
(2001) 10 MP CK 0059

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1193 of 2001 (J)

Commissioner of Customs and Central Excise, Raipur and
Another

APPELLANT

Vs

Shyam Lal Dewangan and Another

RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Citation : (2001) 2 MPJR 386

Hon'ble Judges : Bhawani Singh, C.J;S.L. Kochar, J

Bench : Division Bench

Advocate : Indira Nair, for the Appellant; Manoj Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.

The Petitioners have lodged their grievance by filing this writ petition against the order dated 4th Aug, 2000, in O.A. No. 599/2000 Shyamlal Dewangan v. Union of India and Ors., Passed by Central Administrative Tribunal, Jubalpur. The Central Administrative Tribunal while deciding the application of Respondent Shyamlal Dewangan challenging his transfer order from Bhilai to Range Waidhan, Division Satna made observations/directions directing that "within a year of his joining, the Respondent should be transferred either to Bhilai or any station in or around Raipur on humanitarian grounds so that the applicant's family life and his children's education is not disturbed for long". By this order dated 4th August, 2000 (Annexure P/6) the Central Administrative Tribunal did not quash the order of transfer on the ground as urged by Respondent Shyamlal Dewangan but made the aforesaid observation.

The factual matrix giving rise to this petition is as follows -Respondent No. 1 Shyamlal Dewangan was transferred by Joint Commissioner, Central Excise, Bhilai to Range Waidhan, Division Satna by general transfer order dated 7.4.2000

(Annexure P-1). By this transfer order the authority has transferred as many as 55 employees including the Respondent No. 1. The Respondent No. 1 preferred an O.A. No. 335/2000 against the order of transfer and the Tribunal at the stage of its admission, by order dated 19.4.2000 (Annexure P-2) directed that if Respondent No. 1 filed representation within seven days from the date of order, the employer/Petitioners shall consider all the aspects that may be agitated in the representation and dispose of the same by a speaking order within six weeks from the date of receipt of the representation.

The Respondent No. 1 in pursuance of this direction submitted a representation (Annexure P-3) before the Commissioner, Central Excise, Raipur and as ailed the transfer order on several grounds out of which the main grounds were hat he was taking active part as a General Secretary of Inspectors" Association and his wife had established business at Raipur, because of the transfer the education of his children will also hamper. In the representation, he had prayed for his posting at Raipur or nearby place.

The Petitioner, Commissioner, Custom and Central Excise, after due consideration of the representation, rejected the same by passing a detailed speaking order (Annexure P-4) holding that the contention of the Respondent No. 1 that he was a sitting member of JCM was not correct and not supported by fact. In the order Annexure P-4, the authority while considering the representation held that in Waidhan also there were good reputed schools and there would not be any disturbance to the education of the children. The transfer of any Govt. Officer from one place to another entails the change of school for their children from one school to another. This is inevitable consequence of one being a Govt. servant, The ground of establishment of wife"s business at Raipur has also been rejected.

Against the order of rejection of representation (Annexure P-4) Respondent No. 1 filed an O.A. before the Central Administrative Tribunal, Jabalpur vide O.A. No. 599/2000. The Tribunal by way of impugned order dated 4.8.2000 (Annexure P-6) held that there was no case of mainfides or violation of any statutory rules by the administration while transferring the Respondent No. 1 to Range Waidhan from Bhilai after his completing the normal tenure of posting. However, the Tribunal while deciding the said O.A. directed the Petitioner to post the Respondent No. 1 either to Bhilai or any other station in or arround Raipur within a year of his joining at his new place of posting as the Respondent No. 1"s family life and education of his children (aged 10 years and 3 and half years) may not be disturbed.

Against this direction, the Petitioners have submitted this writ petition mainly on the ground that it is the domain of the executive and the administrative authority is supposed to know better how to utilise the services of his subordinates in the interest of administration. Respondent No. 1 had already completed five years at one station, i.e., Bhilai. It has also been contended by the Petitioners that the direction by the Tribunal to transfer the Respondent No. 1 within a year of his joining at the new place of positing, to Raipur or nearby place is contrary to the

principles laid down by the Apex Court in the matter of transfer and posting of Officers made bonafide in the interest of administration and where there are no malafides. The Petitioner have also submitted that the Tribunal has erred in law in not appreciating the fact that it would be making a wrong precedent in transferring in the matter of transfer of employees, prescribing an impractical condition of return transfer within a year and creating indiscipline in the cadre of uniform service.

Contrary to the submissions of the Petitioner, the Respondent No. 1 has urged that the Respondent No. 1 was harassed and persecuted by his superiors due to his employees' association activities, of which the Respondent No. 1 was an effective office-bearer. The Respondent No. 1 was General Secretary of Central Excise Officers Group-C (Association) Raipur Officers Commissionerate. The association of the Respondent was affiliated to the All India Federation of Central Excise Executive Officers, Nagpur. The Respondent No. 1 has raised various issues through his association because of which he has earned displeasure of his superiors resulting into his transfer from Bhilai to Waidha District Sidhi and that various post are typing vacant, in or around Bhilai in the periphery of 200 Kms. and he could be posted against any of these vacant posts and that he has been transferred from Bhilai to Waidhan on the ground that he had completed five years at one place whereas there are several Inspectors of Raipur Commissionerate who have completed for more than 10 to 15 years in the same region and that the impugned order of the Tribunal is a consent order and as such it could not have been challenged before this Court which is clear from the fact that the Petitioners did not prefer to file a review petition before the Central Administrative Tribunal and when a consent order has been passed by the Tribunal the same could not be assailed in any higher forum and that the present petition has been filed only when the Respondent No. 1 has raised certain issues as a General Secretary of the Association which has annoyed the Petitioners which speak volumes of malafides and bias and that since he is the General Secretary of the Inspectors Association, a recognised Association, members of which generally posted at the headquarter. The Respondent No. 1 has supported the Tribunal order on the ground of establishment of business by his wife and disturbance to the education of his children and on these grounds the Central Administrative Tribunal has passed the aforesaid direction for transferring the Respondent No. 1 after completion of one year at Bhilai or in any other station around Raipur.

Having considered the rival contentions of the parties, we are of the opinion that the impugned order (Annexure P-6) dated 4.8.2000 passed by the Central Administrative Tribunal directing the Petitioners to post back the Respondent No. 1 either to Bhilai or any other station in or around Raipur within a year of his joining at his new place of posting is not sustainable as the same is contrary to the basic principles of law of transfer of Government employees.

The contention of the Respondent No. 1 that he was the General Secretary of

Central Excise Officers Group-C (Association) Raipur Commissionerate is not substantiated by filing some positive authenticated document such as the recognition letter of the union, when he was elected, documents of election, what were the bye laws of the union, etc. He has filed merely two letters Annexure R-1/2 and R-1/3 showing the name of the Respondent No. 1 in the column of the office-bearer as General Secretary. The Petitioners have denied the contention of the Respondent that he was a sitting member of JCM and was the General Secretary of recognised union (see Annexure P-4) at page 4 paras 3, 4 and the rejoinder submitted by the Petitioners at page 5 para 7.5).

The Respondent No. 1 could not get any benefit for assailing his transfer order on the fact that he was the elected member and office-bearer of the recognised union. Moreover no such statutory rule was pointed out restraining the employer to transfer the Government servant from one place to another if he holds any post in the employees association. Therefore, this ground is not at all available to the Respondent No. 1 for making out his transfer based on malafides. The Central Administrative Tribunal has also in para-5 of its impugned order (Annexure P-6) held that "normally the Court/Tribunals should not interfere in an order of transfer because it is the domain of the executive and the administrative authority is supposed to know better how to utilise the services of his subordinates in the interest of the administration. The impugned order is also clearly showing that the Tribunal did not find any malice on the part of the Petitioners for transferring the Respondent No. 1 from Bhilai to Waidhan.

The contention of the Respondent No. 1 that the posts are vacant at or near Raipur is also not tenable because posting cannot be given on the basis of the choice of the employees. It is for the employer to decide as to how and where service of the employee can be utilised, The Supreme Court said in para-4 of Gujarat Electricity Board and Anr. v. Atmaram Sungomal Poshani (AIR 1988 SC 1433) that -

Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to another is necessary in public interest and efficiency in the public administration.

The contention of the Respondent No. 1 that several other Inspectors are posted at Bhilai and Raipur since last more than five years and they have not been transferred and the Respondent has been transferred because of his union activities has no force. The transfer order (Annexure P-1) shows that by one order, 55 Inspectors have been transferred. The Respondent cannot be heard to complain that many persons staying for longer periods have not been transferred since it is for the employer to find out and select persons for transfer and Court cannot interfere with it, matter being administrative in character.

A bare perusal of impugned order (Annexure P-6) does not give the impression

that it is a consent order. The contention to this effect is not acceptable and is rejected.

The Respondent No. 1 was not able to substantiate by adducing appropriate, cogent and reliable material about his being member and office-bearer of the union and also about taking active part in the functioning of the union hence the allegation of malice in transfer order is not borne out from these facts.

So far as establishment of business by wife of the Respondent No. 1 and disturbance to the studies of his children are concerned, these grounds are not available to him. The Supreme Court, while considering this issue, held in *Union of India and Others Vs. S.L. Abbas*, para-7) that -

Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides 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. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines, however, does not confer upon the Government employee a legally enforceable right.

In view of this judgment by the Supreme Court, even if the husband and wife are in Government employment, are not legally entitled to have a posting at one place. In the instant case, the wife of the Respondent is not a Government servant but she is doing business hence even applying the guidelines about posting of husband and wife who are in service at one place, does not give any assistance to the Respondent. Moreover, no such guidelines have been filed or pointed out by the Respondent along with the return.

Since the wife of the Respondent No. 1 is doing business at Raipur and if this is considered for giving posting to the Respondent No. 1 at or near Raipur then he cannot be transferred at any other place of long distance in his whole service tenure even though his transfer to that place is essential for the administrative exigencies. So far as the question of disturbance to education of his children is concerned this is also not a legal ground and children of Respondent No. 1 could be easily admitted in schools available at Waidhan. They are the students of Primary School. The Supreme Court in *State of Punjab and others Vs. Joginder Singh Dhatt*,) has held that -

this Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer.

After due consideration of the contentions raised by the Petitioners and the Respondent No. 1, we find that the Respondent No. 1 is not able to lay any firm foundation warranting a finding that the transfer order (Annexure P-1) was passed malafide and/or for oblique pupose in order to punish the Respondent No. 1 and/or to humiliate him. The allegations of malafides are to be based on factual matrix. We are fortified by the view taken by the Supreme Court in M. Sankaranarayanan, IAS Vs. State of Karnataka and others,

In view of the aforesaid discussion, we are of the firm view that the direction given by the Central Administrative Tribunal directing the Petitioners to transfer back the Respondent No. 1 either to Bhilai or any other station in and around Raipur, is contrary the law. We, therefore, set aside the said direction. The writ petition is, accordingly, allowed without any order as to costs.