

(1998) 09 GAU CK 0045
In the Gauhati High Court
Case No : Civil Rule No. 479 of 1997

Bibhuti Dutta Gupta

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 4 GLT 205

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : C.S. Sinha, for the Appellant; U.B. Saha, G.A., for the Respondent

Judgement

D. Biswas, J.—This petition under Article 226 of the Consitution has been preferred by Shri Bibhuti Dutta Gupta, Forest Ranger working under the Govt. of Tripura, Forest Deptt. challenging the order of transfer from Sadar Range office, Agartala to Tirthamukh Range Office vide order dated 2.4.97 on the ground that the transfer is mala fide and has been made in order to accommodate another person.

2. I have heard Sri C.S. Sinha, learned Counsel for the Petitioner and Mr. U.B. Saha, learned Govt. Advocate for the Respondents.

3. It would appear from the pleadings that the Petitioner was subjected to frequent transfers to different places. Eventually when posted at Sadar Range Office, Agartala, he was transferred to Tirthamukh Range office by the aforesaid order before completion of three years which is normally the period an officer is allowed to work in a station.

4. Learned Counsel for the Petitioner has brought to the notice of this Court the decisions rendered in AIR 1986 SC 1955 (B. Vardha Rao, Petitioner, v. State of Karnataka and Ors. Respondents), 1984 (2) SLR 328 (Sheshrao Nagarao Umap, Petitioner v. State of Maharashtra and Ors. Respondents) and (1995) 1 GLT 435 (Shri Bimal Kumar Deb Medhi, Petitioner v. The State of Assam and 5 Ors.

Respondents) in support of the case of the Petitioner. The law laid down in the above three cases undoubtedly point out that frequent transfer of an officer from one place to another place without any cogent ground is mala fide and this has to be deprecated on the ground that such transfer can uproot a family, cause irreparable harm to the Govt. servant and drive him to desperation. There is no dispute to the above proposition of law. A transfer which is mala fide is ordered by way of punishment has to be interfered with by a Court in exercise of its jurisdiction.

5. In the instant case, the Petitioner joined at Agartala in the month of December, 1994. The impugned transfer order was issued on 2.4.97. The order was ten months ahead of completion of three years, and from that the point of view, it can be said to be premature. But this does not itself render the transfer as bad unless it is shown to have been done with some oblique motive. In the instant case, apart from the averment incorporated in the petition that the Respondent 4 and 5 have been allowed to continue beyond four years, there is nothing on records to show that the impugned transfer order is otherwise pregnant with malice. The power of transfer is vested in the State and the executive in their discretion and after consideration of the exigency of the public service may under-take to issue such transfer orders. The consideration of reasons for which pre-mature transfer is required has to be left to the executive only and a Court in exercise of writ jurisdiction shall not normally interfere with such order unless it is proved to be mala fide. In the instant case, the Petitioner has referred to the case of the Respondents 4 and 5 to prove mala fide. The reasons for which they have not been transferred is a matter cannot be enquired by this Court and their stay at a place beyond the limit of three years cannot be an analogy for extending protection from transfer to the Petitioner.

6. However, from para-13 of the Counter submitted by the State, I find that the Respondent No. 5 had suffered a major heart attack and the right side of his body was paralysed. So far respondent No. 4 is concerned, it has been stated that there is some dispute regarding his date of birth and, for this purpose, he has not been transferred. Whether the above two grounds are sufficient enough is a matter which has to be left to the wisdom of the executive, and the Court cannot enter into a searching scrutiny to enarth mala fide or malice unless those are apparent on the face of the record.

7. Another special feather of this case is that the Petitioner joined his present place of posting in the month of December, 1994 and by virtue of an order of stay, he has been continuing in the same station. By now he has completed more than three years at his present place of posting and, as such, there may not be any grievance on his part to move out of the present place of posting to the place where he has been transferred. However, after such a long time, whether the Respondents would still maintain the earlier order of transfer is a matter to be considered by them. Therefore, I am of the opinion that there is no need for this Court to interfere with the impugned order of transfer.

8. I may refer here to a decision of the Division Bench of this High Court in Nurul Amin, Petitioner v. State of Assam and Ors. reported in (1992) 2 GLR 331 wherein their Lordships held that frequent transfer incline towards mala fide, but it cannot be held mala fide if the transfer is made in public and administrative interest. In the instant case, the transfer order, Annexure-1 (g), shows that the transfer of the Petitioner was made in the interest of public service. It will be pertinent to refer to a decision of the Supreme Court reported in Union of India and Others Vs. S.L. Abbas, wherein their Lordship held as follows:

7. Who should be transferred where, is a matter for the appropriate authority to decide . Unless the order of transfer is vitiated by a mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer there is no doubt, the authority must keep in mind the guidelines issued by the government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration.

9. The ratio laid down in the above two cases under no circumstances can salvage the situation for Petitioner so as to enable him to continue at his present place of posting in perpetuity. Therefore, this writ has to be dismissed. Accordingly, this writ petition is dismissed. Considering the circumstances, parties are directed to bear with their respective costs.

10. Before parting with (sic) case, it is felt necessary to place on record that the Petitioner was, prior to his present posting, subjected to frequent transfer which should, as far as possible, be avoided by the respondents except in the exigency of public service.

11. Interim stay order granted earlier stands vacated.