
(2001) 09 GAU CK 0023

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 140 (k) of 2001

Gurnam Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Constitution of India, 1950 — Article 142, 226

Citation : (2001) 3 GLT 150

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : B. Deb Nath, for the Appellant; K. Meruno, Sr.C.G.S.C., for the Respondent

Judgement

B. Lamare, J.—Heard Mr. B. Deb Nath, learned Counsel for the Petitioner and Mr. K. Meruno, learned Sr. Central Govt. Standing Counsel for the Respondents.

2. This petition relates to the transfer of the Petitioner vide order dated 9th June, 2001, Annexure-2 to the writ petition. This Court by order dated 28.4.2001 in Misc. Application No. 54 (K) 2001 has fixed this case for hearing on interim relief on 10.9.2001. When the writ petition was posted before this Court on 10.9.2001, the Respondents have filed counter affidavit. On that date both the learned Counsels submitted that instead of hearing the prayer for interim stay, the entire main petition itself can be disposed of. On the consent of the parties this writ petition is heard on merits at the notice motion stage. The case in short compass is that the Petitioner by impugned order dated 9.7.2001 was transferred from Rangapahar Headquarter 137 Works Engineer to C.E. HQ Central Command Lucknow by transfer order at Annexure-2 to the writ petition. The said transfer order was served on the Petitioner soon after his return from leave when he came back to Rangapahar on 6.8.2001. The main contention of the Petitioner in this writ petition is that according to the revised policy, Annexure-4 to this writ petition, the transfer of the Petitioner was violative of that policy, for according to the Petitioner he is entitled to be retained in the same post for a period of 3 to 4

years, according to this policy. Another point raised by the Petitioner is that his son who is a B.A. 2nd year student and studying in Dimapur Govt. College is in the midst of his studies and it would be very difficult for the Petitioner to leave his son alone in Rangapahar as he is yet to complete his studies for the B. A. Course. The next contention of the Petitioner is that inspite of his representation regarding his transfer, the Respondents have not considered his representation till the filing of this writ petition. Being highly aggrieved, the Petitioner has approached this Court for a writ of mandamus to quash the said impugned transfer order and to direct the Respondents not to transfer the Petitioner.

3. In the instant writ petition the Petitioner has averred that the transfer was malafide and that it is violative of aforesaid guidelines. The Petitioner had laid emphasis on the study of his son as apparent from the statement in the writ petition that his son would complete his B.A. course in June, 2003 and in the event of his transfer, the Petitioner's son will be left without proper care and that his further studies shall be severely affected. More so, when the said son of the Petitioner is contemplating of joining the army and doing his training in NCC in the college.

4. The Respondents in their affidavit in opposition contends that the transfer of the Petitioner is in accordance with the policy in the army and that the officer being a Class-I officer has to be transferred keeping in view the exigency of his service and administrative requirements to suit the organisational interest. The Respondents also contends that the Petitioner has no ground in invoking the extraordinary jurisdiction of this Court as the Petitioner is holding a transferable post and that there is no malafide in the transfer not it is violative of the guidelines. In support of their contention the Respondents also have annexed the revised policy of transfer for which according to the Respondents, the Petitioner can continue in the field area only for a period of 2 to 3 years. In the instant case the Petitioner has already completed 2 years and 5 months, contends the Respondents.

5. I have heard learned Counsel for the parties and also perused the records.

6. Without going into the facts of the case which is not permissible while exercising power under Article 226 of the Constitution of India, the decisions in regard to the transfer has been considered by the Apex Court in many cases and a catena of decisions has been made by the Apex Court as a criteria regarding the transfer.

7. It is not disputed in this case that the Petitioner's post is transferable and that posting and transfers are incidents of service. The Petitioner also never raised any question during his previous transfers from place to place as shown in Annexure-5 to the writ petition as well as paragraph 3, page 7 of the counter affidavit.

8. Mr. Deb Nath, learned Counsel for the Petitioner draws the attention of this Court to the case of Director of School Education Madras and Ors. v. O. Kapruppa

Thevan and Anr. reported in 1994 Sup (2) SCC 666, wherein the Apex Court has directed that the Appellant should not be transferred till the end of the current academic year. The order was passed keeping in view that the children of the Respondent at the relevant time were school going children and that the studying of the children should be given due weightage. In the instant case, the son of the Petitioner is a B.A. 2nd year student which is quite distinguishable from the case of Director of School Education, Madras and Ors. (supra). On the other hand the son of the Petitioner has attained the age of majority and is in the position to take care of himself even if the Petitioner is transferred.

9. In the case of Union of India and Others Vs. S.L. Abbas, the Apex Court in paragraph 7 of the judgment has held as follows:

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.

10. In the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, in paragraph 4 of the judgment the Apex Court has held as follows:

In our opinion, the courts should not interfere with a transfer order which are 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 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.

11. In the case of Ashim Kr. Baruah and Ors. v. Tanushyam Borgohain and Ors. reported in 1998(3) GLT 183, a division bench of this Court in paragraph 5 of the judgment has held as follows:

It is a settled principle of law that holder of a transferable post cannot insist on being posted at a particular place. Similarly, it is also a proposition of law that interim orders which overreach or cover the final relief, should not be passed and the Supreme Court has deprecated time and again the practice of granting

interim orders which practically give the principle relief sought in the writ petition.

While passing this judgment, the division bench of this Court has also taken into consideration the case of *Shilpi Bose v. State of Bihar* (supra).

12. In the case of *Dr. Pranabjyoti Deka Vs. State of Assam and Others*, a division bench of this Court has held that:

Transfer is an incident of service. No government servant of any department claim a vested right to remain at any particular place unless a transfer order is shown to be in contravention of any statutory rule or palpably malafide. The courts ordinarily do not interfere with orders of transfer.

In the above case the attention of the court was even drawn to the fact that the transfer was effected at the behest of the minister to accommodate Anr. person. Even in such situation the division bench of this Court has refused to interfere with the transfer.

13. In the case of *Kumsong Pangging Vs. State of Arunachal Pradesh and Others*, this Court has held in paragraph 8 of the judgment as follows:

The Govt. employee has no legal right to insist for being posted at any particular place unless it is provided his service condition, he has no choice in the matter of posting. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. After all, the Govt. must look to the welfare of the employees and when making an order of transfer, the Govt. should usually bear in mind that aspect of the matter but at the same time the Govt. must strike a balance between the public need and the need of the officer and it is for the only to strike that balance. The court usually does not apply the measuring rod or scale to find it out.

While passing the judgment, the court has also taken into consideration the law laid down by the Apex Court in many cases regarding the question of related hardship involved in the transfer. On the other hand in the case of *State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others*, the Apex Court has observed that the court cannot go into the question of relative hardship involved in the transfer. The only alternative to the Govt. servant is to make a representation to the Govt. and it is for the Govt. to consider the same and take appropriate action.

14. In the case of *State Bank of India Vs. Anjan Sanyal and Others*, the Apex Court has held that:

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 malafide or that the service rules prohibit such transfer or that the authorities, who issued the order, has not the competent to pass the order.

15. Coming to the instant case and on perusal of records, it is noticed that the

question of malafide raised by the Petitioner has not been established. From the records, there is no intention on the part of Respondents to make an arbitrary transfer of the Petitioner nor to accommodate anybody else. The transfer was made purely according to the exigency of service and that too after the Petitioner has been allowed to remain 2 years and 5 months in the present post. There is also no frequent transfer of the Petitioner to make out the case of malafide transfer, but as discussed above, the transfer was done as in earlier occasions according to exigency and requirement of service.

16. Regarding the next contention of the Petitioner about the studies of his son, as observed above, his son is already a student of B.A. 2nd year and is not a school student which is quite distinguishable from the case of Director of School Education, Madras and Ors. (supra).

17. Mr. Deb Nath, learned Counsel for the Petitioner while controverting the above points have referred to the case of B. Varadha Rao Vs. State of Karnataka and Others, In the said case the Apex Court has observed that:

...unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation.

But in the same case the Apex Court had also observed that:

...it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration.

In the instant case, even if the claim of the Petitioner for retaining him till June, 2003, i.e. the completion of the study of his son is taken into consideration, the Petitioner would remain more than the normal period of his transfer as he has already served 2 years 5 months in this capacity till date. Therefore in the same case of B. Varadha Rao v. State of Karnataka and Ors. (supra), the Apex Court has said that it is an accepted principle that in Government service a transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees.

18. Mr. Debnath, learned Counsel for the Petitioner further draws the attention of the court to the case of B.C. Chaturvedi Vs. Union of India and others, and submits that the High Court being a court of plenary jurisdiction has an inherent power to do complete justice between the parties similar to the Supreme Court under Article 142 of the Constitution of India. Therefore the learned Counsel contends that in the instant case also this Court can exercise its judicial review and grant the relief to the Petitioner.

19. In the case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, the Apex Court following the law laid down in the case of Tata Cellular Vs. Union of India,

in paragraph 25 of the judgment has held as follows:

This principle was reiterated in *Tata Cellular v. Union of India* in which it was *inter alia*, laid down that the court does not sit as a court of appeal but merely reviews the manner in which the decision was made particularly as the court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The court pointed out that the duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its power ?
2. Committed an error of law;
3. Committed a breach of the rules of natural justice;
4. Reached a decision which no reasonable tribunal would have reached; or
5. abused its powers;

20. In the instant case the criteria for which judicial review is required has not been established by the Petitioner and none of the criteria laid down by the Apex Court as quoted above have been called for which requires a judicial review. In view of the discussions and the settled law as quoted above, the transfer of the Petitioner in the instant case cannot be said to be malafide or unjustified. More so, when the representation of the Petitioner was duly considered by the Respondents and by order dated 7.9.2001, Annexure-R1 to the rejoinder affidavit filed by the Respondents, his representations dated 25th June, 2001 and 6.8.2001 were duly considered and not accepted. To make the matter clear the said Annexure-R1 dated 7.9.2001 is reproduced below:

Tele: 3019621 Sena Sachiv Shakha (MS-12A) SenaMukhalaya Military Secretary's Branch Army Headquarters Kashmir House, Rajaji Marg DHQ PO, New Delhi-110011

A/55751/3376/MS12A 07 Sep 2001 Headquarters eastern Command (MS) Fort William Kolkata-21 POSTING :ENOF OFFRS

1. Ref Chief Engineer Eastern Command Kolkata letter No. 131052/424/14/Engrs/EIB dt. 04 Sep 2001 vide which applications dated 25 June 2001 and 06 Aug 2001 in respect of SL-3376 Maj Gurnam Singh of HQ 137 Works Engineers have been received.

2. Vide his application dated 25 Jun 2001, Maj Gurnam Singh has requested for an extension of tenure upto July 2003 on grounds of his son's education. Vide his application dated 06 Aug 2001, the officer has requested for cancellation/deferment of posting to Chief Engineer Central Command Lucknow, issued vide this Headquarters (MS 12A) posting order No. A55002/PO-86/MS12A dated 09 July 2001.

3. The requests of the officer made vide his applications under reference have

been examined. The requests of the officer were considered sympathetically but not accepted.

4. The officer may please be informed accordingly

Sd/- AYDIMEI Lt. Col AMS-12 for Military Secretary Copy to : CE Eastern Command HQ 3 Coips (Legal Cell) CESE Falls Shillong PO 137 WKS Engrs.

A bare reading of the said order shows that the representations of the Petitioner regarding his son's education and other grievances of the Petitioner were duly sympathetically considered but the same were not accepted.

21. As per the law laid down regarding interference with the transfer cases, the Respondents are the best persons to know about the same. Therefore this Court is of the considered opinion that the impugned transfer order calls for no interference and the writ petition is devoid of merits and accordingly it is dismissed.

22. Interim order dated 10.8.2001 stands vacated.