
(2006) 04 MP CK 0067

In the Madhya Pradesh High Court

Case No : Writ Petition 4693 of 2006 (S)

Bachchanram Agrahari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Citation : (2006) 3 MPLJ 568

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : Z.M. Shah, for the Appellant; P.S. Nair, Learned Sr. Counsel and Jashmeet Chana, learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.

Shri Z.M. Shah, learned Counsel for the petitioner.

Shri P.S. Nair, learned Senior Counsel with Ms. Jashmeet Chana, learned Counsel for the respondents.

The petitioner is working on the post of Deputy Chief Engineer in Jayant Colliery, N.C.L. at Singrauli district Sidhi. He has been transferred to B.C.C.L. at Dhanbad by order dated 19.10.2005 (Annexure P-4). Feeling aggrieved the petitioner had filed a representation to the fourth respondent on 24.10.2005 (Annexure P-5). Before the said representation could be decided the petitioner approached this Court by filing W.P. 15864/2005 (S). The said writ petition was disposed of by this Court on 16.12.2005 directing the fourth respondent to decide his representation on or before 31.1.2006. This Court further directed that till the representation of the petitioner is decided, his present place of posting may not be disturbed.

Thereafter the petitioner submitted yet another representation on 20.5.2005 (Annexure P-7) requesting cancellation of his transfer order on the ground that

he is a chronic patient of heart and undergone operation from Escort Heart Institute and Research Centre, New Delhi on 20.2.2004. He also stated that he is going to retire on 31st July 2007 and his ailing mother is aged 80 years. The respondents considered his representation and rejected the same by following order dated 21.1.2006 (Annexure P-8):

Shri B.R. Agrahari, the petitioner has submitted representation on 20.12.05 addressed to the respondents as per above order dated 16.12.05 of the Hon'ble High Court. Shri Agrahari in the said representation has requested to cancel his transfer order from his present company due to his heart disease and other ailments. Moreover, at present he has less than two years of service.

Pursuant to the said order, the undersigned, being Direct (P&IR), Coal India Limited, Respondent No. 4, has gone through the representation dated 20.12.05 of Shri Agrahari, the petitioner as well as other documents.

In this connection, this is to state that the cut off date for determining exemption was taken on 31.03.2004 as per decision of CMDs' meet held on 6th April 2004 and the same principles was followed in the year 2005. From the records, it is found that Shri B.R. Agrahari is in NCL since 14.12.84. As such, Shri Agrahari had completed more than twenty years service as on 31.03.05 in NCL, As per transfer policy of the company, it was decided that the executives, who would be completing twenty years service in one company would be transferred to other company.

The date of birth of Shri B.R. Agrahari is 14.07.1947. As such, Shri Agrahari should retire from the service of the company w.e.f. 31st July 2007. Therefore, on the cut of date, i.e., on 31.03.2005 Shri Agrahari had more than two years service left to retire. As such Shri Agrahari was transferred from NCL to BCCL to fulfill the requirement of the Company,

Now, the undersigned, Director (P&IR) Coal India Limited, after carefully examining the relevant records, facts and circumstances of the case and also the representation of Shri B.R. Agrahari dated 20.12.05 is of the view that the cancellation of Transfer Order of Shri B.R. Agrahari dated 20.12.05 is of the view that the cancellation of Transfer order of Shri B.R. Agrahari is not possible as it will give rise to re-open the other cases where the officers have already joined, who had less than 2 years service on the date of issue of transfer order as per transfer policy of the company. Moreover, medical facilities are available in hospitals of BCCL including Central Hospitals, where Shri Agrahari can avail the opportunity of that facility. Considering the facts and circumstances as stated above, the representation of Shri Agrahari stands disposed of.

The petitioner contends that in view of the policy dated 26.4.2002 (Annexure P-3) framed by the respondents the executives who have less than two years of service left, are not to be transferred. He also contends that he is a heart patient. According to the petitioner the order of rejection of his representation (Annexure P-8) is illegal and deserves to be quashed.

Shri P.S. Nair, learned Senior Counsel appearing for the respondents contends that the petitioner has been transferred for administrative grounds. He has completed 20 years of service at his present place of posting. He contends that in the absence of mala fides or breach of statutory rules, this Court will not interfere in the transfer order which has been issued for administrative exigency. He contends that the petitioner's post is a transferable post. He having completed 20 years at the same place¹ Singrauli has been transferred as per the policy decision of the respondents to transfer executives who have completed 20 years at same place. The said policy decision is applicable to all employees and is in administrative interest. He contends by the said order there is no change in service condition of the petitioner. He contends that Dhanbad where the petitioner has been transferred is a place where better medical facilities are available than Singrauli, He also submits that if the petitioner is advised by doctors to get him treated in Escort Heart Hospital and Research Centre, New Delhi or any other place throughout India, the respondents shall get him treated as per the medical advice.

Having heard the learned Counsel for the parties, in my view no case for interference in this petition is made out. Though the policy of the respondents provides that the executives who have less than two years left are not to be transferred and normally they may be given a posting of their choice if the vacancy is available keeping in mind the administrative requirement.

(emphasis supplied).

It is now well settled that transfer is an incident of service and merely for the breach of transfer policy the courts will not interfere. It is not the case of the petitioner that his transfer is mala fide or there is breach of any statutory rules. Admittedly the petitioner has completed 20 years of service at his present place of posting. As per transfer policy of the respondents the petitioner along with other executives who have completed 20 years have been transferred to other places.

In that view of the matter in my considered view no case is made out to interfere in the said transfer order dated 19.10.2005 (Annexure P-4) and the order dated 21.1.2006 (Annexure, P-8) by which the petitioner's representation has been rejected.

Accordingly the writ petition is dismissed. No orders as to cost.