

(2005) 09 OHC CK 0034

In the Orissa High Court

Case No : Writ Petition (C) 4248 of 2004

Bhagyadhar Satapathy

APPELLANT

Vs

General Manager, Ferroscrap Nigam Ltd. and Others

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 101 CLT 257 : (2006) 109 FLR 265 : (2005) 2 OLR 637

Hon'ble Judges : P.K. Tripathy, J;A.K. Parichha, J

Bench : Division Bench

Advocate : K.K. Swain and associates, for the Appellant; S.D. Das and associates, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—In this application under Articles 226 & 227 of the Constitution of India, the petitioner has prayed to quash the order of

transfer dated 10/12.2.2004, Annexure-3, charge-sheet dated 22.2.2004, Annexure-8 and the orders passed by the Enquiry Officer in the said

proceeding, Annexures-9 and 10.

2. Petitioner while working as Senior Crane Operator-I in Rourkela Steel Plant applied for his transfer to the newly opened unit of Nilachal Ispat

Nigam Ltd.(hereinafter referred to as "NINL") situated at Duburi on the ground that his brother met a premature death and that he has to look

after the family of his deceased brother. His representation was allowed and by virtue of order dated 6.8.2002, Annexure-2, he joined at the

Duburi unit of NINL. While working there, he was served with office order dated 10/12.2.2004, Annexure-3, transferring him to Dolvi unit of

NINL. Petitioner made a representation on 14.2.2004, Annexure-4 requesting the

Deputy General Manager (P & A) to cancel the order of transfer or to transfer him back to Rourkela Steel Plant. In the said representation, he also made an alternative prayer that in case his transfer to Dolvi unit is not cancelled or his prayer for re-transfer to Rourkela Steel Plant is not favoured with, then he may be allowed to take voluntary retirement from his service under the VRS scheme floated by the opposite parties. While the matter stood thus, petitioner approached this Court vide WPC No. 2363 of 2004 with prayer to quash the order of transfer, Annexure-3, or to direct the opposite parties to post him at Rourkela or to allow him to take voluntary retirement. This Court after considering the matter, passed order on 2.3.2004 (Annexure-5) directing the General Manager, FSNL, (opposite party no. 1) to consider and dispose of representation of the petitioner at an early date preferably within a period of four weeks. On 5.3.2004 petitioner then submitted a fresh representation Annexure-6 to the opp.parties, but the said representation was rejected by order dated 22.3.2004, Annexure-7. Since petitioner did not join his place of posting at Dolvi in spite of rejection of his representation, disciplinary proceeding was initiated against him for disobedience of the order and unauthorized absence from duty and enquiry into the proceeding was also commenced as per order dated 24.2.2004, Annexure-8. Aggrieved by such action of the opposite parties, petitioner has filed the present writ application with the prayer to quash the orders as indicated earlier.

3. Mr. K.K. Swain, learned Counsel for the petitioner submitted that petitioner was brought to Duburi unit from Rourkela Unit on the basis of his own representation that he has to look after the family of his brother, who met a premature death, but overlooking such genuine difficulty, order of transfer Annexure-3 was passed only one and half years later in order to accommodate another person at Duburi unit. According to him such unreasonable action cannot but raise an inference of malice on the part of the opp.parties. He submits that taking such malicious conduct of the opp.parties as well as the personal difficulties of the petitioner into account, order under Annexure-3 should be quashed.

Mr. Swain further argued that petitioner initially submitted his VRS application on 2.2.2004 under Annexure-12 and he repeated the prayer on 14.2.2004 in Annexure-4 but though his VRS application was in writing and

within the time limit set for receipt of applications for VRS but his such prayer was unreasonably and illegally rejected on the ground that the application was not filed in time and that too in prescribed format. He submits that the circular dated 5.7.2003, Annexure-11 simply states that the employees interested to take voluntary retirement would submit written application to the concerned authority through the Department/Unit Head and nowhere that contemplated submission of application in any format. According to Mr. Swain, order dated 22.3.2004, Annexure-7 is contrary to the facts and materials and is liable to be quashed as apparently, the same is tainted with malice.

4. Mr. S.D. Das, learned Senior Counsel appearing for the opposite party No. 2, on the other hand, submitted that petitioner had no doubt been transferred from Rourkela unit to Duburi unit on his own representation, but that does not give him unfettered legal right to continue at Duburi unit indefinitely. He submitted that the transfer of an employee from one unit to another is made on need basis and the administrative authorities are to decide the posting of the employees according to the requirement of the units and such administrative order being not visited with malice, is not liable for interference. He indicated that transfer of the petitioner to Dolvi unit was made to cater to the need of Crane operators in that unit and there was no malice on the part of the opposite parties in passing such order.

5. So far as VRS issue is concerned, Mr. Das submitted that the alleged VRS application dated 2.2.2004, Annexure-12 was never received by the authorities and the application dated 14.2.2004 was not in the prescribed format and therefore, there was no scope for the opposite parties to allow the petitioner to avail voluntary retirement under the scheme, which had been floated for a limited period. Mr. Das also submitted that the claim of VR of the petitioner is hit by constructive res judicata as he had abandoned, that claim in the earlier writ petition, WPC No. 2363 of 2004 and had taken a direction only for reconsideration of his order of transfer.

6. It is not disputed that the petitioner was working as Senior Crane Operator Grade-I in the Rourkela unit where-from he was transferred to Duburi unit on 6.8.2002 on his own representation. It is also not disputed that while working as Senior Crane Operator in Duburi unit, transfer order, Annexure-3 was passed on 12.2.2004 and the petitioner made a

representation to the opposite parties on 14.2.2004 either to cancel his transfer order or to transfer him to Rourkela unit or in the alternative to accept his VRS application and that such representation of the petitioner was rejected on 22.3.2004 vide Annexure-7.

7. Law is settled that an employee cannot claim transfer or cancellation thereof as a matter of right and Courts should also be slow in interfering with the orders of transfer of an employee unless such order is actuated with malice of the authorities or infraction of any prescribed norms. This view is supported by the observation of the apex Court in the case of *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey*, reported in AIR 2004 SC 4850, wherein their Lordships have observed as under:

Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray Vs. State of Orissa and Others*,). Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it. (see *Union of India and Others Vs. S.L. Abbas*,). Who would be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of any operative guidelines or rules the Courts should not ordinarily interfere with it.

In view of this legal position, now the only point for consideration is whether the order in Annexure-7 was passed according to the prescribed norms and principle governing transfer or vitiated with any malice of the authorities.

9. In the present case, petitioner has claimed that the N.I.N.L. authorities had transferred him to Duburi Unit after considering his family problems but only one and half years of his joining at Duburi Unit, he was transferred to Dolvi unit in order to accommodate another employee at Duburi unit and so, the impugned order, Annexure-3, is actuated with malice of the authorities. It was never contemplated in the order of transfer, Annexure-2 that the petitioner would be retained in Duburi unit for any stipulated period nor it was contemplated that he would continue in that unit indefinitely. So, the order of transfer under Annexure-3 cannot be said to be actuated with malice simply because transfer of the petitioner was made one and

half years after his joining at Duburi unit or because someone else was brought on transfer in his place from another unit. The administrative authorities are legally competent to transfer an employee for administrative reasons or for fulfilling the requirement of a particular unit. Unless specific evidence and circumstances of prejudice, bias or malice is established, such orders are not to be tinkered with. Petitioner has not been able to show any personal prejudice or bias of the authorities against him. On the other hand in the order in Annexure-7, the General Manager, FSNL has clearly reasoned and mentioned that as per the requirement and availability of jobs at Dolvi unit, the petitioner has been transferred there to cater to the need of Crane Operator and that is not possible for the management to either cancel his transfer or to send him back to Rourkela unit, where there is no additional requirement of Crane Operator. This observation in Annexure-7 shows that the transfer of the petitioner was made on the basis of need of crane operator in Dolvi unit and that it was never done with any malice or prejudice towards the petitioner. In such circumstances, there is hardly any scope to quash Annexure-3.

10. On the point of voluntary retirement, Mr. Swain vehemently argued that the voluntary retirement scheme floated by NINL, Annexure-11 never contemplated that an employee has to submit his application for voluntary retirement in prescribed format. According to him, the scheme simply said that the application should be in writing and should be presented within a time limit and when the petitioner had submitted his application in writing vide Annexure-12 dated 2.2.2004 and Annexure-4 dated 14.2.2004, within the prescribed time limit, it was improper on the part of the administration to reject his prayer for voluntary retirement simply on the ground that the application was not submitted in the prescribed format in time.

11. Mr. Das, learned Counsel for the opposite parties counters this argument by relying on Annexures-11, 12, E/1 and F/1. According to him, the scheme floated by NINL for voluntary retirement of an employee clearly postulates that an employee, has to submit his application in proper form through his controlling authority so that all the information required and the recommendation of the authorities would be available to the sanctioning authority for consideration. He indicates that Annexure-12, which has been relied

on by the petitioner also shows that the petitioner had allegedly applied for voluntary retirement in the prescribed format which suggests that he was aware of the fact that the VR application was to be submitted in prescribed format. Mr. Das argued that the prayer for voluntary retirement by the petitioner not having been submitted in proper format within the stipulated time, there was no scope for the authorities to grant his prayer. Mr. Das further argued that petitioner in the earlier writ petition, WPC No. 2363 of 2004 did not press his claim for voluntary retirement and this Court in Annexure-5 directed the FSNL authorities to simply consider the representation of the petitioner about cancellation of his transfer or his transfer to Rourkela unit. According to him, when the petitioner did not press his claim for voluntary retirement in that writ petition, now he is estopped from raising that plea under the principle of constructive res judicata.

12. A reading of Clause 6.0 of the scheme, Annexure-11, would show that for availing voluntary retirement, an employee has to submit a written application to the concerned P & A Department through the department/unit head and that the said application in turn be sent to the Corporate office for approval/acceptance of the competent authority. The underlying intention of that clause is that an employee seeking voluntary retirement would furnish all the relevant information in writing to his department/ unit head who would verify correctness of the information, put his remark and forward the same to the Corporate office. Annexure-4 is indicative of the fact that petitioner was aware that voluntary retirement application was to be submitted in prescribed format giving all the required information. Now in this writ petition, opposite parties have filed affidavit that no such application dated 2.2.2004 of the petitioner was received and that the other application dated 14.2.2004 was not in proper proforma. Moreover, it is also apparent from Annexure-5 that petitioner obtained the order from this Court directing the FSNL authorities to consider his prayer for cancellation of transfer only, which further suggests that the petitioner had not insisted for consideration of his prayer for voluntary retirement. In such a situation, the present prayer for voluntary retirement is not liable for consideration.

13. Mr. Swain relying on the decision in the case of State of Haryana and Ors. v.

S.K. Singhal 1992 (2) SLR 249, submitted that an employee is conferred with the right to take voluntary retirement after giving notice of his intention to retire and unless the authorities by cogent reason reject such prayer, the retirement of the employee automatically follows after the period given in the notice. The facts and circumstances of the aforesaid case is totally different from the present one. There, the Rule prescribed that if the authorities do not reject the prayer for voluntary retirement within a particular period, it would be presumed that the prayer for voluntary retirement has been accepted. In the present case, there is no such rule or circular in the scheme, Annexure-11 and cogent reason has been assigned in Annexure-7 for rejection of the voluntary retirement prayer Of the petitioner. So, the ratio of the cited case will not be applicable in the present situation.

14. For the aforesaid reasons, we are of the considered opinion that Annexure-7 does not suffer from any illegality, arbitrariness, malice or infraction of any prescribed norms of principles governing the transfer. Accordingly, we do not find any good reason to quash the same. So far as Annexures-8, 9 and 10 are concerned, it appears that the disciplinary proceeding has been initiated and enquiry is going on into the charges and the petitioner has been noticed to take part in, the same. Under the circumstances noted by us (supra) there is no reason now to quash the proceeding. We, however, make it clear that we have not given any observation on the merit of the disciplinary proceeding and the said proceeding shall be disposed of strictly on its own merit in accordance with law.

15. The writ petition is accordingly dismissed. No cost.

P.K. Tripathy, J.

I agree.