
(2007) 01 RAJ CK 0070
In the Rajasthan High Court

Ganesh Chandra Joshi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 RLW 1169

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks to quash the order Annex.7 dated 18.4.2006 and order Annex.13 dated 24.5.2006 passed by the respondent No. 3.

2. I have heard learned Counsel for the parties.

3. The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially appointed on the post of B/R Grade II on 18.1.1983 with the respondents. During his service tenure, the petitioner was posted to various places and performed duties at Bhutan, J & K, Uttar Kashi, Mijoram, Arunachal Pradesh etc. Lastly, the petitioner was transferred to Bikaner which according to the counsel for the petitioner is a static formation. However, while the petitioner was posted at Bikaner, he was attached to Hanumangarh by order Annex. 1 which according to the petitioner is a non-static formation. The petitioner represented to the higher authorities. However, in the meantime, the petitioner was transferred to 337 SPL/95 RCC (P) Chetak, Jaisalmer vide Annex.7 dated 18.4.2006. The petitioner by communication dated 19.4.2001 Annex.8, requested the respondent No. 3 for payment of pay and allowance for the month of March and April 2006, Ration Money w.e.f. 07.3.2006 onwards, Ration money during past leave periods, transfer grant, luggage charge, T.A. for himself and family i.e. wife and son and one month pay to plan his move to the new place of

transfer in compliance of the order Annex.7 dated 18.4.2006. It appears that on transfer of the petitioner to the Unit at Jaisalmer i.e. 337 SPL/95 RCC (P) Chetak, Jaisalmer, the petitioner has been paid his outstanding legitimate dues as per order of the HQ DGBR fax dated 23.5.2006 before he moved out. Vide Annex.R-18 the petitioner was paid a sum of Rs. 12,100/- as pay advance, Rs. 36,900/- as transfer incidentals including cash TA advance and pay and allowance for Feb., 2006 amounting to Rs. 6600/-. In the meantime, the location of the unit to which the petitioner was posted i.e. 337 SPL/95 RCC (P) Chetak, along with five other units moved to Arunachal and therefore, instead of directing the petitioner to join at Jaisalmer, he was directed to join the unit at Arunachal. The petitioner was issued the Movement order on transfer to the said unit vide Annex.13 dated 24.5.2006. In compliance of the transfer order, it is stated by learned Counsel for the petitioner that the petitioner has joined the new unit i.e. at Arunachal in the month of November, 2006.

4. It is contended by learned Counsel for the petitioner that the transfer of the petitioner is in violation of the transfer policy issued by the Government of India, Ministry of Shipping and Transport, BRDB letter No. F. 114 (02)/ 865/pers/22366 DGBR/ E2A (T&C) dated 03 February, 1976. According to Clause (e) of the said policy, a personnel of Nonstatic units may be attached to static or non-static units as required. Personnel of static units/formation will, however, not be attached to other units. According to the learned Counsel for the petitioner, the petitioner was attached to Hanumangarh unit which is Non-static. Be that as it may, the petitioner has been transferred from Bikaner to Jaisalmer and Unit at Jaisalmer to which the petitioner was transferred i.e. 337 SPL/95 RCC (P) Chetak, which is a non-static formation but it has moved to Arunachal which is a static formation and at any rate, the petitioner has joined the unit at Arunachal which is a static formation. Even otherwise, the transfer is an incident of service. Even if it may be in violation of the administrative instructions, but it does not confer any right to a person transferred in the exigency of service. During the pendency of the writ petition, by order dated 04.7.2006 the respondents were directed to dispose of the representation submitted by the petitioner as was referred in the Message dated 23.5.2006. However, subsequently by order dated 5.10.2006, the respondent No. 2 was directed to consider and dispose of the representation already submitted by the petitioner as referred in communication Annex.12 dated 23.5.2006. The representation submitted by the petitioner came to be decided by the respondent by a well reasoned and speaking order dated 23.10.2006 which was communicated to the petitioner and it has been ordered that the transfer of the petitioner was in the larger interest of the Organization. While deciding the representation, the performance of the petitioner was also noticed which reveals that the performance of the petitioner at Bikaner was unsatisfactory. He was not found suitable to continue at Bikaner in view of his poor performance of the duties.

5. During the course of arguments, learned Counsel contended that the transfer of the petitioner suffers from malice. However, in the writ petition, no malice has

been alleged, so much so, the person against whom the malice is alleged, has not been impleaded as party non-petitioner. This shows that up to the date of filing of the writ petition, there was hardly any material for levelling any allegation of malice but in the rejoinder, certain allegations have been levelled. Be that as it may, at the time of transfer of the petitioner, there was no material to allege that the transfer was outcome of the malice.

6. In reply, the respondents categorically came with a case that the performance of the petitioner was not found satisfactory during the period of his tenure with Chetak Headquarters at Bikaner. The petitioner has been issued with performance counseling on various occasions by the Staff Officers as well as Chief Engineer (P), Chetak vide Annex.R/1 and Annex.R/2. It has also been averred that the petitioner was not suitable for the office work and therefore, he was directed to proceed on temporary attachment to 49 BRTF vide Headquarter Movement Order No. 11209/OUT/44/El Camp dated 4.3.2006 keeping in view the site work in peak working season. It has also been averred that the Chief Engineer is empowered to mobilize the resources and personnel wherever required. The respondents came with a case that similarly situated persons such as G.S.- 155342H BR-1 Hansraj, GS-163021A BR-1, Shelandra Kumar and GS-155489K BR-1 Abhey Ram have also been sent for site work and posted to the various places vide Movement Orders Annex.R-7,R-8 and R-9 and therefore, the petitioner has not been discriminated in transferring him from Bikaner to Jaisalmer and on movement of Unit from Jaisalmer along with other five units to Arunachal Pradesh.

7. From the facts stated, it is clear that not only the petitioner, but the similarly situated persons have also been transferred and the transfer of the petitioner is in the larger interest of the Organisation as per the availability of work on a particular site or place. The petitioner was transferred from Bikaner to Jaisalmer, but since there was paucity of work and keeping in view the larger interest of the organisation, the unit to which the petitioner was transferred, along with five other units, has been shifted to Arunachal Pradesh and therefore, not only the petitioner has joined at Arunachal Pradesh but all the persons who were posted to the unit 337 SPL/95 RCC (P) Chetak have joined at Arunachal Pradesh. Even the administrative Instructions Annex. 14 dated 03.2.1976 does not speak that a person cannot be transferred from one unit to another unit. It makes hardly any difference even if the person is transferred from Static unit to Non-static formation. It cannot be said that any statutory right has been violated in such transfer.

8. Learned Counsel appearing for the respondents submits that the petitioner requested for payment of pay and allowance, one months salary, Transfer grant, luggage charges etc. vide Annex.8 dated 19.4.2006 has not been disclosed by the petitioner in his writ petition as having been paid by the respondents, and therefore, according to learned Counsel for the respondents the writ petition deserves to be dismissed for concealment of material facts. Be that as it may,

the order of transfer has been executed and acted upon as back as in the month of May 2006.

9. In *Shilpi Bose (MRS) and Ors. v. State of Bihar and Ors.* 1991 Supp. (2) SCC 659, Hon"ble Supreme Court held as under:

The Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order; instead affected party should approach the higher authorities in the department. If the courts continue to interfere with the day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.

10. In catena of decisions i.e. in *Union of India and Others Vs. S.L. Abbas*, , *State of Uttar Pradesh v. Dr. D.N. Prasad National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others*, , *State of U.P. and Anr. v. Siya Ram and Anr.* (2004) 1 SCC 405 the Hon"ble Supreme Court has taken the similar view.

11. In view of the decision of Hon"ble Supreme Court in *Shilpi Bose (MRS) and Ors. v. State of Bihar and Ors.* (supra) and the decisions of Hon"ble Supreme Court referred herein above, as also the discussion made herein above, the impugned transfer order calls for no interference.

12. In this view of the matter, I do not find any merit in the writ petition and accordingly it is dismissed. Stay petition also stands dismissed. There shall be no order as to costs.