
(2015) 11 DEL CK 0215
In the Delhi High Court
Case No : LPA 791 and 792/2015

Ajit Kumar Komath and Others	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 16-11-2015

Acts Referred:

Citation : (2015) 11 DEL CK 0215

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Saahila Lamba, Advocate, for the Appellant; Anjana Gosain and Shreya Sinha, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The controversy involved in the present intra-court appeal relates to transfer of two employees of Airports Authority of India (hereinafter referred to as the "AAI").

2. Mr. Ajit Kumar Komath (hereinafter referred to as "Mr. Komath") and Tarun Chander Chandolia (hereinafter referred to as "Mr. Chandolia") are working for on the post of Assistant General Manager (ATC) and posted at Indira Gandhi International Airport (hereinafter referred to as "IGI Airport"), New Delhi till July 16, 2015.

3. On June 23, 2015 AAI issued a list for transfer of officers working on the post of Assistant General Manager (ATC) for the year 2015-2016. Most significantly, the names of Mr. Komath and Mr. Chandolia did not figure in said list. In fact, five officers viz. Manjit Singh, Vipin Kumar, Pramod Kumar Sharma, Santosh Kumar Maurya and Anup Kumar. A further perusal of transfer list dated June 23, 2015 shows that two officers viz. Satya Pal Singh and Hari Om Sharma were exempted from transfer on account of "operational requirement".

4. On July 17, 2015 another transfer list was issued where names of Mr. Komath and Mr. Chandolia figured, in that they i.e. Mr. Komath and Mr. Chandolia were

transferred from IGI Airport, New Delhi to Corporate Headquarters, New Delhi.

5. Being aggrieved, Mr. Komath and Mr. Chandolia submitted various representations to the competent authority stating therein that their transfer from IGI Airport, New Delhi to Corporate Headquarters, New Delhi is arbitrary and thus the same be cancelled.

6. Mr. Komath and "Mr. Chandolia received no response with respect to their representation(s). However, on September 28, 2015 another transfer list was issued wherein it was recorded that "request of Mr. Komath and Mr. Chandolia has been examined but the same has not been acceded to".

7. In the meantime, the transfer(s) of all the five officers who were transferred from IGI Airport under first transfer list came to be cancelled. The details of cancellation of transfer(s) of said five officers are being tabulate herein under:-

8. In these circumstances, the appellant filed a writ petition being W.P. (C) No. 8876/2015 before a learned Single Judge of this Court seeking quashing of his transfer from IGI Airport, New Delhi to Corporate Headquarters, New Delhi. In essence, following five submissions were advanced by Mr. Komath in the said writ petition:-

a) Transfer of Mr. Komath from IGI Airport, New Delhi to Corporate Headquarters, New Delhi is in gross violation of clause 2 of Transfer Policy dated November 25, 1999 issued by AAI. Clause 2 of said policy postulates that "generally transfer are meant to utilize the individual skill/potential in areas in which he/she been trained/skilled". It was contended Mr. Komath who has acquired Route Surveillance Radar (RSR) Rating on April 23, 2015 which is exclusively meant for IGI Airport instead of being utilized at IGI Airport is being transferred to perform an administrative job at Corporate Headquarters requiring no special skills. (In case of Mr. Chandolia he had acquired all ratings in respect of Radar Training)

b) Transfer of Mr. Komath from IGI Airport, New Delhi to Corporate Headquarters, New Delhi is in gross violation of clause 4.1 of Transfer Policy dated November 25, 1999. Clause 4.1 of said policy prescribes that "except in cases where operational/administrative reasons warrant, transfers shall normally be avoided. Transfers when made shall be in accordance with the seniority at stay at the station in the region." It was contended that clause 4.1 of Transfer Policy dated November 25, 1999 that transfer of officer has to be made/effectuated as per seniority of officers in a particular station in a region. Meaning thereby, that the officer senior has to be transferred by first followed by transfer of his juniors. It was contended as many as seventy one officers approximately are senior to Mr. Komath (eighty seven officers in case of Mr. Chandolia) with respect to their posting/stay at IGI Airport, New Delhi but despite thereto he i.e. Mr. Komath has been transferred out of IGI Airport whereas the persons senior to him continue to remain at IGI Airport, New Delhi.

c) Transfer of Mr. Komath from IGI Airport, New Delhi to Corporate Headquarters, New Delhi smacks of mala fide which is evident from the fact that transfer of all five officers who were transferred from IGI Airport, New Delhi under first transfer list dated June 23, 2015 was cancelled. It was contended that cancellation of transfers of said five officers coupled with the fact that name of Mr. Komath (and Mr. Chandolia) did not figure in the first transfer list leaves no manner of doubt that Mr. Komath (and Mr. Chandolia) were transferred from IGI Airport to accommodate said five officers at IGI Airport, New Delhi who were transferred at first transfer list.

d) There was no administrative exigency to transfer Mr. Komath (Mr. Chandolia) to Corporate Headquarters. On the contrary, manpower was required at IGI Airport evident from the fact that transfer of one officer viz. Santosh Kumar Maurya transferred under first transfer list dated June 23, 2015 was cancelled on ground of "manpower requirement" and two officers (both of whom were senior to Mr. Komath and Mr. Chandolia) were granted exemption of transfer from IGI Airport on ground of "operational requirement."

e) Transfer of Mr. Komath from IGI Airport, New Delhi to Corporate Headquarters, New Delhi greatly hampers the career/professional prospects of Mr. Komath. By virtue of impugned transfer, Mr. Komath is being denied the opportunity of undergoing Terminal Approach Radar Training which is the last professional and most crucial qualification for an officer dealing with Air Traffic Control causing grave prejudice to him.

f) Transfer of Mr. Komath from IGI Airport, New Delhi to Corporate Headquarters, New Delhi causes financial loss to the tune of Rs. 16,500/- to Mr. Komath (Rs. 28,000/- in case of Mr. Chandolia).

g) The word "posting" nowhere finds mention in any of the transfer list(s) issued by AAI. In fact, transfer list(s) dated July 17, 2015 and August 28, 2015 records that Mr. Komath (and Mr. Chandolia) have been "transferred" from IGI Airport to Corporate Headquarters. Meaning thereby, that Mr. Komath (and Mr. Chandolia) were transferred and not posted from IGI Airport to Corporate Headquarters. Further, it was highlighted that on September 21, 2015 another office order was issued by with respect to transfer of Assistant General Manager (ATC) 2015-16 whereby one Jay Kumar was transferred from Corporate Headquarters to IGI Airport, New Delhi. Most pertinently, the subject of said office order is "Transfer of Assistant Manager (ATC) 2015-16". Had said transfer of Jay Kumar from Corporate Headquarters to IGI Airport been a the subject of office order dated September 21, 2015 would have been local posting and not transfer, particularly when said office order pertained to a single individual.

9. Before proceeding further, it would be apposite to note clauses 2, 3(v), 4(i) and 4(v) of Transfer Policy dated November 25, 1999 which read as under:-

"2. Generally transfer are meant to utilize the individual skill/potential in areas which he/she has been trained/skilled. The transfer policy shall apply to all

transferable posts in all disciplines.

3. Definition:-

3(v) Length of stay at the station/in the region:-

Transfer will be in accordance with the seniority in stay at the region/station as applicable. Length of stay means period continuously spent at the station in the region under AAI in a post which has the liability of service, anywhere in India. To illustrate a person may be in Delhi Region for the last six years - Four years as Sr. Superintendent (ATC) and two years as Asstt. Manager (ATC), his length of stay in Delhi region is six years. Similar shall be his case in respect of his stay at the same station. However, in the case of Group D posts length of stay shall be computed only from the date of promotion to Group C posts.

4. General Guidelines

4(i) Except in cases where operational/administrative reasons warrant, transfers shall normally be avoided. Transfers when made shall be in accordance with the seniority in stay at the station in the region.

4(v) Except in cases of transfer to tenure station, officers and staff shall not normally be transferred to one station to another station in the region before he/she completes a minimum period of three years at that station and from one region to another region before he/she completes five years in that region."

(Emphasis Supplied)

10. It would also be apposite to note following portion of Appendix I appended to Transfer Policy dated November 25, 1999:-

@@"APPENDIX I LIST OF STATIONS/TENURE STATIONS

11. Per contra, stand taken by AAI was that Transfer Policy dated November 25, 1999 relied upon by Mr. Komath is not applicable in the present case for the reason Mr. Komath (and Mr. Chandolia) has not been transferred from IGI Airport, New Delhi to Corporate Headquarters, New Delhi but posted from IGI Airport, New Delhi to Corporate Headquarters, New Delhi.

12. Vide order dated September 23, 2015 the learned Single Judge disposed off aforesaid petition filed by Mr. Komath with directions to AAI to decide the representation dated July 21, 2015 submitted by Mr. Komath within a week of passing of said order. Further, the learned Single Judge granted liberty to appellant to avail of the remedies as available in law.

13. Vide memorandum dated September 28, 2015 competent authority rejected the representation dated July 21, 2015 submitted by Mr. Komath essentially on the grounds that:- (i) Mr. Komath has availed long stay of over 6 years at IGI Airport, New Delhi; (ii) posting at the same station from one place to another in the same discipline does not constitute a transfer, especially when the postings are made on account of administrative and official requirements of Corporate

Headquarters, Regional Headquarters and DGCA taking into account the suitability of the officers for the particular job and (iii) posting of Mr. Komath has been made purely on administrative/official requirement and there is no discrimination as alleged by Mr. Komath. (Significantly, the administrative/official requirement in respect whereof Mr. Komath was (allegedly) transferred/posted to Corporate Headquarters was not spelt out in memorandum dated September 28, 2015).

14. In these circumstances, Mr. Komath filed another writ petition being W.P. (C) No. 9887/2015 before the Single Judge assailing the legality of memorandum dated September 28, 2015 rejecting his representation regarding transfer wherein he reiterated the submissions made by him in his earlier writ petition.

15. Around the same time Mr. Chandolia also filed a writ petition being W.P. (C) No. 9910/2015 before the Single Judge assailing his transfer from IGI Airport to Corporate Headquarters advancing same submissions as. Save and except ground (e) same submissions as advanced by Mr. Komath in his petition were advanced by Mr. Chandolia. One additional submission was advanced by Mr. Chandolia which is as follows:-

a) Transfer of Mr. Chandolia from IGI Airport, New Delhi to Corporate Headquarters, New Delhi is in gross violation of clause 4(v) of Transfer Policy dated November 25, 1999. Clause 4(v) of said policy prescribes that except in case of tenure station, officers and staff shall not normally be transferred from one station to another station in the region beyond he/she completes a minimum period of three years at that station and from one region to another region before he/she completes five years in that region. Such being the position, Mr. Chandolia could not have been transferred before having spent a minimum period of three years at IGI Airport, Delhi in terms of clause 4(v) of policy but he i.e. Mr. Chandolia was transferred within a period of just one year of being posted at IGI Airport.

16. This time around, AAI filed affidavit(s) in both the petitions essentially stating therein that:-

a) Mr. Komath and Mr. Chandolia have not been transferred but posted from IGI Airport to Corporate Headquarters thus Transfer Policy dated November 25, 1999 has no application in the case(s). To buttress said submission, reliance was placed upon office order dated February 10, 2015 issued by AAI, the relevant portion whereof reads as under:-

"2. It has been observed that while submitting the option forms for three different places at the time of annual transfers, officers generally indicate the same place/municipality, thereby simply changing nomenclature of the Unit, e.g. CHQ/RHQ- NR/SAP/RCDU/NIAMAR, etc. in the case of Delhi/Northern Region despite clear instructions that it would count as one option only."

b) Mentioning of word "transfer" in office order dated September 21, 2015

relating to transfer (posting) of one Jay Kumar from Corporate Headquarters to IGI Airport is an inadvertent error.

c) Mr. Komath cannot undergo Radar Training while being posted at Corporate Headquarters.

17. Vide judgment dated October 29, 2015 learned Single Judge dismissed the writ petition(s) filed by Mr. Komath and Mr. Chadolia essentially on the grounds that:- (i) shifting of Mr. Komath and Mr. Chadolia from IGI Airport to Corporate Headquarters, Delhi is a mere posting and not a transfer and hence Transfer Policy is not applicable in the case; (ii) inter-se posting of Mr. Komath and Mr. Chadolia from IGI Airport to Corporate Headquarters is on account of administrative exigencies; (iii) neither any mala fides have been alleged nor there appears to be violation of any statutory provision in posting appellant from IGI Airport to Corporate Headquarters. (Significantly, no reasons have been given by the learned Single Judge for coming to the conclusion(s) that: - Mr. Komath and Mr. Chadolia have been "posted" (and not transferred) from IGI Airport to Corporate Headquarters and (ii) posting of Mr. Komath and Mr. Chadolia is on account of administrative exigencies.) and (iv) Courts do not normally interfere in matters pertaining to transfer.

18. Parameters relating to interference by Courts in matter of transfer of an employee laid down in various decisions require the pleadings of the aggrieved employee to be considered if there is a transfer policy. No doubt, a transfer policy would be subject to administrative exigencies, but the same have to be justified by the respondents and objective facts have to be disclosed to the Court. Of course, the subjective satisfaction is that of the employer. In the decision reported as B. Varadha Rao Vs. State of Karnataka and Others, the Supreme Court had observed:-

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous consideration or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such; transfers, cannot, but be held as mala fide. A transfer is mala fide when it is not made for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

19. In the decision reported as (2003) 11 SCC 740 Sarvesh Kumar Awasthi vs. U.P. Jal Nigam & Ors. the Supreme Court observed as under:-

"In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or any exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For the better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration."

(Emphasis Supplied)

20. In the decision reported as Gobardhan Lal Vs. State of Uttar Pradesh and others, it was held by the Supreme Court that courts are empowered to quash a transfer order in following situations:-

- i) Transfer order is an outcome of a mala-fide exercise of power;
- ii) Transfer order is violative of any statutory provision (an Act or Rule);
- iii) Transfer order is passed by an incompetent authority;
- iv) Transfer order is an infraction of administrative guidelines for regulating transfers or containing transfer policies when such infraction results in an adverse effect on official status and career prospects such as seniority, scale of pay and secured emoluments.

21. After visiting the law relating to judicial interference in matter of transfer in the decision reported as Andrew Banrilang Umdor Vs. State of Meghalaya and Others, a learned Single Judge of Gauhati High Court concluded as follows:-

"The above decisions make it amply clear that an order of transfer of an employee cannot be made without valid reasons. In such view of the matter, I have no hesitation to answer the question raised by the learned Counsel for the respondents in the affirmative and to say that an order of transfer even though in the nature of administrative order must be supported by valid reasons."

22. Whereas Mr. Komath and Mr. Chandolia have reiterated the stand taken by them before the learned Single Judge in the present appeal(s) AAI has refurbished its stand. It was contended by AAI that Transfer Policy dated November 25, 1999 (relied upon by Mr. Komath and Mr. Chadolia) was replaced by a new Transfer Policy with effect from year 2010, which (new) policy was materially different from Transfer Policy dated November 25, 1999. Despite having full opportunity to do so, AAI chose not to place new Transfer Policy which purportedly came in the year 2010 before the learned Single Judge.

23. From the afore-noted conspectus of facts it is evident that the issue which was debated before the learned Single Judge was whether Mr. Komath and Mr. Chadolia have been transferred or posted from IGI Airport to Corporate Headquarters.

24. A perusal of the impugned judgment dated October 29, 2015 shows that the

learned Single Judge has not satisfactorily dealt with the issue that whether Mr. Komath and Mr. Chadolia have been transferred or posted from IGI Airport to Corporate Headquarters. As already noted herein above, no reasons have been given by the learned Single Judge for coming to the conclusion that Mr. Komath and Mr. Chadolia have been "posted" (and not transferred) from IGI Airport to Corporate Headquarters.

25. A further perusal of the impugned judgment dated October 29, 2015 shows that learned Single Judge has also not dealt with the submissions relating to mala-fide, loss of career prospects, financial loss, absence of any administrative exigency etc. advanced by appellants. The observation by the learned Single Judge that no mala-fide(s) have been alleged by appellants (Mr. Komath and Mr. Chandolia) is wrong. A perusal of writ petition(s) filed by Mr. Komath and Mr. Chandolia shows that allegations of mala fides were specifically levelled by Mr. Komath and Mr. Chandolia, in that it was contended/averred that officers instrumental in transferring Mr. Komath and Mr. Chandolia have transferred Mr. Komath and Mr. Chandolia to accommodate few of their chosen persons. It is for this reason, respondents Nos. 4 and 7 i.e. the officers who were involved in issuance of transfer list(s) were impleaded as respondents Nos. 4 to 7 in the writ petition(s) filed by Mr. Komath and Mr. Chandolia.

26. Besides, we find that the stand of the respondent is that the transfer policy relied upon by the petitioners was superceded by another transfer policy. Said aspect has not been considered by the learned Single Judge. The record shows that the learned Single Judge did not call upon the respondents to file any counter affidavit. Considering the pleas urged in the writ petitions it was necessary that a counter affidavit was directed to be filed.

27. In these circumstances we set aside the impugned judgment dated October 29, 2015 passed by the learned Single Judge. We restore W.P.(C) Nos. 9887/2015 and 9910/2015 for adjudication afresh. Since during the pendency of the petitions before the learned Single Judge the appellants were on leave and the non-grant of any interim order did not create any legal problem, it appears that interim stay was not pressed for. At the remanded stage the learned Single Judge would consider either an expeditious disposal of the writ petitions or grant of an interim stay.

28. The above captioned appeals are accordingly allowed. The writ petitions be listed for directions before the learned Single Judge on November 27, 2015. Counter affidavit shall be filed by the respondents in the two writ petitions latest by November 24, 2015. If rejoinder has to be filed by the appellants they shall do so within two days.

29. No costs.