

TUSHAR D. BHATT  
v.  
STATE OF GUJARAT & ORS.  
(Civil Appeal No. 968 of 2009)

FEBRUARY 12, 2009

**[DALVEER BHANDARI AND J.M. PANCHAL, JJ.]**

*Service Law – Dismissal – On the charge that pursuant to transfer, delinquent flouting the orders of his superiors, remaining absent from duty unauthorisedly and using intemperate language – Held: Dismissal justified – On facts, transfer order cannot be termed as mala fide.*

**Appellant was dismissed from services finding him guilty of the charges of unauthorized absence from duty, threatening the head of Department for transferring him and flouting his orders, acting beyond official authority and using intemperate language etc. His Writ Petition challenging dismissal order, was dismissed by Single Judge of High Court. Writ Appeal, thereagainst was dismissed by Division Bench of High Court. Hence the present appeal.**

**Dismissing the appeal, the Court.**

**HELD: 1.1 Transfer is an incidence of service and transfers are made according to administrative exigencies. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties for more than six months. In the interest of**

A **discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced. [Para 15] [236-D]**

B *Gujarat Electricity Board and Anr. v. Atmaram Sungomal Poshani AIR 1989 SC 1433 and Mithilesh Singh v. Union of India and Ors., AIR 2003 SC 1724, relied on.*

C **1.2. In the instant case, the matter has been thoroughly examined by the Single Judge and the Division Bench of the High Court and this Court has also examined the matter in great detail. On consideration of the totality of the facts and circumstances of this case, no interference is called for in the impugned judgment. [Para 18] [237-E]**

D **Case Law Reference :**

<b>AIR 1989 SC 1433</b>	<b>Relied on</b>	<b>Para 16</b>
<b>AIR 2003 SC 1724</b>	<b>Relied on</b>	<b>Para 17</b>

E **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 968 of 2009.**

From the Judgment & Order dated 24.11.2006 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 1360/2004.

F **Mahender Anand, Mohit Chaudhary, Puja Sharma, Manish Jain and Pradeep Chandel for the Appellants.**

**R.P. Bhatt, Uttara, Pinky Behera, Hemanitka Wahi and Naresh K. Sharma for the Respondent.**

G **The Judgment of the Court was delivered by**

**DALVEER BHANDARI, J. 1. Leave granted.**

H **2. This appeal is directed against the judgment of the High Court of Gujarat at Ahmedabad delivered in Letters Patent**

Appeal No. 1360 of 2004 on dated 24.11.2006 and final judgment and order dated 19.1.2007 in Misc. Civil Application for Review No.116/2007.

3. Brief facts which are necessary to dispose of this appeal are recapitulated as under:-

The appellant had joined service of respondent no.1 as Food Inspector on 1.12.1982. The appellant worked for 14 years as Food Inspector at Ahmedabad as well as Gandhinagar Circle. Thereafter, for the first time in 1996, he was transferred to Rajkot. He remained there for three years.

4. On 30.9.1999, the appellant was transferred to Bhuj. However, he did not join duty at Bhuj and after a period of 20 days, i.e. on 04.10.1999, he sent a fax message of illness of his mother. Though the appellant was relieved on 05.10.1999 from Rajkot, yet he did not join duty at Bhuj and instead he entered into correspondence with respondent no.2. The appellant was given personal hearing in November 1999 by respondent no. 2. Even after his advice, he did not join duty at Bhuj.

5. The Assistant Commissioner, Bhuj again on 04.01.2000 called upon the appellant to immediately join the duty, but the appellant not comply with his direction. The appellant on 17.01.2000 filed a reply to the show cause notice and bluntly refused to join duty at Bhuj. Ultimately, by an order dated 08.03.2000 the appellant was suspended from the service pending enquiry. It was only thereafter he made a symbolic report on 27.4.2000 at Bhuj with condition in pursuance of the order of transfer dated 30.9.1999.

6. The appellant was served with a charge-sheet on 5.5.2000 containing following seven charges:

- (i) He unauthorizedly remained absent between the period 11.10.1999 and 27.4.2000;

- A (ii) He on his own decided the place of discharging his duty without receiving any prior permission of the competent officer instead of reporting at transferred place;
- B (iii) He exerted mental pressure and also gave threats by writing letter to the Head of the department for transferring him to a place of his choice;
- (iv) He acted beyond his official authority by giving notice to his superior officer under the provisions of the Gujarat Civil Services (Discipline and Appeal) Rules;
- C (v) He flouted and disobeyed the orders of the Head of the department as well as the Head of the office;
- D (vi) Ignoring the office orders issued by the Government, he directly represented to his Head of the department regarding his transfer; and,
- (vii) He used intemperate language not befitting a government employee.
- E

7. The appellant was given full opportunity to defend his case in the inquiry. The Inquiry Officer in his detailed report found the appellant guilty of all the charges levelled against him and sent his report to the Disciplinary Authority. The Disciplinary Authority concurred with the same and the appellant was served with second show cause notice issued by respondent no. 3 calling upon him to show cause within 15 days as to why one of the punishments indicated in Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules should not be imposed.

F He sent his reply on 12.11.2001 followed by his second reply dated 10.12.2001. In view of the serious allegations levelled by the appellant against respondent no.2, he decided to refer the matter to the highest authority – the State of Gujarat for passing appropriate orders in the matter and after considering the

G replies dated 12.11.2001 and 10.12.2001 respondent no. 1 by

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his impugned order dated 22.5.2002 dismissed the services of the appellant.

8. The appellant challenged the dismissal order by filing a writ petition before the learned Single Judge. The learned Single Judge by a comprehensive judgment dealt with every aspect of the matter including the relevant cases which have been decided by this court. The learned Single Judge observed that the scope of judicial review of action taken by the disciplinary authority against the delinquent is very limited. It is not only when such an order of punishment is found to be so perverse that no reasonable person can pass such order or the punishment imposed is shockingly disproportionate to the guilt established or there is violation of any fundamental rights or the principles of natural justice.

9. The appellant aggrieved by the order of the learned Single Judge preferred Letters Patent Appeal before the High Court. The Division Bench analysed the submissions of the appellant in great detail and dismissed the entire case. The Division Bench has observed:-

"We have undertaken the exercise of going through the entire record of the case and considered the arguments of the learned counsel for the appellant as if we were hearing the writ petition. We have also considered the reasons assigned by the learned Single Judge for dismissing the writ petition with which we fully agree."

10. The Division Bench has also discussed the number of judgments decided by this court. The Division Bench observed that the appellant flouted the order of transfer and deliberately remained absent from the duty without leave for over six months and he indulged in the practice of brow-beating the superior officers and using intemperate language and indulging in this type of tactics leading to gross indiscipline is not in the interest of the institution. The Division Bench has reproduced the instances of use of intemperate language which were

A reproduced in para 6.3 of the judgment of the learned Single Judge. We deem it appropriate to reproduce the same.

B “.....Instances of use of intemperate language have been described in detail while discussing charge no.7. They are : (a) his transfer to Bhuj was not only illegal but disgusting (b) respondent no.2 runs the administration of Goods and Drugs Control Department as his private concern (c) the Commissioner is encouraging irregularities and corrupt practices in the department and by such corrupt administration he was damaging the health of people (d) he was also creating scandals with the help of Food Inspectors (e) whatever the other officers will have to suffer on account of scandals, respondent no.2 would be responsible for the same (f) whatever the scandals that have been done by the officers of this department in the past he (the petitioner) would be constrained to bring them to light even at the cost of the discipline (of the service) (g) respondent no.2 should cancel his order of transfer, which is illegal and he should be immediately posted at Ahmedabad or Gandhinagar (h) that respondent no.2 is directly involved in corrupt practices and if the order of transfer was not cancelled, he would expose scandals to the public and whatever the consequences it would be sole responsibility of respondent no.2 (i) if the order was not cancelled, he would be compelled to take such steps (j) he would expose them by having a meeting with the Secretary, Health Department and the Chief Minister regarding the corrupt practices, the irregularities done with the help of the Health Minister with a view to harass him if his order of transfer was not cancelled within four days, and (k) kindly render your explanation why steps should not be taken against you (respondent no.2) for the corrupt practices committed by him. It is, therefore, to be seen that for what purpose and what type of intemperate language has been used.....”

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11. The learned Single Judge was clearly of the opinion that strict view was required to be taken in the matter of discipline of the institution. According to him, when the disciplinary authority has taken appropriate view in the facts and circumstances of the case, then it should not be interfered with.

12. The learned Single Judge observed that no leniency in the punishment can be shown in the facts of this case. The learned Single Judge observed as under:

“The facts of this case do not warrant any such conclusion to be drawn by this Court and no interference with the decision of the disciplinary authority is warranted. If the petitioner is allowed to escape with minor penalty as suggested by Mr. Oza, it will certainly form a bad precedent and in a given case, some other unscrupulous Government employee would resort to arm twisting of his superior for extorting a decision in his favour. Such leniency cannot be permitted.”

13. The Division Bench of the High Court also concurred with the observations of the learned Single Judge in para 10 of the said judgment. The relevant portion of the judgment of the learned Single Judge reads as under:-

“it is well established proposition of law that scope of judicial review of the action taken by disciplinary authority against the delinquent is very limited. It is only when such order of punishment is found to be so perverse that no reasonable person can pass such order or the punishment imposed is shockingly disproportionate to the guilt established or there is violation of any fundamental rights or the principles of natural justice. The facts of this case do not warrant any such conclusion to be drawn by this court and no interference with the decision of the disciplinary authority is warranted. If the petitioner is allowed to escape with minor penalty as suggested by Mr.

A Oza, it will certainly form a bad precedent and in a given  
case, some other unscrupulous Government employee  
would resort to arm twisting of his superior for extorting a  
decision in his favour. Such leniency cannot be permitted.  
On the question of unauthorized absenteeism also Mr. Oza  
B has placed reliance on several other decisions. However,  
they are on the same line, hence dealing with them would  
be mere repetition. Further, he has been held guilty not  
only of that charge, but composite charge of in all seven  
different nature which have been adequately prescribed in  
C the charge-sheet.”

14. The Division Bench was not oblivious of the fact of the  
limited jurisdiction which it has in the appeal but in the interest  
of justice they gave full length hearing to the appellant and  
decided every aspect of the matter.

D 15. The legal position has been crystallized in number of  
judgments that transfer is an incidence of service and transfers  
are made according to administrative exigencies. In the instant  
case, in the entire tenure of more than 18 years, the appellant  
E was only transferred twice. The appellant's transfer order cannot  
be termed as *mala fide*. The appellant was not justified in  
defying the transfer order and to level allegations against his  
superiors and remaining unauthorisedly absent from official  
duties from 11.10.1999 to 27.4.2000 i.e. more than six months.  
F In the interest of discipline of any institution or organization such  
an approach and attitude of the employees cannot be  
countenanced.

G 16. In *Gujarat Electricity Board and another v. Atmaram  
Sungomal Poshani* AIR 1989 SC 1433, this court had an  
occasion to examine the case of almost similar nature. This  
court observed as under:

H “Transfer from one place to another is necessary in public  
interest and efficiency in the public administration.  
Whenever, a public servant is transferred he must comply

with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.”

17. In *Mithilesh Singh v. Union of India and Others*, AIR 2003 SC 1724, the settled legal position has been reiterated. The court held that absence from duty without proper intimation is indicated to be a grave offence warranting removal from service.

18. In the instant case, the matter has been thoroughly examined by the learned Single Judge and the Division Bench of the High Court and we have also examined the matter in great detail. On consideration of the totality of the facts and circumstances of this case, no interference is called for in the impugned judgment. The appeal being devoid of any merit is accordingly dismissed leaving the parties to bear their costs.

D.G.

Appeal dismissed.