
(2008) 09 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2828 of 2008

Brajesh Kumar Verma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Constitution of India, 1950 — Article 166

Citation : (2009) 57 BLJR 448

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : Anil Kr. Sinha and Ajit Kumar, for the Appellant; J.C. to A.G., for the Respondent

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Challenge in this writ application is against the Notification contained in Memo No. 4089 dated 30.05.2008 (Annexure-6), issued under the signature of Respondent No. 6, whereby the petitioner was transferred prematurely from the post of Assistant Engineer, Rural Development Special Division, Jamshedpur to the post of Assistant Engineer, Office of Superintending Engineer, Rural Development Special Circle, Palamau.

2. The petitioner has assailed the impugned order (Annexure-6) on the ground that it has been passed at the instance of the local M.L.A. (Respondent No. 7) in a most arbitrary and mala fide manner without the recommendation of the Establishment Committee and for no declared administrative reasons or in the public interest.

3. The petitioner is an Assistant Engineer belonging to the cadre of Water Resources & Irrigation Department and was posted as Assistant Engineer, Rural Development Special Division, Jamshedpur, where he was discharging his duties since 07.09.2006. However, he was abruptly transferred from Jamshedpur, vide the impugned order.

4. The grievance of the petitioner is that though he has been discharging his duties to the satisfaction of his superiors but since he could not satisfy the desire and whims of the local M.L.A. (Respondent No. 7), who is also the Chairman of the Government Assurance Committee, the said Respondent No. 7 wrote a letter dated 14.01.2008 to the Minister in-charge of the Rural Development Department for transfer of the petitioner to any other place. On this, the Minister in-charge directed the Respondent-Secretary to recall the petitioner to the Headquarters. Information was sought for by the Respondent-Department, regarding the period of the petitioner's posting and also the charges, if any, the petitioner was facing. The query was promptly responded and it was declared that the petitioner was posted since 07.09.2006 and that no charge was pending against him. After recalling the petitioner to the Headquarters, he was attached/deputed in the Office of the Chief Engineer, Rural Development Special Division, Ranchi, where he took additional charge of the said post.

Despite the fact that there was no charge pending against petitioner and that he was posted at Jamshedpur recently since 07.09.2006, the petitioner was abruptly transferred from Jamshedpur vide the impugned order, purportedly on administrative grounds without obtaining approval/ recommendation of the Establishment Committee. The transfer of the petitioner within 20 months of his posting, is also against the Rules of Executive Business, which have been framed in exercise of power under Article 166 of the Constitution of India.

5. Counter affidavit has been filed by the Respondents, challenging the very maintainability of this writ petition on the ground that the transfer is an incidence of service and an implied condition of service and, therefore, the petitioner cannot claim it, as a matter of right to continue at a particular place. The services of the petitioner were needed and absolutely required in the Office of the Superintending Engineer, Rural Development Special Division, Palamau on absolutely administrative grounds in the interest of work and, therefore, his transfer being not in violation of any of the statutory provision, the same cannot be assailed.

It is further contended that the M.L.A. being the representative of the people of his constituency, is supposed to know all the activities going on in his constituency and as such, merely since the M.L.A. had recommended for the transfer of the petitioner, the same cannot be held to be arbitrary. The Minister in-charge of the Department is the competent authority and the order of the petitioner's transfer having been passed by him, the same cannot be challenged.

6. In the counter affidavit filed by the Respondent No. 7, it is stated that the Respondent No. 7 is the M.L.A. of the Ghatshila constituency in the district of East Singhbhum. The petitioner, who is posted as Assistant Engineer, Rural Development Special Division, Jamshedpur was required to execute and monitor several developmental Schemes falling within the constituency of the Respondent No. 7. Several complaints (Annexure-A series) were received by the Respondent No. 7 from the people of his constituency against the petitioner alleging, therein

that he was not performing his duties with sincerity and serious lapses/irregularities have been committed by him in performance of his duties. The Respondent No. 7 at his own level verified the complaints and had found that the petitioner had not carried out his duties properly and sincerely. It was under such circumstances that the Respondent No. 7 had recommended for the transfer of the petitioner to any other appropriate place keeping in view the larger public interest of the constituency and in making such recommendations, the Respondent No. 7 has not acted with any malice or mala fides.

7. The petitioner in his rejoinder, has challenged the allegations of complaints being received against the petitioner. Referring to the entire note-sheet (Annexure-4), moved at the departmental level before issuance of the impugned Notification of transfer (Annexure-6), Mr. Anil Kumar Sinha, Senior Advocate, for the petitioner contends that in the entire note-sheet not a single word of complaint or charge against the petitioner has been mentioned. In fact, even the letter of recommendation (Annexure 3) by the M.L.A. (Respondent No. 7) for the petitioner's transfer, does not contain reference to any such complaint as a reason for the recommendation for transfer. It is claimed that all the alleged complaints are non-est, concocted, by way of an after thought and therefore the same cannot be relied upon.

8. The main ground as emphasized by the learned Counsel for the petitioner is that the petitioner's transfer was made under political pressure and in utter violation of the Rules of Executive Business, which guides the transfer and postings of the Government servants and under the Rules under which the proposal for transfer of an Officer shall be placed before the Minister in-charge through departmental Secretary/Commissioner, alongwith the recommendations of the Establishment Committee of the Department. The other ground on which equal emphasis has been placed is that the petitioner's transfer was made even within 20 months from his present posting, although the Rules provide that the minimum period should not be less than three years and only in case of extreme urgency and administrative exigencies, it could be reduced to two years.

9. The facts which emerge even as admitted by the Respondents are as follows:

(i) The petitioner's transfer from his present place of posting was made within 20 months from the date of his joining office.

(ii) Prior to the issuance of the Transfer order, a recommendation vide Annexure-3 was made by the local M.L.A. to the Minister in-charge of the Department.

(iii) The petitioner was initially recalled to the Headquarters and later by the impugned order, he was transferred to Palamau under the same Department and in the same capacity.

10. The petitioner's contention is that since as per norms, the recommendation of the Establishment Committee has not been obtained, the impugned order

should be considered, as contrary to the Rules and illegal.

11. Relying upon a judgment of the Supreme Court in the case of Sarvesh Kumar Awasthi v. U.P. Jal Nigham reported in : (2003)11SCC740 , Mr. A.K. Sinha, learned senior counsel for the petitioner argues that the power of transferring a Government Servant cannot be wielded arbitrary, mala fide or an exercise against efficient and independent Officer or at the instance of politicians whose work is not done by the Officer concerned. Learned Counsel argues that as has been laid down by the apex Court, for better administration the Officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

12. Admittedly, in the matter relating to transfer and postings of Government servants, a comprehensive policy has been adopted by the State of Jharkhand. The Policy vide Resolution dated 25th October, 1980 of the State of Bihar published in the extraordinary Gazette has been adopted by the State of Jharkhand and it is applicable to the employees under the Government of Jharkhand under the said Act. It is relevant to notice some of the relevant features of this Notification:

The 25th October, 1980

SUBJECT: - Policy and procedure regarding transfer and posting of Government servants.

The policy and procedure regarding transfer and posting of Government servants has been laid down by the State Government, from time to time. The policy and procedure as laid down in the Personnel and Administrative Reforms Departments Resolution No. 14747, dated the 6th September 1979 and No. 16609, dated the 18th October, 1979 which is enforced at present has failed to fulfill the desired objective. The matter has, therefore, been reconsidered by the State Government and with a view to further streamlining the policy and procedure of transfer and postings, the State Government have been pleased to take the following decisions in supersession of all previous orders:

(A) General policy regarding transfer and posting. - (1) Transfer and postings will generally be done twice, i.e., in May-June and November-December of each year:

Provided that in special circumstances, e.g., death, illness, vacancy or other administrative reasons transfer and posting could be made at any other time subject to the following conditions: -

(i) In respect of officers whose transfer/posting is done with the approval of Minister or by Council of Ministers, specific prior approval of the Chief Minister has to be obtained; and

(ii) In respect of such officers and Government employees whose transfer and posting is done by subordinate officers under delegated powers of transfer,

specific prior approval of the immediate superior officers is obtained.

(2) The duration of posting on any post and at any particular place will generally be for a period of 3 years. For some posts of places, the period of posting may, however, be kept for 2 years which should be specified by the departments by Standing Orders.

xxx xxx xxx (B) Procedure for transfer and posting.-

xxx xxx xxx (2) Proposals regarding transfer, posting and deputation of such officers whose maximum pay in the pay scale exceeds Rs. 810 but does not exceed Rs. 1,200 should be placed before the Minister-in-charge for orders after the recommendation of the Establishment Committee. Proposals regarding transfer, posting and deputation of such Officer whose maximum pay in the pay scales exceeds Rs. 1,200 shall be placed before the Cabinet after obtaining the recommendation of the Establishment Committee and approval of the Minister-in-charge.

xxx xxx xxx (C) Formation of Establishment Committee.- (1) An Establishment Committee should be formed for each Department with the approval of the Departmental Minister for recommending transfer/posting of such officers whose transfer and posting is made by Government. The Committee will consist of the following Officers:

- (i) Commissioner and Secretary,
- (ii) Seniormost head of Department,
- (iii) One Special Secretary/Additional Secretary
- (iv) Suitable seniormost Officer of the Scheduled Caste/Scheduled Tribe.

xxx xxx xxx

13. It is manifest from the above that the whole procedure for transfer in special circumstances is laid down in the paragraph under the heading (A). Had the intention been to apply the general procedure as mentioned under the Heading (B), there was no necessity of laying down "Conditions" under this rule. Thus, where the procedure as laid down in Paragraph (A) of the Rule is applied, the order of transfer without obtaining the recommendations of the Establishment Committee will not create any infirmity of such order of transfer.

14. In the case of State of U.P. and Others Vs. Gobardhan Lal, , the Supreme Court at Para 7 of the judgment has observed as follows:

7 ...The transfer of employee is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service and unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course of routine for any or every type of grievance sought to be made....

In the case of *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey* reported in (2004) 11 SCC 299, the Apex court while considering the validity of transfer and scope of interference in writ jurisdiction observed as follows:

4 ...Unless, the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules, the courts should not ordinarily interfere with it....

15. In the instant case, the petitioner has contended that the transfer was made on the recommendation of the local M.L.A. without assigning any reason, or justification for the premature transfer of the petitioner.

16. The petitioner has brought on record, the recommendation of the local M.L.A. vide letter dated 14.01.2008 (Annexure-3). The letter in plain and simple terms addressed to the Minister in-charge of the Rural Development Department, Government of Jharkhand, recommends that the petitioner be posted in any other place. No reasons have been mentioned for such recommendation. It further appears that on receipt of the aforesaid letter, the Minister in-charge had endorsed his directions on the letter itself on 17.01.2008 directing the Secretary, Rural Development Special Division, to recall the petitioner to the Headquarters in the light of the recommendations of the local M.L.A. Pursuant to the directions, a note was placed by the Secretary before the Minister in-charge on 21.04.2008, for an order to transfer of the petitioner from his present place of posting at Jamshedpur to the Headquarters at Ranchi. Later, on considering that the post of Assistant Engineer in the concerned Department is running vacant at Palamau, the Minister in-charge of the Department directed vide his order dated 03.05.2008, for the transfer of the petitioner in the concerned Department at Palamau as Assistant Engineer and the corresponding Notification of Transfer dated 30.05.2008 (impugned), was accordingly, issued.

17. The Respondent No. 7 has explained that several complaints were received against the petitioner and on his personal inspection, he had also found that the petitioner was not performing his duties properly and therefore, in the public interest, he had forwarded his recommendation of the petitioner's transfer. Annexure-A series to the counter affidavit of the Respondent No. 7, which are purported complaints, having challenged by the petitioner as being concocted documents. From the reading of the counter affidavit of the Respondent No. 7, it appears that the letters of complaint (Annexure-A Series), have been referred only to indicate that the Respondent No. 7 being the M.L.A. of the constituency, was prompted to make a personal inspection of the work performance of the petitioner and on such inspection, he was satisfied that the petitioner's performance was not satisfactory and this was the reason, which had prompted him to recommend to the Minister in-charge of the Department for the withdrawal of the petitioner.

18. The reason as explained, does not indicate that it was actuated with any bias or prejudice or malice. There is nothing in the recommendation made by the

M.L.A. to suggest that it was an arbitrary action. The M.L.A. is the representative of the people of his constituency and he has every right to keep a track on the developmental activities in respect of the projects undertaken by the Government in his constituency and to report to the Minister in-charge of the Department against the unsatisfactory performance of any Government servant.

19. From the facts stated, it transpires that even though the letter of recommendation was forwarded by the M.L.A. in the month of January, 2008, the order of the petitioner's transfer was issued after more than four months on administrative exigencies and on consideration of the fact that the post of Assistant Engineer in the concerned Department was running vacant, since long at Palamau. It is apparent, therefore, that the petitioner's transfer, even though was made within 20 months of his present posting, was not altogether on account of the recommendation made by the M.L.A. Rather, it was under administrative exigencies and in consideration of the fact that the post of Assistant Engineer at Palamau was running vacant since long, that the order of transfer was passed. In absence of any malice behind the order of transfer, the mere absence of an approval from the Establishment Committee does not in my opinion, vitiate the order of transfer.

In the light of the above discussions, I do not find any merit in this writ application, which is, accordingly, dismissed.