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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 540/95

V.A. Goswami .. Applicant

Vs.

Union of India & Ors. .. Respondents

CORAM : Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

Appearances

1. Shri.G.S.Walia
Advocate
for the applicant.
2. Shri.R.K. Shetty
Advocate
for the respondents.

ORAL JUDGMENT

DATED : 27/06/1995

(Per. Shri.Justice M.S.Deshpande, V.C)


By this application, the applicant questions his transfer from Daman to Diu pursuant to the order dated May 19, 1995.

2. The applicant is working as a Head Master in the Government High School, Bhimpure, Daman and came to be transferred by the order dated 19.5.95 to Government High School, Bucharwada, Diu vice Shri. S.R. Vaghela who was transferred from Diu to Daman. According to the applicant, his transfer was not shown to be in public interest and was not in conformity with the guidelines which has been issued pursuant to the policy of transfer of Government Servants. It is urged that the applicant has not yet handed-over the charge of his post in view of the Interim Relief granted

by the Tribunal, vide its order dated 31.5.1995 and that the transfer order may be quashed.

3. The respondents contended that the transfer was in accordance with the rules and ^{the} guidelines were flexible permitting transfer of Shri. Vaghela. The applicant has been working for more than 12 years at Daman and though Shri. Vaghela was working at Diu only for 2½ years, there ~~was~~ circumstances which would justify his transfer to Daman. With regard to handing-over of the charge, it was urged that ^{as} the applicant was served with the relieving order on 24.5.95 he must be deemed to have ^{been} relieved on that date but he stuck to his office.

4. The first question before us for consideration is whether the applicant can succeed on the basis of the guidelines not having been scrupulously followed. The guidelines dated 18.5.1993, ~~which~~ have been produced at the time of hearing and clause 5 of the same show that Primary, Middle and Secondary School teachers will not normally be transferred, except on administrative grounds before completing five years provided there is a vacancy. The Head Masters of Primary, Middle and Secondary Schools may also be transferred after a period of five years in the post. The question is whether the office memorandum on the subject of transfer policy guidelines lays down ~~in~~ absolute rules which must at all costs be followed. The subject is only transfer policy guidelines and they were issued in supersession of all previous O.Ms on this subject. In clause 5 it is stated that the Head Masters of Primary, Middle and Secondary Schools may be transferred after a period of five years, hence



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I am not inclined to think that any breach of these guidelines give^a right to the transferred officer to approach the Tribunal for relief. The learned counsel for the applicant, however relied on B.Varadha Rao V. State of Karnataka and Others (1986 SCC (L&S) 750) where after extracting a passage from E.P.Royappa V. State of Tamil Nadu (1974) 2 SCR 348, it was pointed-out that the observations that transfer is also an implied condition of service is just an observation in passing and it cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a government servant, any of his conditions of service making the impugned order appealable under Rule 19(1)(a) of Karnataka Service Rules. What is pointed-out is that there were transfers without justified reasons which were held as malafide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. It is true that even the administrative actions have to be just and fair. The learned counsel for the applicant urged that the impugned order does not show that it was passed in public interest. It is however not necessary that the order on its face should show that the order was passed in public interest. It is only when the order is questioned before a Court or Tribunal, ^{it is} prima facie ^{to be shown} show that the order was justified and there were reasons for acting in the ordinary administrative need. Reference was also made to Home Secretary V. Darshjit Singh Grewal (1993) 4 SCC 25. In para 14 of the judgment, it was mentioned that

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it may be relevant to emphasise that while the rules and regulations referred to therein are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it. The subject, in the context of which observations came to be made was however different and the stray observation made in the judgment would not show that the Supreme Court was deviating ^{from} ~~with~~ the earlier law which it had laid down.

5. Reference was also made to Ramadhar Pandey V. State of U.P and others (1993) SCC (L&S) 918 where Fundamental Rules as amended by Uttar Pradesh Fundamental (Second Amendment) Rules 1981 came up for consideration and those rules provide that the Governor may in public interest transfer a government servant to a post in other cadre or to an ex-cadre post and the impugned order did not recite any public interest. Here, the Supreme Court did not say that public interest in all events must be referred to in the order of transfer. The Supreme Court further observed that they were not in a position to ascertain from the other records available before them whether the transfer of the applicant was in public interest and in the absence of a counter-affidavit and even the relevant records, they were left with no option than to conclude that no public interest was involved. Public interest therefore can be shown even if the order does not refer to it, from other material which may be available with the

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respondents.

6. The respondents have not produced any official records in this respect but para 7 of their reply gives reasons for transfer, stating that Shri.S.R. Vaghela had in fact completed two and half years at Diu. Shri.Vaghela was selected as Principal of Govt.Higher Secondary School, Diu and posted at Diu on 21.9.92 on ad-hoc basis. There after he was reverted, due to the UPSC selection of regular Principal, as Head Master w.e.f. 29.12.93 and posted as Head Master, Govt.High School, Bucharwada, Diu instead of his original place i.e. Govt.High School, Dabhel, Daman on administrative adjustment. It was urged therefore that Shri.Vaghela claimed that he should have been posted in the original school at Dabhel, Daman from where he was selected as Principal of Govt.Higher Secondary school, Diu. This claim was examined by the Administration and found ^{to be} genuine and ^{was} considered for transfer and posting at Government High School, Bhimpore in place of the applicant. It is obvious that it is for the Government to consider the facts, circumstances and the exigency in which a transfer should be effected. It is not for the Court or Tribunal to ^{substitute its own} ~~subsequently~~ give ^{for} opinion ~~on~~ the conclusion of the government. If the government thought that the request made by Shri.Vaghela was substantial and should be granted, The Tribunal would not normally interfere with the conclusion drawn by the Government. Considering that the guidelines were only ~~directive~~ and that Respondents considered the circumstances in which Shri.Vaghela should be posted in the post of the applicant, I do not think that any interference with the order of transfer will be justified. However, next question arised as to whether in view of the circumstances stated by the applicant in his application,

he should be granted any further concession. On behalf of the respondent, it was urged that the applicant was transferred and was relieved when he refused ^{to} ~~accepting~~ ^{the} relieving order dt. 24.5.95. It is difficult to accept this proposition because the respondents themselves produced a copy of the office correspondence in which it was stated that Casual leave application was given on 23.5.95 by the applicant directly without routing through A.D.E Daman and it was observed that the applicant had not handed-over the charge to the Head-Master concerned as per the relieving order and reasons for that are not known and the leave therefore has not been sanctioned. It is therefore clear from the correspondence produced by the respondents that the applicant had not handed-over the charge and was not relieved because he refused to accept the relieving order. The letter dated 6/6/95 from the Collector shows that Shri.Vaghela was to hand-over the charge to Shri.B.K. Jetwa and Shri.Jetwa will hold the charge in addition to his own duties. This order makes it clear that Shri.Vaghela did not hand-over his charge before 6/6/95. The applicant has produced material to show that he had, in fact, issued cheques for the pay of the establishment on 2.6.95. Interim Order was passed on 31.5.95 effective till 8.6.95 directing that the effect of the transfer order dated 19.5.95 should be stayed. The counsel for respondents appeared on 8.6.95 but did not mention that the applicant had already handed-over the charge but only sought time to file reply. On 22.6.95 when the matter came up before the Tribunal, reply came to be filed and the matter has been posted for hearing today. It is only in the reply, the allegations regarding the applicant having been

deemed to have handed-over the charge came to be made. It is therefore difficult to accept the proposition that the applicant ^{was relieved} had ~~sought relief~~ on 24.5.95. If he was holding his office and was not relieved, he must be deemed to have continued in pursuance of the Interim Order passed by the Tribunal.

7. The applicant has stated in the application the hardships to which he would be subjected ~~to~~ because his two daughters aged 22 and 18 and one son aged 14 years are studying at Daman, ~~he~~ has his mother, aged 75 years and he has to finalise the marriage of his daughter in the near future. He has also to vacate the government quarters. Considering that the applicant is still holding the post and if he ^{would be} ~~is~~ subjected to these hardships, ~~we~~ ^{we} direct that the order of transfer shall not be given effect uptill 31st of December 1995. While rejecting the appeal of the applicant, ~~we~~ ^{we} direct the respondents to keep the transfer order in abeyance till 31.12.1995 subject to applicant's giving undertaking that he shall hand-over the charge from 31.12.1995 at Daman and join at Diu after availing such joining time as may be permissible under the Rules. O.A is disposed of with this direction. Liberty to the Department to consider any application for further relief if the Department think that such relief can be granted to the applicant.



(M.S.DESHPANDE)
VICE CHAIRMAN