

(2005) 09 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52249 of 2000

Dr. Krishna Chandra Dubey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 6 AWC 6017

Hon'ble Judges : Shishir Kumar, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Sudhir Agarwal and Krishna Agarwal, for the Appellant; P.B. Sirohi and N.P. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for setting the aside the judgment and order of the Central Administrative Tribunal, Allahabad Bench, dated 10.11.2000 (Annex. 12), by which the Original Application of the petitioner against the order of transfer dated 24.11.1998 (Annex.5) has been rejected.

2. The facts and circumstances giving rise to this case are that petitioner while working as a Senior Scientist in Indian Council of Agriculture Research (in short "ICARO was transferred vide order 24.11.1998 in public interest from the post of Scientist (Horticulture), Central Soil and Water Conservation Research and Training Institute, Agra to Central Soil and Water Conservation Research and Training Institute, Koraput, Orissa. Petitioner challenged the said order before the Tribunal on various grounds, inter-alia, that earlier, he had worked in backward area (Ranchi) and as per the transfer policy/statutory Rules, he could not be posted again in backward area; the transfer order cannot be passed in public interest and it could be passed only on administrative ground; the transfer order suffered from mala fide as the same was passed to accommodate Dr. Dinesh Kumar at Agra; it was a transfer in mid-academic session and it caused inconvenience and adversely affected the education of the school going children

of the petitioner.

3. The respondents contested the case submitting that the services of the petitioner were required in Orissa and no mala fide could be attached to the same. It was also submitted that the transfer of Dr. Dinesh Kumar to Agra had been made in accordance with the Rules.

4. After considering the rival claim of the parties, the Tribunal dismissed the Original Application vide impugned order dated 10th November, 2000. Hence the present petition.

5. Shri Krishna Agarwal, learned counsel for the petitioner has reiterated the submissions agitated before the Tribunal and the same has been controverted by Shri P.B. Sirohi, learned counsel appearing for the respondents.

6. We have given serious considerations to the said submissions and have perused the record.

7. The issue of transfer and posting has been considered time and again by the Apex Court and entire law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested right to be posted at a particular place. (Vide B. Varadha Rao Vs. State of Karnataka and Others, ; Mrs. Shilpi Bose and others Vs. State of Bihar and others, ; Union of India and another Vs. N.P. Thomas, ; Union of India and Others Vs. S.L. Abbas, ; Rajendra Roy Vs. Union of India (UOI) and Another, ; Ramadhar Pandey Vs. State of U.P. and Others, ; N.K. Singh Vs. Union of India and others, ; Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, ; State of Uttar Pradesh v. Dr. D.N. Prasad; Balwant Singh and another Vs. State of Punjab, ; Abani Kanta Ray Vs. State of Orissa and Others, ; Laxmi Narain Mehar Vs. Union of India and others, ; State of U.P. and Others Vs. Ashok Kumar Saxena and Another Etc., ; National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, ; Public Services Tribunal Bar Association Vs. State of U.P. and Another, ; State of U.P. and Others Vs. Siya Ram and Another, ; and Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, .

8. An employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency. In Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , the Hon"ble Supreme Court has observed as under:-

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another 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 other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

9. In *Union of India and Others Vs. H.N. Kirtania*, , the Hon"ble Apex Court observed as under:-

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide."

10. In *Union of India v. S.L. Abbas* (supra), the Apex Court has observed that the Government instructions on transfer are mere guidelines without any statutory force and the Court or Tribunal cannot interfere with the order of transfer unless the said order is alleged to have been passed by malice or where it is made in violation of the statutory provisions.

11. Similar view has been reiterated by the Supreme Court, in *Bank of India Vs. Jagjit Singh Mehta*, , observing that the terms incorporated in the transfer policy for posting of both the spouses, if in service, at the same place, require to be considered by the authorities "along with exigencies of administration" and "without any detriment to the administrative need and claim of other employees".

12. In *State Bank of India Vs. Anjan Sanyal and Others*, , the Apex Court held as under:-

"4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

(Emphasis supplied).

13. In *Rhone-Poulenc (India) Ltd. Vs. State of U.P. and Others*, , the Hon"ble Supreme Court held as under.-

"the mere fact that after the order of transfer had been issued and when Respondent 3 had failed to report for duty, he was also asked by the Corporate Manager, who was competent to order his transfer, to join the duties at Kanpur will not validate " the order of transfer issued by an authority not competent to do so."

14. A relieving order could be passed when certain functional responsibilities are to be carried out by the transferred employee. For example, handing over of the charge, classified documents, registers, commercial documents, cash etc., as the case may be (*Vide Raj Bahadur Sharma (Dead) Thr. L.RS. Vs. Union of India and Others*,).

15. Thus, it is clear that the transfer policy does not create any legal right in favour of the employee. It is settled law that a writ petition under Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by an employee that there is a breach of a statutory duty on the part of the employer. Therefore, there must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he/ she has a legal right to insist on such performance. The existence of the said right is a condition precedent for invoking the writ jurisdiction. (Vide *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, ; *Mani Subrat Jain and Others Vs. State of Haryana and Others*, ; *State of Kerala Vs. Smt. A. Lakshmikutty and others*, ; *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, ; *Krishan Lal Vs. State of Jammu & Kashmir*, ; *State Bank of Patiala and others Vs. S.K. Sharma*, ; *Rajendra Singh Vs. State of Madhya Pradesh and others*, ; *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, ; *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, ; *State of Punjab Vs. Ragbir Chand Sharma and Another*, ; and *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, .

16. In *Shilpi Bose (supra)*, the Apex Court has held that order of transfer/posting "issued by the competent authority did not violate any of her legal right." The employee holding a transferable post cannot claim any vested right for his/her posting at a particular place.

17. In *Atmaram Sungomal Poshani (supra)*, the Apex Court in crystal clear words observed that an employee fails to join at the transferred place, he exposes himself to the disciplinary proceedings for disobedience of the order. The employee cannot avoid the compliance of the transfer order. In *Addisons Paints & Chemicals Ltd. v. Workman* AIR 2001 SC 436, a similar view has been reiterated and it has been held therein that refusal to report for duty upon transfer amounts to misconduct. Even if the transfer order is bad for some reason, the employee must ensure compliance of the order first and then raise the issue with the employer for redressal of his grievance.

18. In *State of U.P. and Others Vs. Gobardhan Lal*, , the Hon"ble Supreme Court held as under:-

"It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine

for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

(Emphasis added).

19. Similar view has been reiterated in *Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others*, .

20. The transfer order may cause great hardship as an employee would be forced to have a second establishment at a far distant place, education of his children may be adversely affected, may not be able to manage his affairs and to look after his family. This aspect was also considered by the Apex Court in *State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others*, , wherein it has been held that it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration.

21. The issue of "malus animus" was considered in *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, , wherein the Hon'ble Supreme Court has held that the High Court would be justified in refusing to carry on investigation into the allegation of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition and burden of establishing mala fide lies very heavily on the person who alleges it and there must be sufficient material to establish malus animus.

22. Similarly, in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , the Hon'ble Supreme Court held that a transfer is mala fide when it is made not for professed purpose, such as normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. The Court further observed as under:-

"Secondly, we must not also over-look that the burden of establishing mala fides is very heavy on the person who alleges it.... The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other, not because of any special status... but because otherwise,

functioning effectively would become difficult in a democracy."

23. The Hon"ble Supreme Court in Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, ; and Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, has made similar observations.

24. In M. Sankaranarayanan, IAS Vs. State of Karnataka and others, , the Hon"ble Supreme Court observed that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise or conjecture."

25. In N.K. Singh (supra), the Hon"ble Supreme Court has held that "the inference of mala fides should be drawn by reading in between the lines and taking into account the attendant circumstances."

26. In Arvind Dattatraya Dhande Vs. State of Maharashtra and others, , the Hon"ble Supreme Court held as under:-

"In view of the unimpeachable and eloquent testimony of the performance of the duties, it will be obvious that the transfer is not in public interest but is a case of victimisation of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances, as stated earlier, the transfer of the appellant is nothing but mala fide exercise of the power to demoralise honest officer who would efficiently discharge the duties of public office."

27. There has to be very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material. (Vide Kiran Gupta and Others Vs. State of U.P. and Others Etc., ; and Netai Bag and Others Vs. The State of West Bengal and Others,).

28. In State of Punjab v. V.K. Khanna and Ors. AIR 2001 SC 343, the Hon"ble Apex Court examined the issue of bias and mala fide, observing as under:-

"Whereas fairness is synonymous with reasonableness- bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice.... In almost all legal inquiries, "intention as distinguished from motive is the all-important factor" and in common parlance a malicious act stands equated with an intentional act without just cause or excuse."

29. Similar view has been reiterated in *M/s. Samant and Another Vs. Bombay Stock Exchange and Others*, .

30. In *Dr. Balkrishna Pandey v. State* 1997 Ad 1038 a Division Bench of this Court has held that if an employee is at a station for a long time and the transfer is made administratively only on that ground, it cannot be a case of mala fide.

31. The Hon^{ble} Supreme Court in *Sarvesh Kumar Awasthi v. U.P. Jal Nigam*, : (2003)11SCC740 held as under:-

"In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, 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. 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."

32. Transfer effected as a punitive measure is also not permissible. Whether a transfer is punitive or not is a question of fact, as held by the Hon^{ble} Supreme Court in *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another*, . It was permissible for the Court to go behind the order and find out if it was punitive in nature.

33. In *Gobardhan Lal (supra)*, the Apex Court held as under:-

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

(Emphasis added)."

34. Similar view has been reiterated by the Apex Court in *State of U.P. and Others Vs. Siya Ram and Another*, .

35. In *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*, ; and *Jasvinder Singh and Others Vs. State of Jammu & Kashmir and Others*, , the Apex Court held that burden of proving mala fides is very heavy on the person who alleges it. Mere allegation is not enough. Party making such allegations is under a legal obligation to place the specific materials before the Court to substantiate the said allegations.

36. It is settled legal proposition that in case allegations of mala fide are made against any person he is to be impleaded by name, otherwise the allegations cannot be considered. (Vide State of Bihar and Anr. v. P.P. Sharma, IAS. and Anr. AIR 1992 SC 1260; Dr. J.N. Banavalikar v. Municipal Corporation of Delhi and Anr. AIR 1996 SC 326; All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others, ; & I.K. Mishra Vs. Union of India and Others,).

37. In Federation of Railway Officers Association and Others Vs. Union of India (UOI), , the Apex Court has held that the allegation of mala fide has to be specifically made and the person against whom such allegations are made has to be impleaded and in his absence such allegations cannot be taken into consideration.

38. In this case, neither the authority which wanted to accommodate Dr. Dinesh Kumar nor Shri Dinesh Kumar had been impleaded before the Tribunal. Even before this Court, Dr. Dinesh Kumar has been impleaded without leave of the Court. A period of five years has passed but no notice has been issued to him. In view of the above, the allegations of mala fide cannot be considered.

39. In Director of School Education v. O. Karuppa Thevan , the issue of transfer in mid academic session was considered by the Hon"ble Supreme Court and it was held that "the fact that children of the employee are studying should be given due weight, if the exigencies of the service are not urgent." Therefore, it is for the employer to examine as to whether transfer of an employee can be deferred till the end of the current academic session. The Court has no means to assess as what is the real urgency of administrative exigency.

40. In Suresh Chand Sharma v. Chairman, UPSEB and Ors. AIR 2005 SCW 1133, the Hon"ble Supreme Court deprecated the transfer under political pressure. In Lokesh Kumar, P.C.S. Vs. State of U.P. and others, , this Court has held that transfer in colourable exercise of power without administrative exigency only on political or extraneous consideration is liable to be set aside. The transfer of an employee must be made considering the administrative exigency and not at the whim of any administrator/ politician, including the Ministers, for the reason that in such a case transfer order may be passed for extraneous consideration as held by this Court in Director v. Nathi Lal 1995 (2) UPLBEC 1121. In Pratap Narain Srivastava v. State of U.P. and Ors. 1995 (1) ESC 509; Pradeep Kumar Agrawal v. Director (1994) 1 UPLBEC 189; Sheo Kumar Sharma and Ors. v. District Shiksha Adhikari, Kanpur Dehat and Ors. (1991) 1 UPLBEC 690; Smt Gayatri Devi v. State of U.P. 1997 (2) UPLBEC 925, Pradip Kumar v. Director Local Bodies 1994 (1) UPLBEC 156; Pawan Kumar Srivastava Vs. U.P. State Electricity Board and Others, ; Shiv Kumar Sharma v. Basic Shiksha Adhikari 1991 (1) UPLBEC 69; and Gobardhan Lal Vs. State of Uttar Pradesh and others, , it has categorically been held that a transfer order passed under influence of any other person cannot be sustained in the eyes of law.

41. In view of the above, the legal position can be summersied that transfer is a

condition of service. It does not adversely affect the status or emoluments or seniority of the employee. The employee has no vested right to get a posting at a particular place. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required. There is a very little scope of judicial review by the Court/Tribunal against the transfer order and only if it is found to be in contravention of the statutory Rules or for mala fide that the Court can interfere. This is for the reason that a transfer order does not violate any legal right of the employee. Transfer policy of the State does not have any statutory force. It merely provides for guidelines for the understanding of the Departmental personnel. However, transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee not under political pressure. If a party alleges mala fides, the burden to prove it lies upon him and it is to be proved by taking appropriate pleadings and the person against whom the allegation of mala fides are alleged, should be impleaded by name. The Court must examine the case from all angles to find out whether the order is punitive or not.

42. If a transfer order is passed during the pendency of the disciplinary proceedings, the Court may examine as to whether the order is punitive in nature as it may also be necessary to facilitate the proceedings and as a preventive measure of tampering with the evidence or witnesses.

43. Once a transfer order is passed, the Competent Authority has a right to cancel it or modify it, even after it stood executed. The transfer order must be passed by the Competent authority and employee should be relieved for joining at the transferred place, if it is necessary to relieve him formally. There is no prohibition to post both the spouses at different places, if they are in service, and cannot be adjusted at the same place or services of one of them is required in administrative exigency at a different place. Same remains the position of mid-academic session. The employer may consider and keep this aspect in mind, but he cannot compromise with administrative requirement.

44. The case requires to be examined in view of the aforesaid settled legal proposition. After assessing the entire factual and legal position, the Tribunal recorded the following findings:-

1. Dr. Dinesh Kumar had been transferred to Agra in accordance with para 3.1.4 of the Rules 1977.

2. The transfer order of the petitioner was in public interest and no mala fide can be attributed in transfer of the petitioner.

3. The guidelines for transferring the employee in mid-academic session provided only not to transfer the employees as far as possible, therefore, it did not confer any statutory right to challenge the transfer order on this ground.

45. Learned counsel for the petitioner did not point out any statutory provision

which has been violated while passing the transfer order, which warrant this Court to interfere against the impugned order. The officer, who wanted to accommodate Dr. Dinesh Kumar at Agra, after transferring the petitioner, nor Dr. Dinesh Kumar had been impleaded before the Tribunal. Even, before this Court only Dr. Dinesh Kumar has been impleaded without seeking any permission of the Court. We fail to understand how such a course is available to the petitioner. Till today, notice has not been issued to Dr. Dinesh Kumar, though petition is pending before this Court for more than five years. Thus, the allegations of mala fides can not be taken into consideration. It is no one's case that the order had been passed by the Authority not competent to pass the transfer order. As the transfer order was passed in 1998, there is no occasion for this Court to examine the issue further.

46. In view of the above, we do not find any force in the petition. It is accordingly dismissed. No costs.