

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 494/93
T.A. No.

DATE OF DECISION 3-10-1994

Mr. Narendra S. Nathani

Petitioner

Mr. S. Brahmhatt

Advocate for the Petitioner(s)

Versus

Union of India and Others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K. Ramamoorthy

Member (A)

The Hon'ble Mr. Dr. R.K. Saxena

Member (J)

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 ?
- NO

Narendra Somdutt Nathani
T.D.X. 163, Adipur,
Kutch, 370205.

Applicant.

Advocate Mr. S. Brahmhatt

Versus

1. Union of India, Ntoce to be served through the Secretary Ministry of Telecommunications Dept. of Tele Communications, Secretariate, New Delhi.
2. The Chief General Manager, Tele Communications, Gujarat Circle, Khanpur, Ahmedabad.
3. Shri Ashok Pathak and/or his successor in the office of the Telecom District Manager, Bhuj District, Raviraj Chambers, Station Road, Bhuj (kutch)
4. Mr. M.H. Kahn and or his successor in the office of Divl. Engineer (Admn.) O/o TDM, Raviraj Chambers, Station Road, Bhuj (kutch)

Respondents-

Advocate Mr. Akil Kureshi

O R A L J U D G M E N T

In

Date: 3-10-1994.

O.A. 494 of 1993

Per Hon'ble Shri K. Ramamoorthy

Member (A)

Neither the applicant nor his counsel is present.
Mr. Akil Kureshi is present for the respondents. Dismissed for default.

(Dr. R.K. Saxena)
Member (J)

(K. Ramamoorthy)
Member (A)

*AS.

OA 494/93

Date	Office Report	ORDER
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04-10-94

This case was dismissed for default on 03-10-94. Thereafter the learned Counsel for the applicant appeared and requested the matter to be heard on merits. The order of dismissal for default was therefore recalled and case fixed for arguments today (04-10-94).
Heard learned advocates for the applicant & the respondent.
Judgement Reserved.

Dr R K Saxena
CO II

Dr R K Saxena
member (D)

(K Ramamoorthy)
member (A)

The Judgement pronounced in open court

Dr R K Saxena
CO II

Dr R K Saxena
member (D)

(K Ramamoorthy)
member (A)

OA 494/93

Date	Office Report	ORDER
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04-10-94

This case was dismissed for default on 03.10.94. Thereafter the learned counsel for the applicant appeared and requested the matter to be heard on merits. The order of dismissal for default was therefore recalled and case restored & fixed for arguments today (04.10.94) for the applicant & the respondent.
Judgement Reserved.

Approval (Dr. R K Saxena) (1) (K Ramamoorthi) member (1)
CO III

07.10.94

The Judgement pronounced in open court.

Approval (Dr. R K Saxena) (1) (K Ramamoorthi) member (1)
CO III



Central Administrative Tribunal

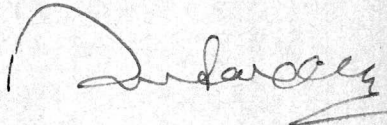
AHMEDABAD BENCH

Shri K. Ramamoorthy Vice-Chairman
Member (A)

Pre-delivery ORDER in

~~T.A.~~ O.A. No, 494 of 199 3

is sent herewith for consideration


(Dr. R.K. Saxena)
Member (J)

48
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Shri K. Ramamoorthy,
Member (A).

Narendra Somdutt Nathani,
T.D.X. 163, Adipur,
Kutch - 370 205.

..... Applicant

(Advocate : Mr. S. Brahmhatt)

Versus

1. Union of India, Notice to be served through The Secretary, Ministry of Telecommunications, Dept. of Tele Communications, Secretariat, New Delhi.
2. The Chief General Manager, Tele Communications, Gujarat Circle, Khanpur, Ahmedabad.
3. Shri Ashok Pathak, and/or his successor in the Office of the Telecom District Manager, Bhuj District, Raviraj Chambers, Station Road, Bhuj (Kutch).
4. Mr. M.H. Khan and/or his successor in the Office of Divl. Engineer (Admn.), O/O TDM, Raviraj Chambers, Station Road, Bhuj (Kutch).

..... Respondents

(Advocate : Mr. Akil Kureshi)

J U D G M E N T

O.A. No. 494 OF 1993

Date : 07-10-94

Per Hon'ble Dr. R.K. Saxena, Member (J)

This application has been filed by Shri Narendra Somdutt Nathani challenging the transfer order Annexure A-1 passed on 4-11-1992 by Divisional

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Engineer (Administration). The brief facts of the case are that the applicant is working as Telephone Operator in Adipur. He was transferred by the impugned order from Adipur to Bhachau with immediate effect. The reasons to transfer, according to the applicant, are that he was office bearer of the Telecom Employees Union and he was a straight-forward employee and never indulged in corrupt practices which were common with the Telephone Operators. It was for this reason ^{that} his colleagues and his superiors were displeased with him. On the false complaint of Smt. Sushila A Ruchani - a Telephone Operator, this punitive order without affording an opportunity of explanation, was passed. It was, therefore, against the principles of natural justice as well as it suffers from malafides.

2. The respondents filed ^{two} replies. One was filed at the time of admission of the application whereas the other was filed after the case was admitted. The plea of the respondents in support of the transfer order is that a large number of complaints were received against the applicant about his misbehaviour towards his fellow staff members and against his superiors. The complaints were also made by the subscribers of the telephones. It was for this reason that this administrative action of transfer was taken and it was in the exigencies of administration itself. In the second reply, it was also pointed out that the

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applicant was charge-sheeted on the basis of the complaints which were made against him and the enquiry is pending against him. The respondents, therefore, justified the order of transfer and the allegations of malafides and of violation of the principles of natural justice, were denied.

3. We have heard learned counsel for the applicant and the respondents. We have also perused the record.

4. The main question in this case is whether the impugned order of transfer is punitive in nature, and if so, whether it is liable to be quashed. The contention of the applicant as is already disclosed is that it was punitive in nature. The reasons advanced in support of this argument are that he was an office bearer of the Union and never supported corrupt practices which were prevalent amongst other Telephone Operators. It was also argued that the complaint of Smt. Sushila A. Ruchani was a concocted one because he had opposed her posting of fixed duty as by that posting^{or} she was indulging in corrupt practices. It is also contended that the respondents never stated in their earlier reply that the enquiry was under contemplation and for the reason that the applicant may not try to threaten the witness or tamper with the evidence, the transfer was necessitated. According to the argument of the learned counsel for the applicant, it was only an after-thought. On the scrutiny of facts, we are not impressed by this argument that charge-sheet

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was an after-thought. The reason is simple and it is that the charge-sheet was dated 11-6-1993 and might have been served on the applicant soon thereafter. This application challenging the order of transfer has been presented on 17-3-1993. It means that action of proceeding with the departmental enquiry against the applicant, was already taken. It is a different matter that it could not be mentioned in the first reply by the respondents. The learned counsel for the respondents tried to explain that the first reply was presented opposing the admission of the case and therefore, detailed discussion about the action being taken against the applicant was not thought necessary. However, when the case was admitted, these facts were brought on record through another reply. In the circumstances, we are of the view that the argument of the learned counsel for the applicant that charge-sheet was an after-thought, does not hold good.

5. It has been vehemently contended on the part of applicant that the transfer order under challenge is punitive and therefore, it must be quashed. In this connection, he has placed reliance on the cases *Biman Kumar Roy Vs. S. Laxminarayana & Others* 1978(2) B.L.R. 136. In this case, the Calcutta High Court had taken view that if no disciplinary action was taken and transfer was made without affording any opportunity, such transfer order tantamounted as punishment. The reliance is also placed on the case *P.P. Ichomal Vs. State of Gujarat* 1981 (xvi) G.L.T. 119 in which it was held that if the transfer

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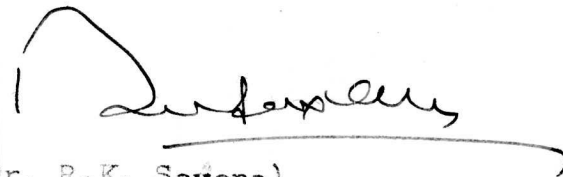
was made on account of complaints made against the public servant and was contrary to the guidelines, it was liable to be quashed. The third case relied ^{upon} by the applicant is Sahadev Narayan Chitravamsi Vs. Chairman, Board of Governors Sainik School Society ^{1982(1) G.L.R. 149} in which the view taken was that though transfer may be incidence of service, rules of natural justice must be followed and the order of transfer must not be by way of punishment. The fourth case is Mohammad Thekkethil Vs. Director of Panchayats & Others 1982(2) [&] S.L.R. 390 (Kerala). The view of the High Court in this case was that the order of transfer should not be interfered with ~~writ which~~ ^{unless it} was established to be arbitrary or passed for extraneous reasons. The Orissa High Court in the fifth case Achutanand Bahera Vs. State of Orissa 1985(2) [&] S.L.R. 16 took the view that order of transfer could not be attacked unless it was infected by malafides or oblique motives or it was in violation of rules or instructions. The last case relied upon is Somabhai Nathabhai [&] Mesaria Vs. Superintendent of Police 1987 (XXIV) G.L.T. 46. The view taken by Gujarat High Court in this case is that once it is held that the order of transfer is passed as a penal measure, it is obvious that such an order cannot be passed without hearing the person concerned. We have mentioned the cases relied ^{upon} by the learned counsel for the applicant in brief and the points which were raised in those cases were considered by Full [&] Bench of

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6. The legal position about the transfer^Q matters has been made clear by Their Lordships of Supreme Court in the cases of State Bank of India Vs. R.P. ^QKhanna 1994^Q(1) S.L.R. 538 and Rajendra Roy Vs. Union of India & Others 1993^Q(1) S.L.R. 126 holding that transfer is an incidence of service. A person holding a transferrable post has no legal right to remain posted at one place or the another. It is further observed that no^{adverse} inference by the Court can be made unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of malafides, the burden of establishing of which is heavily on the person who alleges it. The same view was reiterated in the case Union of India & Others^Q Vs. S.L. Abbas AIR 1993 Supreme Court 2444. In this case, one more plea that the guidelines were not followed^Q was taken, ^Qand Their Lordships^Q were of the view that if there were any guidelines and they were not followed, it did not confer upon employee the legal^Q ^{justiciable} enforceable right. In this case, the applicant has asserted this aspect that the impugned transfer order has been made in violation of the guidelines as well. In view of the law laid down in the decision of Abbas case, we come to the conclusion that this plea also does not hold good. No doubt, the plea of malafides has been asserted in the application and during the arguments^Q ^{and the} learned counsel for the applicant has stressed on it, but we do not find any substantial material on it which may be found to have been established. What were the reasons for transfer ^Qare

clearly disclosed by the respondents in their two replies.

7. Having gone through the facts of the case and the discussions made above, we are of the view that the impugned order does not suffer from any illegality and therefore, there is no ground to quash the same. The application has no merits and it is, therefore, rejected. No order as to costs.



(Dr. R.K. Saxena)
Member (J)



(K. Ramamoorthy)
Member (A)

kvr/.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**O.A. NO.** 494/1993**~~T.A. NO.~~**DATE OF DECISION 07-10-84Mr. Narendra S. Nathani PetitionerMr. S. Brahmhatt Advocate for the Petitioner (s)

Versus

Union of India & Others RespondentMr. Akil Kureshi Advocate for the Respondent (s)**CORAM**

The Hon'ble Mr. K. Ramamoorthy, Member (A)

The Hon'ble Mr. Dr. R.K. Saxena, Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Narendra Somdutt Nathani,
T.D.X. 163, Adipur,
Kutch - 370 205.

..... Applicant

(Advocate : Mr. S. Brahmhatt)

Versus

1. Union of India, Notice to
be served through The Secretary,
Ministry of Telecommunications,
Dept. of Tele Communications,
Secretariat,
New Delhi.
2. The Chief General Manager,
Tele Communications,
Gujarat Circle,
Khanpur,
Ahmedabad.
3. Shri Ashok Pathak, and/or
his successor in the Office
of the Telecom District Manager,
Bhuj District, Raviraj Chambers,
Station Road,
Bhuj (Kutch).
4. Mr. M.H. Khan and/or his
successor in the Office of
Divl. Engineer (Admn.),
O/O TDM, Raviraj Chambers,
Station Road,
Bhuj (Kutch).

..... Respondents

(Advocate : Mr. Akil Kureshi)

J U D G M E N T

O.A. No. 494 OF 1993

Date : _____

Per Hon'ble Dr. R.K. Saxena, Member (J)

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Narendra Somdutt Nathani challenging the transfer
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2. The respondents filed ^{two} replies. One was filed at the time of admission of the application whereas the other was filed after the case was admitted. The plea of the respondents in support of the transfer order is that a large number of complaints were received against the applicant about his misbehaviour towards his fellow staff members and against his superiors. The complaints were also made by the subscribers of the telephones. It was for this reason that this administrative action of transfer was taken and it was in the exigencies of administration itself. In the second reply it was also pointed out that the

applicant was charge-sheeted on the basis of the complaints which were made against him and the enquiry is pending against him. The respondents, therefore, justified the order of transfer and the allegations of malafides and of violation of the principles of natural justice, were denied.

3. We have heard learned counsel for the applicant and the respondents. We have also perused the record.

4. The main question in this case is whether the impugned order of transfer is punitive in nature, and if so, whether it is liable to be quashed. The contention of the applicant as is already disclosed is that it was punitive in nature. The reasons advanced in support of this argument are that he was an office bearer of the Union and never supported corrupt practices which were prevalent amongst other Telephone Operators. It was also argued that the complaint of Smt. Sushila A. Ruchani was a concocted one because he had opposed her posting of fixed duty as by that post, she was indulging in corrupt practices. It is also contended that the respondents never stated in their earlier reply that the enquiry was under contemplation and for the reason that the applicant may not try to threaten the witness or tamper with the evidence, the transfer was necessitated. According to the argument of the learned counsel for the applicant, it was only an after-thought. On the scrutiny of facts, we are not impressed by this argument that charge-sheet

was an after-thought. The reason is simple and it is that the charge-sheet was dated 11-6-1993 and might have been served on the applicant soon thereafter. This application challenging the order of transfer has been presented on 17-8-1993. It means that action of proceeding with the departmental enquiry against the applicant, was already taken. It is a different matter that it could not be mentioned in the first reply by the respondents. The learned counsel for the respondents tried to explain that the first reply was presented opposing the admission of the case and therefore, detailed discussion about the action being taken against the applicant was not thought necessary. However, when the case was admitted, these facts were brought on record through another reply. In the circumstances, we are of the view that the argument of the learned counsel for the applicant that charge-sheet was an after-thought, does not hold good.

5. It has been vehemently contended on the part of applicant that the transfer order under challenge is punitive and therefore, it must be quashed. In this connection, he has placed reliance on the cases Bhimen Kumar Roy Vs. S. Laxminarayana & Others 1978(2) S.L.R. 136. In this case, the Calcutta High Court had taken view that if no disciplinary action was taken and transfer was made without affording any opportunity, such transfer order tantamounted as punishment. The reliance is also placed on the case P.P. Ichomal Vs. State of Gujarat 1981 (19(XVII)) G.L.T. 119 in which it was held that if the transfer

made on account of complaints made against the public servant and was contrary to the guidelines, it was liable to be quashed. The third case relied ^{upon} by the applicant is Sahadev Narayan Chitravamsi Vs. Chairman, Board of Governors Sainik School Society ^{1982(3) GLR 1492} in which the view taken was that though transfer may be incidence of service, rules of natural justice must be followed and the order of transfer must not be by way of punishment. The fourth case is Mohammad Thekkethil Vs. Director of Panchayats & Others 1932(2) S.L.R. 390 (Kerala). The view of the High Court in this case was that the order of transfer should not be interfered ^{unless, if} with ~~writ~~ which was established to be arbitrary or passed for extraneous reasons. The Orissa High Court in the fifth case Achutanand Bahera Vs. State of Orissa 1935(2) S.L.R. 16 took the view that order of transfer could not be attacked unless it was infected by malafides or oblique motives or it was in violation of rules or instructions. The last case relied upon is Somabhai Nathabhai Masaria Vs. Superintendent of Police 1937 (24) ^(xxiv) G.L.T. 46. The view taken by Gujarat High Court in this case is that once it is held that the order of transfer is passed as a penal measure, it is obvious that such an order cannot be passed without hearing the person concerned. We have mentioned the cases relied ^{upon} by the learned counsel for the applicant in brief and the points which were raised in those cases were considered by Full Bench of

this Tribunal in the case Shri Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another - Central Administrative Tribunal (Full Bench) Vol. I 30. In this case, the view of the Tribunal is that the transfer of an employee on the basis of the complaints can be made even without enquiring into them. The earlier view in the case K.K. Jindal Vs. General Manager, Northern Railway - A.T.R. 1986-1 CAT 304 was not deemed an authority. It is, therefore, clear that if the complaints are received against an employee and no enquiry is made into them but the order of transfer is made, it cannot be called illegal. It is also held that even if disciplinary proceedings had been started and the employee is punished, the order of transfer can be passed and in no circumstances it would amount to double jeopardy. The converse of it is ^{they} also true that if an employee is transferred and the enquiry into complaint has also started, it will not amount that the order of transfer was unjust, punitive or suffering from malafides. In this case it is clearly established that certain complaints were made against the applicant. These complaints did not confine to his colleagues only but were even by the subscribers and the superior officer. Charge-sheet with respect to those complaints has been framed and enquiry is going on. When complaints are made in this manner from all sides and completion of enquiry could not be possible within the shortest period of time, the course open to the authority is to transfer the employee so that further complaints may not be

6. The legal position about the transferred matters has been made clear by Their Lordships of Supreme Court in the cases of State Bank of India Vs. R.P. Khurana ~~Lurana~~ 1994(1) S.L.R. 533 and Rajendra Roy Vs. Union of India & Others 1993-1 S.L.R. 126 holding that transfer is an incidence of service. A person holding a transferrable post has no legal right to remain posted at one place or the another. It is further observed that ^{adverse} no inference by the Court can be made unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of malafides, the burden of establishing of which is heavily on the person who alleges it. The same view was reiterated in the case Union of India & Others Vs. S.L. Abbas AIR 1993 Supreme Court 2444. In this case, one more plea that the guidelines were not followed was taken, ^{of Supreme} and Their Lordships were of the view that if there were any guidelines and they were not followed, it did not confer upon employee the legally ^{infringeable} enforceable right. In this case, the applicant has asserted this aspect that the impugned transfer order has been made in violation of the guidelines as well. In view of the law laid down in the decision of Abbas case, we come to the conclusion that this plea also does not hold good. No doubt the plea of malafides has been asserted in the application and during the arguments ^{and the} learned counsel for the applicant has stressed on it, but we do not find any substantial material on it which may be found to have been established. What were the reasons for transfer are

clearly disclosed by the respondents in their two replies.

27. Having gone through the facts of the case and the discussions made above, we are of the view that the impugned order does not suffer from any illegality and therefore, there is no ground to quash the same. The application has no merits and it is, therefore, rejected. No order as to costs.

(Dr. R.K. Saxena)
Member (J)

(K. Ramamoorthy)
Member (A)

kvr/.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 64/494/93 of


Transfer Application No. _____ of

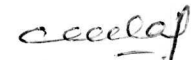
CERTIFICATE

Certified that no further action is required to be taken and
the case is fit for consignment to the Record Room (Decided).

Dated : 25.11.94

Countersign :


Section Officer


Signature of the Dealing
Assistant

INDEX SHEET

NAME OF THE PARTIES MR. M. S. Mathani

U. O. 1 & O. 2.

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