
(1999) 03 BOM CK 0113
In the Bombay High Court
Case No : Writ Petition No. 4920 of 1998

Arun Veer

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1999) 3 ALLMR 275 : (1999) 2 BomCR 766 : (1999) 1 LLJ 1330 : (1999) 2 MhLj 280

Hon'ble Judges : V.K. Barde, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : P.K. Joshi and S.S Kulkarni, for the Appellant; V.D. Sapkal, A.G.P., N.K. Kakade and R.B. Raghuwanshi, for the Respondent

Judgement

B.H. Marlapalle, J.—This petition calls in question the transfer order dt. 28-8-98 and it arises in the following circumstances.

2. The petitioner is an Executive Engineer in the Public Works Department of the State of Maharashtra and while he was working in the same capacity at Beed, which is a district Hqrs., has been transferred to Aurangabad on the same post and the respondent No. 3 Mr. B.M. Mugal has been transferred in place of the petitioner. The petitioner has submitted a representation to the competent authority on 3-9-1998 and the same was rejected. The petitioner, therefore, challenged the impugned transfer order in O.A. No. 224/1998 before the Maharashtra Administration Tribunal Bench at Aurangabad.

3. In support of his challenge to the impugned transfer order, it was contended by the petitioner that the transfer was effected under malice and the respondent No. 4, who is an elected Member of the Legislative Assembly from, Georai, Dist. Beed was instrumental in the said transfer. The transfer was a mid term transfer and the petitioner had hardly spent about 14 months at Beed and thereby, the Government's policy decision regarding transfer to be effected normally after three years had been violated. The transfer was made in colourable exercise of

powers for extraneous and ulterior motives and it being an arbitrary exercise of powers was violative of Article 14 of the Constitution of India. The petitioner also stated that the impugned transfer order had adversely affected the educational career of his children and would disturb the family life. The transfer order was neither in public interest nor for the administrative exigencies, urged the petitioner.

4. By an order dt. 28-8-98, the learned Member of the Maharashtra Administrative Tribunal had stayed the execution and implementation of the impugned order and the matter was finally heard and decided by the learned Vice Chairman of the Tribunal and he was pleased to reject the O.A. No. 224/98 by his order dt. 16-11-98 and the impugned transfer order was upheld. Both these orders have been challenged before us.

5. At the outset, it must be noted that Aurangabad is an adjoining town to Beed, is located at a distance of 130 kms. from Beed, which has better educational facilities and is a Revenue Divisional Hqrs. for Marathwada Region. The academic year is almost nearing completion. The respondent No. 3 has already joined in the place of the petitioner at Beed. The learned Member of the Tribunal has assessed the issue regarding the inconvenience and disturbance to the education of petitioner's children and rightly discarded the contention that the petitioner's children will be put to inconvenience or their education will be disturbed. This is more so when he has retained the Government Quarter and his family is occupying the said quarter at Beed.

6. The petitioner had taken a stand before the Tribunal that his service record was unblemished and there was no complaint against him at any time and under the circumstances, there was no reason for his transfer, after a short tenure of about 14 months from Beed to Aurangabad. It was under these circumstances that the Chief Engineer, Public Works Department, filed a reply, on behalf of the Government and on his behalf, stating that the order was in public interest and for administrative reasons and the contention of the petitioner that there were no complaints against him was far from fact in as much as serious complaints were received against the petitioner by the superior authorities. A chart of the complaints giving details therein also came to be annexed to the return filed by on behalf of the Government. The respondent No. 4 who is an elected Member of the Legislative Assembly (Presently a Minister of State) filed a return and stoutly denied the contention that the transfer of the petitioner was made at his behest and the said respondent has supported the contentions of the Government that there were complaints against the petitioner and these complaints were of serious nature.

On assessing the return filed by the Government as well as the respondent No. 4, the learned Member of the Tribunal recorded a finding that the Chief Engineer by his letter dt. 15-4-98 had recommended the case of the petitioner for his transfer along with others and though the Government had issued a general transfer order in May-June, 1998, in which the petitioner's name was not

included, his case for transfer was considered sometime in the month of August, 1998 by the Government and the impugned transfer order was issued in public interest. So far as the allegations of malice or arbitrary exercise of powers are concerned, the Tribunal discarded the allegations on assessing the returns filed as well as other material on record. The tribunal also held that the Government guidelines in G.R. dt. 27-11-97 were of recommendatory nature and even the said G. R. made it very clear that the Government has the power to transfer officers even within a period of less than three years in appropriate cases. The allegation that the transfer was made at the behest of the respondent No. 4 is also found to be without any force or any support by the Tribunal.

7. The learned Counsel for the petitioner has relied upon the following judgments in support of his challenge to the impugned transfer order:

- (1) S. Ram Gangi Reddy v. Government of A.P., 1992 2 C.L.R. 607 (A.P.).
- (2) Arvind Dattatraya Dhande v. State of Maharashtra, 1997 2 C.L.R. 461 S.C..
- (3) K.B. Kariappa v. N.G.E.F. Ltd., Bangalore & others, 1998 2 C.L.R. 795, (Karnataka High Court).

In addition to the grounds raised before the Tribunal, the petitioner has taken up a new ground before us to challenge the impugned transfer order and submitted that the transfer is punitive nature in as much as in the return filed by the Chief Engineer, P.W.D. it has been stated that the complaints were received against the petitioner and therefore, the Chief Engineer recommended that the petitioner should be transferred. In this regard, the learned Counsel for the petitioner has placed reliance on unreported judgment of this Court in Writ Petition No. 3538/1998 Namdeo B. Modke v. State of Maharashtra & others, in which, this Court, inter alia, has observed that if the transfer has been resorted to by way of a penal action and is not prompted by administrative exigencies, the Court will have to step in and will have to uphold the challenge to the transfer order.

8. In the case of Union of India and Others Vs. S.L. Abbas, , the Apex Court held that the instructions issued by the Government in the matter of transfer are guidelines and even if a transfer order is issued without following guidelines, same cannot be interfered with by the Court, unless it is vitiated by mala fides or is made in violation of the statutory provisions. It was further held that while ordering the transfer of the Government employee, undoubtedly, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right and who should be transferred where is a matter for the appropriate authority to decide. In the facts and circumstances of the instant case, the contention of the petitioner that the G.R. dt. 27-11-97 has been violated and therefore the impugned order should be quashed and set aside on this ground cannot be accepted unless it is demonstrated that the transfer order suffers from malice and/or it has been made in violation of any statutory provisions. This view was confirmed by the Supreme Court in a subsequent

judgment in the case of N.K. Singh Vs. Union of India and others, wherein, it was reiterated that unless the order of transfer is vitiated by mala fides or infraction of any professed norms or principles governing the transfer which alone can be scrutinised by the judiciary, there are no judicial manageable standards for scrutinising the stands and the courts lack the necessary expertise for personnel management of all the Government Departments.

9. In the case of State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, the transfer order was challenged on the ground of lack of power to issue the transfer order, personal hardships to the officer and the order of transfer was not justified when the transferred employee had already spent a tenure of about 7 years at the place of fresh transfer. While rejecting the challenge, the Apex Court has observed thus:

"Courts or Tribunals are not appellate fora to decide a transfers of officers on administrative grounds. Wheels of the administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the administrative working of the system by transferring the officer to proper places. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation."

Regarding the issue of personal hardship, the Apex Court observed that it could not go into the question of relative hardship and it would be for the administration to consider the facts of a given case and mitigate in the interest of good and efficient administration.

The petitioner's contention that the transfer has resulted in personal hardship, in as much as education of his children would be disturbed, has been rightly rejected by the Tribunal and we are satisfied that even though it is for the administration to consider this aspect, the petitioner is not put to any grave hardships by his transfer order from Beed to Aurangabad and on the contrary, it may be better in the interest of education of his children.

10. It is well settled that transfer is an incident of service and more so, for the Government Officers and it is not to be interfered with by the Court unless it is shown to be clearly arbitrary, vitiated by mala fides or amounts to infraction in professed norms or principles governing the transfers. On consideration of the return filed on behalf of the Government as well as the respondent 4, we are of the considered view that the Tribunal's findings in this respect do not call for any interference, as the said findings have been recorded on the basis of proper reasons and the conclusions drawn thereon, cannot be faulted with by this Court. There was no permissible ground made out for challenge to the transfer and the Tribunal has rightly declined to interfere in the said order.

11. So far as the allegation of the transfer being punitive, we must record that said allegation is made on the basis of the return filed by the Chief Engineer in reply to the challenge and especially the contention raised by the petitioner that

there were no complaints received against him at any point of time by the superior authorities. It was in this background, that the Chief Engineer in his return stated that there were number of complaints received against the petitioner while he was working at Beed and in fact, a chart giving the details of such complaints has been annexed to the return. It cannot be accepted that the transfer is based solely on these complaints. It is possible that these complaints may be a motive to initiate the steps for recommending the transfer of the petitioner, but these complaints cannot constitute a foundation for the impugned transfer order. In the case *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, , the Supreme Court had an occasion to distinguish between the terms "Motive" and the "Foundation". While dealing with these distinctions, it is observed as under :--

"If the findings were arrived at in an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But, if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry, but at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in departmental proceedings or he was doubtful about securing adequate evidence. In such circumstances, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

This concept of motive and foundation is equally applicable to the transfer orders as well.

11A. On receiving complaints against the petitioner's working, the Chief Engineer perhaps deemed it appropriate that in the interest of efficient administration and in the personal interest of the petitioner as well as for the public good, it was desirable that the petitioner was shifted from Beed to Aurangabad and the motive behind such a transfer was, therefore, these complaints received against him and the complaints, therefore, could not be said to be the foundation for such transfer. The transfer effected in such circumstances is equally beneficial for the petitioner in as much as he would have an opportunity to work at a new place and be away from the place where the complaints were being filed against him. The competent authorities, therefore, cannot be faulted with in effecting the transfer of the petitioner. We are satisfied that the petitioner's transfer under challenge, cannot be held to be a punitive transfer and therefore, the reliance of the petitioner on the observations of this Court in the case of *Namdeo B. Modke* (supra) is misplaced.

12. For the reasons stated in the foregoing paragraphs, petitioner's challenge to his transfer order as well as the judgment of the Maharashtra Administrative Tribunal rejecting his Original Application must fail and the petition is, therefore, dismissed. Rule is discharged with no orders as to costs.

13. Petition dismissed.