

No
Transfers

CAT/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 329/91

~~XXXXXX~~

DATE OF DECISION 09-10-1991

Mr. Gulabshanker Premasukh Petitioner

Mr. Jagdish Yadav Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. B.R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohammed

Administrative Member

The Hon'ble Mr. R.C. Bhatt

Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Shri Gulabshanker Prem Sukh,
Quarter No.176/D,
Gandhidham Railway Colony,
Kutch.

: Applicant

(Advocate Mr.Jagdish Yadav)

Versus

1. Union of India,
Through:
The General Manager,
Western Railway,
Churchgate,
Bombay.
2. Station Superintendent,
Gandhidham Station,
Gandhidham.
3. Divisional Railway Manager,
Western Railway,
Ajmer.
4. Divisional Mechanical
Engineer(Estt.)
Ajmer.

: Respondents

(Advocate: Mr.E.R.Kyada)

O.A./329/91

Date: 09-10-1991

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

1. This application is filed by the applicant Khalasi challenging the order of transfer dated 14.8.91 from Gandhidham to Phulera passed by the respondents and the applicant has further prayed that he should be reposted/restored at Gandhidham in the office of the respondents and the respondents be further directed to continue him at Gandhidham.

2. It would be proper to refer to the previous application O.A.Stamp No.348/91(O.A.320/91) preferred by the applicant before this Tribunal challenging the same order of transfer dated 12/14-8-1991. The applicant had challenged the said order of transfer on many grounds before this Tribunal. It was pointed out at the time of hearing of that O.A. Stamp No.348/91 by the applicant in person that no order of transfer was served on him but

what was served was the letter dated 21.8.1991 which was an intimation of relief to him on transfer given by the office of Diesel Foreman, Gandhidham to Diesel Foreman, Phulera. The respondents had not served the order of transfer on the applicant but what was served was the intimation of relieve of the applicant by which the intimation of transfer was sought to be carried out. It is found from the judgment of O.A .Stamp No.348/91 that the order of transfer was not served on the applicant and therefore, this Tribunal held that "for want of service on the applicant of order of transfer, he is deprived of his right under Section 19 of the Administrative Tribunals Act, 1985 to make an application". It was also held that the intimation order served on the applicant cannot be a substitute for regular order of transfer. This Tribunal therefore, directed that the applicant not to be taken as having been relieved as a aresult of intimation and he should be continued in service at his place of posting from where he was sought to be relieved by virtue of above letter of intimation to go to Phulera. In para-9 of the judgment the Tribunal observed that "as and when a proper order of transter is served on the applicant the same should remain under stay for a period of 7 days to enable the applicant to approach the Tribunal against it if he so wishes". The application was allowed and the applicant was allowed to serve the order by Dasti.

3. In the O.A. before us, now the applicant has alleged that he went to Gandhidham after the judgment in O.A.Stamp No.348/91 on 30th August, 1991 but the respondents did not allow him to sign the attendance roll

and was asked to sit outside the office silently and thereafter the applicant was served with a copy of the transfer order dated 14.8.1991 which is the original transfer order of the applicant transferring him from Gandhidham to Phulera. The applicant has annexed the copy of that transfer order dated 14th August, 1991 as Annexure A/2. The grievance of the applicant is that in the earlier application the Tribunal found that in absence of order of transfer, the applicant cannot be relieved. It is alleged that the applicant had challenged the order of transfer which was not served on him and after his application O.A. Stamp No.348/91 was allowed, by this Tribunal the respondents cannot serve the same order to the applicant when he went to resume his duties. It is the case of the applicant that the order of transfer dated 12/14-8-1991 is non-est and unenforceable and requires to be quashed and set aside.

4. The learned advocate for the applicant submitted that the applicant having filed the earlier O.A. challenging the order of transfer on the ground that it was not served on him and the same being allowed by this Tribunal on 29.8.1991 it is not open for the respondents to serve upon the applicant the same order Annexure A/2 as it is non-est and without any authority of law and the second ground mentioned in the application is about the alleged malafides of the superior officer against the applicant. The third ground is that the 4th class employees are not to be transferred unless there being special reason and hence the impugned action of transfer is bad in law. The main ground is that the transfer order dated 12/14-8-1991 was served on the applicant for the first time on 30.8.1991 and never before and hence the said action of the respondents in serving the same order which has no existence in eye of law was illegal

and bad in law. The applicant has produced Annexure A/3 collectively the letters written by him to the respondents in which the allegation was that one mad person and a person who was physically not fit to be promoted were given promotion and these remarks of the applicant in his letters displeased the superiors Messrs. Harbanslal and Menna and therefore the applicant is driven out by transfer from Gandidham to Phulera which is at a distant of about 600 to 700 kms.

5. The respondents have contended in the reply that the transfer order made by the respondents is purely on administrative ground and in the ^{ne}intest of administration and therefore, the same cannot be said being in violation of any rules or policies of railway. It is contended that the transfer order was dated 11.8.1991 but the applicant refused to accept it and therefore was served in the presence of two panchas and panchnama was drawn in their presence dated 12.8.1991. The respondents have produced Annexure R/1 copy of transfer order Panchnama & one other document Annexure R-12 letter dated 13.8.91, 21.8.91 & 9.9.91. It is contended that the applicant was relieved on 12.8.1991 and thereafter he was given the service particulars by letter dated 21.8.1991 which was not the transfer order. It is contended that the applicant has made wrong statement supressing the material fact. It is contended that transfer order was already served after the order of this Tribunal dated 29.8.1991 again the order was served on the applicant on 31.8.1991. The respondents have denied the allegations of malafides alleged in the application and denied that there is any violation of any policy.

6. The applicant has filed rejoinder denying that the transfer order dated 11/12.8.1991 was served on him earlier before application O.A. Stamp No.348/91 was decided. He has stated that the transfer order is dated 14.8.1991 but it was not served on him earlier but what was served was the relieving order. He denied that he had suppressed any material fact.

7. The first question which goes at the root of the whole matter is whether the transfer order dated 12/14-8-91 Annexure A/2 passed by the respondents transferring the applicant has become non-est and not enforceable. The learned advocate for the applicant submitted that this order Annexure A/2 was served on applicant for the first time on 31.8.1991 and it was never served on him before. He submitted that what was served on him earlier was the relieving order which has been referred to in the judgment in O.A. Stamp No.348/91 dated 29.8.1991 and now the applicant cannot act on the same transfer order Annexure A/2. The learned advocate for the respondents drew our attention to para 7, 8 and 9 of the judgment of that O.A. Stamp No.348/91 and submitted that the applicant was allowed to file the application under Section 19 of the Act after a proper order of transfer was served on him. He submitted that now the transfer order has been served on the applicant and previous to the judgment in O.A. Stamp No.348/91 also the order of transfer was served on him. He submitted that the applicant cannot urge that the order has become non-est or non-existent or not enforceable.

8. We have perused the documents on record produced by both the parties carefully and we have heard learned advocates at length.

9. In view of the decision in O.A.Stamp No.348/91, we agree with the submission of the learned advocate for the applicant that the transfer order Annexure A/2 was not served on the applicant till the decision in that O.A. and the respondents now cannot act on the same transfer order Annexure A/2 served subsequently of the same date when the applicant had gone to resume his duties at Gandidham in pursuance of this Tribunal's judgment. The Tribunal in para 8, of its judgment has categorically held that the applicant not be taken as having been relieved as a result of intimation and he should be continued in service at his place of posting. Therefore, it was the duty of the respondents to allow him to resume the duties. The respondents were at liberty to serve a new order of transfer on the applicant but cannot act on the original order of transfer of the previous date. We do not agree with the submissions of the learned advocate for the respondents that the respondents were entitled to serve the same transfer order on 31.3.1991.

10. The learned advocate for the applicant has submitted that the alleged transfer was the result of the malafides of the respondents on the applicant and against the rules and policy. We need not decide those points at present because the application succeeds on the first ground namely that the transfer order Annexure A/2 served on the applicant now has become non-est and not enforceable at law by virtue of the judgment in O.A.Stamp No.348/91. The learned advocate for the applicant has submitted that the applicant has mentioned in the application the names of the superior officers who acted with malafides against the applicant and the applicant has also produced documentary evidence namely the letters written by him to his superiors. He also submitted that the applicant is a poor Khalasi

Class IV servant having a large family and he has only four to five years left for retirement and such a person should not be transferred at distant of about 600 to 700 Kms. He has relied on the decision in B.Varadha Rao v. State of Karnataka and Ors. AIR 1986 Supreme Court 1955 in support of his submissions. The learned advocate for the respondents submitted that the respondents have not acted with malafide on the applicant as alleged but the transfer is made in the interest of administration and the applicant is not entitled to challenge such transfer made in public interest and for administrative reasons. He has relied on the decisions in V.B.Laxmashwar vs. Deputy Chief Auditor and Ors. 1981 (1) SLR page 727, K.B.Shukla and Ors. vs. Union of India & Ors. 1979 (2) SLR page 58 and the Gujarat Electricity Board and Anr. vs. Atmaram Sungomal Poshani AIR 1989 S.C. page 1433. It is true that officers should first implement the transfer order and join their places of posting before they agitate the matters. There is also recent decision of the Hon'ble Supreme Court in Mrs.Shilpi Bose and Ors. vs. State of Bihar and Ors. AIR 1991 S.C.page 532 in which it is held that the Court should not interfere with the transfer orders which are made in the public interest and for administrative reason unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of malafide. As observed above, since we have been convinced on the very first ground of the applicant that transfer order Annexure A/2 handed over to the applicant by the respondents has become unenforceable and non-est by virtue of the decision in O.A.Stamp No.348/91, it is not necessary to go into the other questions of malafides, policy of the respondents and rules, etc. We do not decide those questions as it is not necessary for us to probe into the same as we propose to allow the application on the first ground.

Having regard to the peculiar
11. facts of this case, we hold that the order
of transfer dated 12/14-8-1991 Annexure A/2 served by
respondents ^{is} ~~on~~ the applicant has become ^{unenforceable and} ~~nonest~~ and
therefore, the same is quashed and set aside.
The respondents to allow the applicant to resume
duty at Gandhidham as if he is not relieved and
he should be treated ^{to be} ~~in~~ service. The application
is allowed to the above extent. No order as to costs.

R.C. Bhatt

(R.C. Bhatt)
Member (J)

P.S. Habib Mohammed

(P.S. Habib Mohammed)
Member (A)