

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 698 of 1993

~~Case No.~~

DATE OF DECISION 26-06-1995

Shri A.N. Shaikh

Petitioner

Mr. P.H. Pathak

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

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The Hon'ble Mr. N.B. Patel, Vice Chairman

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

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 ?

No

Shri A.N. Shaikh,
Sadguru Apartments,
Ranchhodnagar,
Street No.8,
Rajkot - 3.

..... Applicant

(Advocate : Mr. P.H. Pathak)

Versus

1. Union of India,
Through the General Manager,
Telecom, Nr. Girnar Talkies,
Rajkot.
2. Asstt. General Manager (Admn.),
Telecom, Nr. Girnar Talkies,
Rajkot.
3. Jr. Telecom Officer,
Aji Exchange,
Rajkot.

..... Respondents

(Advocate : Mr. Akil Kureshi)

JUDGMENT

O.A. NO. 698 OF 1993

Date : 26-06-1995

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

The present application has been filed against the transfer effected sometime in 1993. The grounds on which the transfer order is challenged have been two-fold. (i) The transfer is by way of victimisation wherein certain malafides have also been alleged. (ii) The applicant was not liable for transfer in view of the fact that he had been originally a recruit of Rajkot district and his transfer liability was confined to the Rajkot Town only and only thereafter the Telecom district had been enlarged to form a bigger area but such a merger

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could not take away his original rights of non-transferability outside his original district.

2. We have gone through the averments. We have also heard the counsel for both the applicant and the respondents. The applicant has not been able to show any malafides or any specific act of victimisation in passing the proposed transfer order. We are inclined to accept the fact that the transfer was caused by administrative exigencies arising from a need of setting up of an Electronic Exchange in the proposed state of transfer.

3. On the second point, however, the issue has now been settled by Supreme Court in its order arising out of SLP (C) No.4945 of 1994 decided on 1-2-1995 in the case of Union of India & Ors. Vs. D.Mehan & Ors. reported in 1995(2) SLR (April) pages 7 to 11. In this judgment, the Supreme Court has upheld that while the basic legality of transfer liability cannot be questioned, the department had also, in view of its own instructions, to take a conscious decision as to whether such a transfer was really necessary and inevitable. In the present case also, the options had been taken at the time of integration of the district. It is clear from the transfer order that the transfer has not been effected after a conscious decision considering as to whether optees were available who were willing to go outside the district. The Supreme Court has stated in its order in the above case as under:

"Thus, while the instruction contained in paragraph 3 of Annexure 2 provide for the transfer liability of the existing staff of the erstwhile Telephone District, over the entire Secondary Switching areas, it also at the same time provides for taking into consideration individual options. That being so, the Chief General Manager Telecom Circle A.P. before passing the order of transfer, ought to have obtained options from those employees and officers who belonged to the erstwhile Telephone District who were recruited to the specific units and after considering their individual options should have passed the order of transfer, so as to avoid any possible hardship to them."

In view of the fact that the transfer order has been passed without such an exercise, on the facts of this matter, we have no hesitation in following the Supreme Court order cited above and hold the transfer order as illegal and quash the same. It would be of course open to the respondents thereafter to formally carry out an exercise taking in view the options given and take a conscious decision as to whether such a transfer is absolutely necessary. If such a decision were to be taken, the respondents may not implement such a decision for a period of one week thereafter.

4. With the above directions, the application is disposed of. No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

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