

(1999) 01 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : SWP 1248 Of 1998

Habib-ul-lah Bhat

APPELLANT

Vs

Divisional Commissioner

RESPONDENT

Date of Decision : 01-01-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 27, 31

Citation : (1999) KashLJ 686 : (1999) KashLJ 586 : (1999) KashLJ 585 : (1999) 1 SriLJ 125 : (1999) SriLJ 125

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : M.H.Attar, G.A.Lone, Advocates appearing for the Parties

Judgement

1. The petitioner is a Girdawar Qanoongo on the establish of Revenue Department and has been transferred by respondent NO.2 from Pahalgam

to Anantnag vide order No. 53436/Estt dated 08/07/1998 and this order is impugned through this writ petition on the grounds that the order

impugned has been passed on the basis of undisclosed public complaints and is in the nature of punishment and not in the interest of administration,

besides, a malafide exercise of power. It is further contended that the order impugned is without jurisdiction.

2. The respondents have filed reply to the admissibility of the writ petition which is supported by an affidavit of respondent No.2. In the reply it is

pleaded that the petitioner has functioned as Patwari Halqa Pahalgam in the first instance for about more than two and a half years w.e.f.,

14.10.1981 to 23.05.1984 and the in the year 1984 the Patwari record gutted in suspicious circumstances and the petitioner was succeeded by

one Shri Makhan Lai who reconstructed the record and worked as Patwari Halqa

Pahalgam till he migrated from the valley in the year 1990 and after his migration the petitioner again took over as Patwari Pahalgam and continued again for a period of more than six years w.e.f, 13.08.1990 to 7.11.1996. He was promoted to the post of Girdawar in the year 1996 but was continued to be Incharge Patwari Halqa Pahalgam from 8.11.1996 to 11.12.1996. The petitioner was adjusted against the post of Additional Girdawar in Tehsil Office Pahalgam when the post had become available due to transfer of one Shri Krishen Singh, but his continuation as Incharge Patwari Halqa Pahalgam was not interrupted. It is further stated in the reply that in the year 1997, people of Pahalgam registered their protest with the Divisional Commissioner against the prolonged posting of the petitioner and a communication was issued by the Divisional Commissioner to transfer the petitioner from Pahalgam vide communication bearing No.54PtWEsstt dated 13.10.1997 and in the month of April, 1998 the Additional Deputy Commissioner had gone on official tour to Anantnag who was approached by the people of Pahalgam and was told that the revenue records have been tampered with by the petitioner, consequent upon which, a report was called from Naib Tehsildar Pahalgam who substantiated the allegations through his written report which stands forwarded to the Assistant Commissioner Anantnag Vide No,172Estt dated 12.05.1998 for conducting an enquiry into the matter. The respondents have given the details of the allegations through written reply to submit that the petitioner has played havoc with revenue record and has misused and abused his official capacity and has resorted to illegal and fraudulent entries in the revenue record, so much so, the State has been constrained to pay compensation even for the land which belongs to the State, specific instance of mistrust have been detailed in the reply. A specific averment is made in the reply that the petitioner has been transferred from Tehsil Pahalgam to the Tehsil he belongs viz., Anantnag and the transfer has been made because inquiry has been initiated into the matter. It is also averred that the petitioner has withheld the record with him and is bent upon to defeat and frustrate the preliminary enquiry, which stands initiated against him.

3. In this writ petition, it is only the order of transfer validity of which is being scrutinized by the court, therefore, I refrain from expressing any

opinion about the alleged bungling attributed to the petitioner, but the reasons which have prompted the respondent No. 2 to transfer the petitioner

have to be looked into in the backdrop of averments made by the respondent in the reply and the allegations disclosed by the respondents

undoubtedly do call for an affective enquiry, that too expeditiously,

4. The petitioner's contention that his transfer has been made because of communication of respondent No. 1 is not justifiable because had the

respondent No.2 chosen to act upon the direction of the respondent No.1, the petitioner would have been transferee! in the month of October,

1997 itself which was not done which depicts that the Divisional Commissioner's direction was not carried out and petitioner's transfer cannot be

said to have been made on the direction of Divisional commissioner. The reply of the respondents is not wanting in this respect and establish the

fact that the transfer of the petitioner has been made because of pendency of Inquiry and these facts unfold the fallacy of petitioner's contention that

his transfer has been made on undisclosed complaints.

5. The impugned order is also challenged seeking it to be a premature one and petitioner alleges it to be a malafide exercise of power. The

respondents have made it amply clear in their reply giving specific dates about the petitioner's posting at pahalgam which reveal that he has

continued for about a decade at Pahalgam, be it in the capacity of a Patwari or Girdawar, so much so even after his promotion as Girdawar he has

been allowed to continue as Incharge Patwari and these relevant facts have been suppressed by the petitioner in the writ petition which suspension

renders the writ petitioner liable to dismissal. Moreso, the challenge on the ground of prematurity of transfer is nothing but a bald assertion.

Regarding ground of malafides, the respondent No. 2 has not only refuted the averment, but has also given a plausible explanation which

necessitated transfer of petitioner and the reply is not lacking to depict that the impugned order has been passed because of pendency of inquiry

and relevant here is to examine. That when an enquiry is contemplated or is initiated, is the competent authority powerless to transfer such

government servant to some other place and if the reply is in affirmative it will mean that even if scams and scandals come to the notice of the

authority, it cannot make the transfer unless the guilt is proved and if this would

be the position in law it would certainly provide a licence to a corrupt government servant to continue with corrupt practice unless the inquiry is concluded after following the principles of natural justice. Here Rule 31 of Jammu and Kashmir Civil Services (classification, Control and Appeal) Rules of 1956 assumes relevance and significance which empowers the competent authority to place a government servant under suspension when an inquiry into his conduct is contemplated or is pending. This government instructions appended to the said Rule make it imperative upon the functionaries of the State to exercise the discretion vested in them with due care and caution and where continuance in office of a government servant is likely to prejudice an inquiry the authority instead of placing him under suspension has the power to transfer him to some other station or office and the government condition so appended to Rule 31 has been pressed into service by the respondents in their reply and it is specifically stated that the petitioner has been transferred so as to ensure free, fair and uninfluenced inquiry and considering the stand taken by the respondents, I am of the opinion that the competent authority is within its powers to transfer a government servant when the inquiry is contemplated or is pending so that possibilities of subverting the inquiry on the part of public servant who is facing the inquiry are minimised and on the strength of circumstances of the case I have no hesitation to hold that the impugned order of transfer has been passed neither as a measure of punishment nor on account of malafides, but fact of the matter is that the petitioner's transfer is warranted in the public interest, besides efficiency in the public administration and has been passed reasonably and the reply filled by the respondent No.2 is sufficiently convincing that the power has not been exercised on extraneous considerations nor for achieving an alien or oblique motive. The order impugned has been made for professed purpose and the said administrative action of respondent No. 2 is both just and fair, obviously the ground of malafides fails.

6. Now I would like to deal with the challenge of lack of jurisdiction thrown to the order impugned on the ground that the petitioner is working in the grade of Rs 50008000 (pre-revised Rs. 14002600) and it is urged that the power of transfer vests in the government or the Divisional Commissioner in terms of Civil Service Regulations and reliance is placed on

schedule I.C.{Delegation of Powers) Page 360361 which empowers

a classI officer to transfer and to order posting of officer whose scale of pay does not exceed Rs. 600 and to examine this contention, it is relevant

to find out as to what was the scale of pay attached to the post of Girdawar prior to 1985 and for this exercise it is important to look back to the

corresponding scale of pay prior to 1985 which is detailed in descending order hereinafter:

i). Rs. 50008000 Present pay scale.

ii). Rs. 14002600 Pay Scale allowed vide SRO 75, Pay Rules of 1992.

iii). RS. 11502050 Pay Scale allowed vide SRO 370, Pay Rules of 1987.

iv). Rs. 600925 Pay scale allowed vide SRO 91, Pay rules of 1982.

v). Rs. 280520 Prior to 1982,

vi). Rs.220430 In terms of SRO 149, Pay rules of 1973, refer to page 112 serial to numbers 31, 31 and 34.

vii). Rs. 100220 Prior to 1973.

7. To examine the competence of classI Officer, it has become imperative to look in retrospect, dating back to the year 1967, in which year reprint

of civil Service Regulations was published and Deputy Commissioner stands classified as ClassI officer (refer page 183 of 1st. Edition 2nd Reprint

1967, Civil Service Regulations Volume 1), for short reprint of 1967. In terms of said reprint a classI officer could exercise; power of transfer in

respect of an officer whose pay scale did not exceed Rs. 600 (refer page 222 and 223 of reprint of 1967), same pay scale viz., Rs. 600 has been

envisaged in 3rd., reprint of 1971 (refer page LII and LIII of schedule I.C. Delegation of powers 1st. Edition, Civil Service Regulations, Volume

1), 4th reprint of 1975 (refer page 284 and 285 of Schedule I.C. Delegation of powers 1st. Edition, Civil Service Regulations Volume 1), 5th

reprint of 1979 (Refer page 362 and 363 Schedule I.C Delegation of powers 1st. Edition), 6th Reprint of 1985 (refer page 360361 of schedule

LC. Delegation of powers 1st. Edition, Civil Service Regulations volume 2) and 7th reprint of 1991 (refer page 7677 Schedule I.C. Delegation of

powers 1st. Edition, Civil Service Regulations, Volume 2)

8. A bare perusal of provision of transfer contained in aforementioned reprints undoubtedly empowers a classI officer to make transfer of officers

whose pay scale does not exceed Rs. 600 and Mr. Lone's contention is that the power delegated to class I officer vide reprint of 1985 is upto Rs.

600 only, therefore, Deputy commissioner is not competent to pass the order of transfer, for the pay scale of the petitioner exceeds Rs.600.

9. True it is that in terms of Regulations the jurisdiction of transfer is available to a class I officer upto pay scale of Rs 600 and the scale of Rs. 600/

figures in all the reprints including those which have come into being prior to 1985. it is relevant to ascertain as to what was the pay scale attached

to the post of Girdawar way back in the year 1973 and perusal of Rule of 1973 depicts that the pay scale attached to the post of Girdwar

Qannugo was RS.220430. Thus, the pay scale was within the limit of Rs.600 which was revised in terms of J and K Civil Service (Revised Pay)

Rules of 1982 vide SRO 91 dated 20.03.1982 operative from 1st of January 1982 which undoubtedly crossed the limit of Rs. 600 but a rule

came to be incorporated in the said Rules in respect of delegation of powers which reads as under:

23 Delegation of powers. Delegation of powers in respect of transfers, sanction of leave etc., shall be exercised in the corresponding revised

scales by the authorities to whom these powers stand delegated at present.

It is manifestly clear that the pay scale attached to the post of Girdawar prior To 1982 was less than Rs. 600 and it was for the first time vide rules

of 1982 that the pay scale crossed the limit of Rs. 600 but by dint of aforementioned rule the power of transfer is available in the corresponding

revised scale to the authority to whom this power was delegated before rules of 1982 came into force. Since the power of transfer was available to

the Deputy Commissioner prior to 1982 Rules as the pay scale was below Rs. 600, this power came to be maintained with him in terms of rule 23

of Rules of 1982, reproduced hereinabove.

10. It is relevant to notice that in subsequent pay Rules also aforementioned rule stands incorporated, however, it numbers 21 in 1987 Rules and

16 in 1992 Rules.

11. In this view of the matter the pay scale having crossed the limit of Rs. 600 cannot oust the jurisdiction of the authority but the fact of the matter

is that Power remains with the authority to whom this power was available even prior to 1973.

12. The examination of Rules of 1973, 1982, 1987 and 1992 reveals that the Governor of Jammu and Kashmir while framing rules in exercise of his powers conferred by proviso 124 of the constitution of Jammu and Kashmir incorporated a provision in the statute by virtue of which powers came to be delegated inter alia in respect of transfer in the corresponding revised scale of pay to the authority to whom such power was available and the rule delegating the power of transfer is not qualificatory in nature but rule making device and instead of making incorporation in the reprints of civil service regulations, a rule in respect of delegation of powers has been incorporated in the statute which power is available to the rule making authority and such legislative device having been opted for, confers jurisdiction on a class I officer scalewise and examining the matter on the strength of said rules, the conclusion available is that the delegation of powers in respect of transfer has been validity exercised by the Deputy Commissioner and the challenge thrown is misconceived.

13. The law is no more res Integra that the power of transfer when exercised honestly, bonafide, reasonably and in public interest should not be interfered with but if it is exercised on extraneous considerations or for achieving an alien purpose or an oblique motive, it would amount to malafide and colorable exercise of power, more so, if the authority lacks jurisdiction to pass the order, the order is open to challenge but such challenge is not available to the petitioner because the impugned order has been passed bonafide by a competent authority, obviously the writ petition is not maintainable.

14. It requires to be noticed that Mr. Lone urged before the court that the inquiry against the petitioner is not being conducted in accordance with the procedure established under law. It is made clear that if any rights of the petitioner are violated during the course of such inquiry, the verdict which follows hereinafter shall not debar the petitioner from invoking the legal remedy, if available and advised.

15. For the aforementioned reasons, this writ petition is dismissed and the interim direction dated 15.07.1998 is vacated, however, no order as to costs.