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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 18 OF 1992.

~~E. A. No. x~~

DATE OF DECISION 7-4-1992.

A.P. Patel, Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. B.B. Naik, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R. Venkatesan, Admn. Member.

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 ? ☒

A.P. Patel,
11, Rajendra Society,
Jawahar Chowk,
Maninagar,
Ahmedabad - 380 008. Applicant.

(Advocate: Mr.P.H. Pathak)

Versus.

1. Union of India
Notice to be served through
Central Provident Fund Commissioner
Mayur Bhavan, Connaught Circus,
New Delhi - 1.
2. Regional Provident Fund Commissioner
Gujarat State,
Bhavishya Nidhi Bhavan,
Near Income Tax Office,
Ahmedabad.
3. Shri R.D. Chetival,
notice to be served through
Central Provident Fund
Commissioner,
Mayur Bhavan,
Connought Circus,
New Delhi. Respondents.

(Advocate: Mr. B.B. Naik)

J U D G M E N T

O.A.No. 18 OF 1992

Date: 7-4-1992.

Per: Hon'ble Mr.R.Venkatesan, Admn. Member.

The prayer in the present application is to declare an order of transfer dated 16.9.91 at Annexure A of the application, transferring the applicant from Inspectorate Office, Nadiad to the Sub Regional Office, Baroda as AAO as illegal and quash it.

2. The facts of the case are that the applicant, who was working as Enforcement Officer under the
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second respondents at Ahmedabad was given an order of posting/transfer dated 20.6.91, transferring him from Ahmedabad to the Inspectorate at Nadiad. The applicant had assumed charge of the Inspectorate of Nadiad, thereafter on 16th September, 1991. Another order was issued by the Regional Provident Fund Commissioner (F&A & Recovery) with the approval of the Regional Provident Fund Commissioner transferring the applicant and ^{one} other, Shri R.U. Vaghela; the order reads as follows:

No.GJ/ADMN/VIG/1292 16th Sept. 1991

Keeping in view the administrative exigencies the following transfers ordered with immediate effect :-

S.No.	Name of the Officer.	Transferred	
		From	To
1.	Shri A.P.Patel, E.O.	Inspectorate Office Nadiad	Sub-Regional office Baroda as AAO.
2.	Shri R.U.Vaghele E.O.	Inspectorate Office Jamnagar.	Sub-Regional office Rajkot as AAO

xxxxx xxxxx xxxxx
This is the impugned order which is being challenged in this application.

3. At the outset it was made clear to the counsel that as held by the Supreme Court in several decisions, an order of transfer can be interfered with by the Tribunal only on two grounds, namely, malafides or violation of mandatory statutory rules.

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4. The learned counsel for the applicant contended that the order in the present case was clearly malafide and referred to an averment to this effect in paragraph 15 of the application. In support of his contention of malafides he drew our attention to para 7 of the application in which it is stated that several Vigilance investigations were carried out against Respondent No.3 and as a result the statutory powers under Section 7A of the Employee's Provident Funds and Misc. Provisions Act, 1952 were withdrawn and he was ultimately transferred and posted to a non-executive post at Delhi in December 1991. It is stated that the Respondent No.3 unwarrantedly suspected that the applicant was instrumental in the investigations against him. He was therefore infuriated against the applicant and out of vengeance he tried to initiate a vigilance inquiry against the applicant to make out a case for his transfer. The counsel took ^{us} ~~us~~ ^{he} elaborately through certain notes issued ⁱⁿ pursuance to the Vigilance team's visit to show that the notes had tried to implicate the applicant in irregularities and failures for which he ~~was~~ not responsible. The learned counsel contended that the above allegations had not been refuted by the respondent in their reply and that this would imply acceptance.

5. The learned counsel for the respondents strongly refuted the above allegation. He drew attention to the respondents' reply which has specifically refuted the allegation of malafide in para 20 of the reply. The learned counsel for the respondents further filed before the Tribunal a copy of Confidential letter dated 6-9-91 from

the Director (Vigilance), Office of the Central Commissioner, Employee's Provident Fund, New Delhi, at Annexure R-1. This letter, which is an important one ^{is} and/_addressed to Respondent No.3 Shri R.D.Chetival the then Regional Provident Fund Commissioner, reads as follows :

"During investigation of certain complaints against the Regional Office, Gujarat it is observed that the continuance of S/Shri A.P. Patel and Vaghela, Enforcement Officers in Field assignments for the present would not be conducive to the investigations. Central Provident Fund Commissioner therefore, desires that both of these officials be withdrawn from the field assignments and posted to non sensitive posts. Your compliance report may please be submitted within a week of receipt of this letter."

The learned counsel submitted that the transfer of the applicant and Shri Vaghela by the impugned order of 16th September, 1991 was issued in pursuance of the above direction which was received on 9th September, 1991 and was required to be complied with and reported within a week of the receipt. He therefore denied the allegation that the transfer was carried out by the Respondent No.3 out of malafide reasons as alleged. The counsel further stated that the order dated 6th September, 1991 was issued before of the on Sept.11/12th the visit /Central Vigilance team to Ahmedabad/_and the issue of certain memos which had been incorporated in Exh. I of the original application and which

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applicant had relied on in support of his allegation of malafide by contending that there was collusion between Respondent No.3 and ^{the} Vigilance wing to harass and victimise the applicant. The counsel for the respondents submitted that the decision to transfer of the applicant had been taken by the Vigilance Cell of the Headquarters administration even before 6th September, 1991.

6. From the perusal of the letter dated 6th September, 1991 which has been issued by the Director (Vigilance) of the Headquarters organisation, it is clear that the subsequent vigilance inquiry at Ahmedabad carried on 11/12-9-1991 had nothing to do with the transfer order. We also accept the averment that the transfer order, which is ^{a common one} passed for both the applicant and Shri Vaghela was issued in pursuance of the direction of the Director (Vigilance) and was not a decision taken by Respondent No.3, as alleged. Hence we hold that the applicant has not been able to establish the charge of malafides against ^{R-3, Shri R.D. Chetival,} the then Regional Provident Fund Commissioner, in transferring him.

7. The learned counsel for the applicant next argued that the order was in clear violation of certain of the Headquarters orders dated 19.10.1988 addressed to all Regional Provident Fund Commissioners regarding transfers reading as follows :

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"Instructions have been issued from time to time from this office regarding guidelines laid down for transfer and postings of officials. Government of India, Ministry of Labour vide their letter No..... dated 21.9.1982 instructed that ordinarily an officer should not be transferred out of a station unless he/she had completed atleast three years at that station and that no officer should be allowed to remain in the station for more than five years. Subsequently in D.O. letter No..... dated 15.4.1983 it has been indicated by the Government, Ministry of Labour that once an officer is transferred out from a particular station he should do a minimum of two years of service before he is considered for another transfer either to the old station, or to any other station. Though you have been advised to follow these instructions strictly, it is once again emphasised that these instructions should be strictly adhered to in the case of transfer of E.O/A.A.O. from one place to another within the Regions. There should not be any deviation from these instructions. In certain cases when due to administrative exigencies..... transfers have to be made, it may be ensured that the reasons are clear and unassailable as otherwise it may give rise to charges of malafide". The learned counsel contended that the above orders required that the

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posting of
applicant shall ^{be} retained ^{at} to the new place of Nadiad
for a minimum of two years whereas he has been
transferred after only 2½ month, in the new station
thus violating the above direction. The learned
counsel for the respondents refuted the above
contention and referred to the reply affidavit in
which it has been stated that though a new
directorate had been sanctioned for Nadiad which was
the part of the Ahmedabad office, the new directorate
had not been established and become operational. The
applicant, though served with the order dated 20.6.91,
was only looking after the Nadiad zone which was part
and parcel of the Ahmedabad office and no transfer
up till now.
of station was involved. He further stated that
even as per the above guidelines there could be
diviations due to administrative exigencies. In the
present case the transfer had been ordered as the
of the Headquarters organization
result of the direction of the Director (Vigilance) /
for the reasons which had been stated in the
post at
letter dated 16th September, 1991. He stated that the /
Nadiad Inspectorate was a field assignment whereas the
to
post which the applicant had been transferred, namely
that of Assistant Accountant Officer in the ^{sub -} ~~rate~~ - ^{Rz}
regional office at Baroda, was not a field assignment
and was a non-sensitive post. The transfer was
therefore due to administrative exigencies and in
strict compliance of the Director (Vigilance)'s
instructions.


8. It has been held by the Supreme Court in its decision in Mrs. Shilpi Bose V/s. State of Bihar & Ors., 1990(2) SCC(L&S) 127, "The Courts should not interfere with a transfer order which is made in ^{the} public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. ~~The~~ A Government servant holding a transferable post has no vested right to remain posted ^{at} one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not ~~violated~~ any of his legal rights. Even if a transfer order is passed in violation of executive instruction or orders, the courts ordinarily should not interfere with the order; instead the effected party should approach the higher authorities in the department". ^(Emphasis supplied) We thus find that in the present case even if there had been a violation of executive instruction or orders as contended by the counsel for the applicant, this would not be sufficient cause ^{for} for our inference. We therefore cannot accept this ground of the applicant.

9. The learned counsel for the applicant stated that this Tribunal should call for the file from the department regarding the investigation of complaints against the Regional Office referred to in the letter

dated 6th September, 1991. However, the applicant has not been able to refer to any particular file and we also not consider it necessary to go into the detailed investigation by the directorate of vigilance in a case of transfer such as the present one, especially ^{when} ~~which~~ no legal rights of the applicant are involved, as held by the Supreme Court, and considering the fact that ^{Br} ~~when~~ an investigation is still under way. ^{Br} ~~It~~ is premature for this Tribunal to call for records.

10. We are satisfied for the reasons which we have discussed above that the plea of malafides being involved in the order of transfer has not been established and no violation of any statutory rules in the order of transfer has been established by the applicant. In the result, the application fails and is dismissed. There will be no order as to costs.


(R. Venkatesan)
Member (A)


(R.C. Bhatt)
Member (J)