

(1997) 11 AHC CK 0055
In the Allahabad High Court
Case No : Civil Misc. Writ No. 30100 of 1997

Bhanu Pratap Mishra

APPELLANT

Vs

Secretary, Minor Irrigation and Rural Engineering Service,
U.P. Government, Lucknow and others

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Citation : (1998) 1 AWC 143 : (1998) 79 FLR 176 : (1998) 2 UPLBEC 1054

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Shailendra, for the Appellant;

Final Decision : Allowed

Judgement

O.P. Garg, J.—The petitioner, Bhanu Pratap Mishra, who is a Junior Engineer, in Rural Engineering Service, is posted at Gorakhpur. By order dated 13.6.1997 (Annexure 1) passed by the Director/Chief Engineer, Rural Engineering Service, Lucknow--respondent No. 2, he was transferred to Gonda along with three others. It appears, wife of the petitioner met a State Minister, on whose recommendation contained in letter dated 3.7.1997 (Annexure 2) the transfer order in respect of the petitioner was cancelled on 13.7.97 (Annexure 3). Soon thereafter, one Ramesh Kumar Pandey, a Press Reporter, Saptahik Gorakhpur-Ki-Chahat and Saptahik Monday Times, Gorakhpur made a complaint on 30.7.1997 (Annexure 4) to the Minister, Rural Engineering Service, against the petitioner, taking an exception to the continuance of the petitioner at Gorakhpur. On the same day, the concerned Minister passed an order on the complaint itself that the petitioner be not allowed to continue at Gorakhpur (In Ko Gorakhpur Main Na Rakha Jaye), obviously without verifying the allegations made against the petitioner. The Director-cum-the Chief Engineer of the Department readily passed a fresh order dated 13.8.1997 (Annexure 5) transferring the petitioner from Gorakhpur to Etawah. It is this order which has been challenged in this writ petition as being mala fide with the prayer that it may be quashed.

2. Despite order dated 15.9.1997, the State has failed to file a counter-affidavit. Heard Sri Shailendra, learned counsel for the petitioner and the learned standing counsel on behalf of the respondent Nos. 1 to 4.

3. At the outset, it may be observed that it is well-settled that the courts should not interfere with transfer orders which are made in public interest and for administrative reasons, as a Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer is always understood and construed as an incident of service. It is a normal feature of service. It is also an implied condition of service and the appointing authority has a wide discretion in the matter. The employer is the best Judge how to distribute and utilise the services of its employees. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from the place of his present posting. Ordinarily, the courts have no jurisdiction to interfere with the order of transfer. When a public servant is transferred, he must comply with the order. In case there be any genuine difficulty in proceeding on transfer, it is open to him to make a representation to the competent authority. The ground that transferred employee has made a representation or that he is having some problems or difficulties in moving from one place to another, cannot be a justification to avoid or evade the transfer order. If the employee fails to proceed on transfer, he exposes himself to the risk of disciplinary action.

4. Thus, the transfer orders issued by the competent authority do not violate any of the right of a Government servant. This is one side of the picture and flows from the various decisions of the Apex Court, viz., *Shanti Kumari v. Deputy Director* AIR 1981 SC 157 ; *B. Varadha Rao Vs. State of Karnataka and Others*, ; *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, ; *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, ; *State of Punjab and others Vs. Joginder Singh Dhatt*, ; *Union of India v. S. L. Abbas*, JT 1993 (3) SC 678 and *State of U.P. Vs. Yamuna Shanker Misra and another*, . However, the other line of thinking is that the transfer orders are not inviolable or sacrosanct. In a democratic set up, like ours, the Society is governed by laws and not by men and, therefore, if the order of transfer is shown to be clearly arbitrary or vitiated by mala fide or infraction of any professed norms or principles governing the transfer, the courts shall not sit idle but will step-in to intervene. The courts have the power and authority to interfere with the transfer orders which are politically motivated and are passed in personal interest as opposed to public interest and in a mala fide manner. The transfer orders passed with a view to aggrandise or appease a particular authority or person without having regard to the convenience or difficulties or which have the demoralising effect on an upright or honest official have not been approved by the courts. This trend is reflected from the decision of the Supreme Court in *Supriya Sahu (Miss) Vs. Union of India (UOI) and Others*, ; *Abani Kanta Ray Vs. State of Orissa and Others*, and *Arvind Dutta Atraya Dhande v. State of Maharashtra* JT (1997) (6) SC 299.

5. The gamut of all the above rulings one way or the other is that a Government servant has no vested right to remain posted at one particular place as it is for the concerned authority to determine as to who would be transferred where and when but if the exercise of power of transfer 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. The courts have deprecated the frequent and unscheduled and unreasonable transfers as they have the effect of uprooting the family and causing irreparable harm to Government servant and drive him to desperation. The transfer order disrupts the studies of an employee's children and lends him into numerous other complications and problems resulting in hardship and demoralisation. On this point, the decision of this Court in *Smt. Ganga Devi v. State of U. P. and others*, (1997) 2 UPLBEC 925 and *Pradeep Kumar Agarwal v. Director Local Bodies, U. P., Lucknow and others* (1994) 1 UPLBEC 189; are notable.

6. In the latter case, it was observed by a Division Bench of this Court that in cases where the order of transfer is made against any statutory and mandatory rules or ex facie, it does not appear to be mala fide or passed in colourable exercise of power or motive to cause harassment by transferring the employee frequently within a short span of period, the court can certainly interfere so as to create a sense of protection under law and thereby securing the ends of justice. It was further observed that in a democratic set up like ours bureaucrats are expected to act and discharge their executive functions impartially and strictly in accordance with rules and regulations. The transfers, however, are to be done only in administrative exigencies and in public interest and in cases where the transfers are made for extraneous consideration to appease the politicians, the court will not hesitate to interfere.

7. In the backdrop of the law as stated above, now let us examine the facts of the present case. As stated above, the transfer of the petitioner from Gorakhpur to Gonda was cancelled taking into consideration the difficulties pointed out by his wife. Another order of transfer was passed within a period of hardly one month whereby the petitioner was directed to proceed to Etawah. This order was passed on the note jotted down by the departmental minister on the complaint made by Ramesh Kumar Pandey, a local newspaper reporter whose brother is also engaged as a contractor in the department. The assertions made by the petitioner have remained un rebutted as no counter-affidavit has been filed. As a matter of fact, in case like the present one, where the things speak for themselves from various documents brought on record, no counter-affidavit was required. Undoubtedly, the second order of transfer was passed at the instance of the Minister of the department who, then and there, without getting the allegations made in the complaint against the petitioner enquired, ordered for shifting of the petitioner from Gorakhpur. The learned standing counsel urged that the Minister of the department has done nothing wrong in the case by ordering the transfer of the petitioner as he being at the helm of the affairs, can, in administrative exigency, pass such orders. In support of his contention,

learned counsel placed reliance on Dr. Bal Krishna Bansal v. State of U. P. 1997 SCJ 1038 (DB). The observations made in the aforesaid case have to be confined to the peculiar facts of that case only as they are not of universal application. That was a case where the petitioner has remained posted for long a time twice at a particular station. The local M.L.A. brought this fact to the notice of the concerned Minister. The transfer was held not to be in the personal interest of the person who invited the attention of the Government that the posting of an officer at a particular station for a long duration is contrary to rules.

8. In the instant case, the order of transfer of the petitioner from Gorakhpur to Gonda was cancelled. There was apparently no administrative exigency to transfer him again to Etawah within a period of hardly one month. The order of transfer to Etawah was passed on the complaint made to the Minister. The complainant is a person who has a pique against the petitioner and was interested in getting the petitioner shifted. He felt incensed because the transfer of the petitioner to Gonda was cancelled. In short, the complainant who had a grudge against the petitioner had been successful in getting the petitioner transferred through the agency of the Minister and the Director/Chief Engineer without applying his mind to the fact that the transfer of the petitioner was cancelled hardly a month back and the petitioner was allowed to continue at Gorakhpur danced to the tune of the Minister, obviously to appease him. The Government servants cannot be treated like chattels, who could be derived from one direction to another without any rhyme or reason for the mere asking of a person in authority or to please him. The Director/Chief Engineer after having transferred the petitioner from Gorakhpur to Gonda should not have cancelled his transfer and once it was done, he should not have acceded to the directions of the Minister, instead he should have convinced the Minister by bringing to his notice the correct facts. The impugned order, of transfer, therefore, was, in fact, in the interest of the complainant and not in public interest or due to administrative exigency. It is afflicted by the vice of colourable exercise of power.

9. In the result, the writ petition succeeds and is allowed. The impugned order dated 13th August, 1997 transferring the petitioner from Gorakhpur to Etawah is hereby quashed. The petitioner shall continue to remain posted at Gorakhpur till 30.6.1998 if he had not already been relieved.