

(2020) 01 GUJ CK 0198

In the Gujarat High Court

Case No : R/Special Civil Application No. 23002 Of 2019

Ajay Sharma S/O Shiv Sharma

APPELLANT

Vs

Director General

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 92(2), 93(7)

Citation : (2020) 01 GUJ CK 0198

Hon'ble Judges : S.R.Brahmbhatt, J;Dr. A. P. Thaker, J

Bench : Division Bench

Advocate : RK Mishr

Final Decision : Dismissed

Judgement

S.R.Brahmbhatt, J

1. The present petition has been taken out for seeking following reliefs:

(A) Your Lordships may be pleased to admit and allow this petition.

(B) Your Lordships may be pleased to quash and set aside the order dated 11.07.2019 at Annexure-C (Collectively) by holding and declaring to be

illegal, arbitrary, unconstitutional and without jurisdiction therefore to declare null and void.

(C) Your Lordships may be pleased to hold and declare that the Inter-Zonal transfer powers are vested with the Inspector General Railway

Protection Force cum Principal Chief Security Commissioner western railway zone Churchgate, Mumbai; and be further pleased to hold and declare

that the Director-General, R.P.F, New Delhi does not have powers except to concur the Inter-Zonal transfer and has no authority and therefore, the

impugned transfer orders at Annexure-C (Collectively) dated 11.07.2019 suffers

from want of jurisdiction under the law; therefore your lordships may be pleased to quash and set aside by declaring to be null and void and against settled principles of law.

(D) Your Lordships may be pleased to hold and declare the tenure transfer order dated 25.04.2019 at Annexure-B issued by Inspector General cum

Principal Chief Security Commissioner Western Railway Churchgate Mumbai to be legal lawful being in conformity to Rule 92(2) and 93(7) of

Railway Protection Force Rules, 1987 and also in conformity to Directive NO 32 (Revised) Government of India; Ministry of Railway Board new

Delhi dated 28.12.2017.

(E) During the Pendency hearing and final disposal of this petition your lordships may be pleased to direct the respondent authorities to allow the

petitioner to discharge his duties and responsibilities of the post of Inspector R.P.F and to function as such under respondent NO 3 Senior Divisional

Security Commissioner, Vadodara at Divisional Security Commissioner Reserve, Vadodara and further restraining them from causing any hindrances

of any nature whatsoever.

(F) Your Lordships may be pleased to pass such other and further orders as may deem fit in the interest of justice.

2. Learned counsel for the petitioner invited Court's attention to the grounds mentioned in the memo of the petition and broadly indicated that the

authority for passing inter-zone transfer is infact with the authority who has passed the order, but the said authority was required to obtain

concurrence of D.G. of the force and in the instant case there is a specific ground taken. The representation made also clearly indicated that the

petitioner's daughter was prosecuting her study in 12th standard and therefore when the petitioner was to be permitted as per the benevolent policy of

granting extension of an year, the same should have been covered and in fact it was in due respect and deference to the request of petitioner his

posting was made at Vadodara itself at the station where he was earlier serving. The authorities, however, for the reasons best known to them,

decided to change the order or re-transfer him from Vadodara to a different zone altogether and therefore this petition is required to be allowed.

Learned counsel for the petitioner relied upon the judgment of the Calcutta High Court rendered in case of Mr. Rajeev Ranjan Vs. Union of India, in

WP No.20518 (W) of 2019.

3. We are of the view that this petition is required to be dismissed, as it does not have any material to indicate that the order was not passed with the concurrence of the authority. Assuming for the sake of examining without holding that the concurrence was not there, then also the same order would not become ipso facto bad in eye of law as the power to transfer is very much vested in the authority and in absence of the requisite order under which the reference is made to further orders, and the order impugned placed before the Court is the only communication of the transfer decision, the Court is of the view that the decision rendered by the authority cannot be questioned. The judgment cited at the bar is infact on altogether different facts and there the order quashed was that of a punitive transfer and, therefore, on that ground only the transfer order was quashed, therefore, the said judgment is of no avail to the petitioner.

4. In this view of the matter, when the transfer powers are not under question, as the requisite order itself is not placed on record for the reasons known to the concerned, the Court is unable to exercise discretion in favour of the petitioner in any manner, besides the transfer order as such are not interfered with when the petitioner forwarding and resuming his duties at the transfer place. In that view of the matter, the petition being meritless, deserves to be dismissed and accordingly dismissed.