case, the recent decision regarding the case of transfer

-- decided by the Hon'ble Supreme Court --

-- This 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 representation. He submitted that the interim stay granted by the <sup>Tribunal</sup> is still in force. Mr. Pandit, learned advocate appearing for the applicant in O.A. 150/91 submits that applicant ought to make representation separately. Both the learned advocates 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. However, having regard to the facts

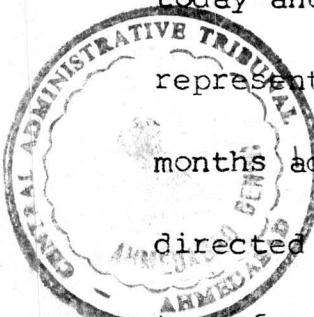


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of these two cases which are inter-connected meaning thereby that the impugned orders passed in both the cases effect the applicants it would be just and proper on the facts of this case to direct the applicants to make representations to the respondents' 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 <sup>their</sup> 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 <sup>of</sup> 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