

(2019) 06 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 11112 Of 2019

Harjeet Singh Bamba

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 20-06-2019

Acts Referred:

Citation : (2019) 06 MP CK 0008

Hon'ble Judges : Atul Sreedharan, J

Bench : Single Bench

Advocate : Vipin Yadav, Madhur Shukla

Final Decision : Dismissed

Judgement

1. The present petition has been filed by the petitioner who is aggrieved by the order dated 10/06/19 passed by the respondent No.1 and another order of even date also passed by the respondent No.1. By Annexure-P/4, the petitioner was transferred from Jabalpur to Shivpurkala of Morena Division. By the other order impugned, the respondent No.2 has been transferred back to Jabalpur from Katni after only a span of six months. It is also stated that the respondent No.2 was earlier working for five years at Jabalpur itself. The present petition has been filed on three grounds:-

2. The first one is the allegation of malafide by the respondents. According to the petitioner, the policy controlling the transfer of the petitioner gives him a tenure of three years at his present place of posting.

3. Learned counsel for the petitioner has also stated that the petitioner was a Lower Division Clerk whose nomenclature has now been changed to Assistant Grade III and is at the lowest rung of the ladder. He further submits that there are departmental instructions to the effect that people serving on this cadre ought not to be transferred out of the division.

4. Learned counsel for the petitioner has further stated that the petitioner has

been shunted out only for accommodating the respondent No.2. Under the circumstances, malafide is the first ground on which the impugned order has been questioned. He has also referred to the judgment of the Supreme Court passed in N.K. Singh Vs. Union of India reported in AIR 1995 SC 423 in which, according to the learned counsel for the petitioner, the ratio laid down by the Supreme Court is that where allegations of malafide have been levelled, the same cannot be dismissed summarily by the Court without calling for a reply from the party upon whom the malafide is alleged. This finds place at paragraph 20 of the judgment.

5. The second ground is that there is a minimal period of three years in which the petitioner is supposed to serve at Jabalpur before he can be transferred as per the policy.

6. The third is the transfer out of the Division.

7. Learned counsel for the petitioner has drawn the attention of this Court to Annexure-P/5 by which the respondent No.2 was transferred from Jabalpur to Katni. Thereafter, he has drawn the attention of this Court to both Annexures-P/4 and P/6 which are issued at the same place by which the petitioner is shunted to Shivpurkala in Morena and the respondent No.2 was brought back from Katni to Jabalpur.

8. In short, the arguments of the learned counsel for the petitioner is that the petitioner has been shunted out only to accommodate the respondent No.2. As regards the office instructions, the same have not been filed along with the petition and even assuming for the sake of an argument that there does exist such an office instruction that people at Grade III may not be shunted outside the division, the same does not create an indelible right in the petitioner to pass his entire service period in one division alone. It must be set in all fairness to the learned counsel for the petitioner that he has not opposed the proposition of law that a public servant does not have a right against transfer until and unless the same is vitiated either by malafide or by an order which is patently illegal having been passed by the authority not so empowered to transfer the public servant.

9. This Court now refers to the judgment put forth by the learned counsel for the petitioner in N.K. Singh's case wherein the petitioner had preferred an appeal against the order passed by the Central Administrative Tribunal which had dismissed his OA challenging his transfer from the post of Joint Director in the C.B.I to the post of Director General of the Bureau of Police Research and Development of the Border Security.

10. The facts in that case were unique. Mr. N.K. Singh in his capacity as Joint Director in the C.B.I. was investigating into the St. Kitts' affair where there were allegations of forgery of some documents and their involvement in that forgery of some persons having political patronage and that because of his impeccable reputation as an officer beyond approach he could not be replaced. He had alleged malafides in that case which were attributed to the then Prime Minister of

India, Mr. Chandrashekhar. It was the case of the petitioner N.K. Singh that in the phone tapping case of the then Prime Minister, the petitioner was investigating into the leads which led to the so-called Godman Nek Chand Gandhi alias Chandraswami against whom there were allegations of forgery of some documents relating to the St. Kitts' affair.

11. The petitioner in that case has alleged that government of the day, in order to wreak vengeance, caused his transfer from the Central Bureau of Investigation to the BSF.

12. The Supreme Court has observed in that particular case that there was no allegation in the petition that the appellant in that case was replaced by a pliable or less competent officer who may have facilitated the alleged ulterior purpose. Mr. Ram Jethmalani Sr. Advocate, who argued on behalf of the petitioner N.K. Singh in that case, also tried to carve out two categories of prejudice. One is prejudice to public interest and the other was prejudice to the personal interest of the appellant. As regards the prejudice to public interest, the Supreme Court held that the same must be specifically pleaded and material to substantiate the same must find its place in the petition and unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. The Supreme Court rejected this contention by holding that there is no allegation by Mr. N.K. Singh that his successor in the CBI was a pliable officer and held that it was not a case where an officer of inferior quality was to succeed the petitioner in that case and that the transfer would scuttle the sensitive investigation which were being conducted by the CBI under the supervision of the Mr. N.K. Singh.

13. Thereafter, the Supreme Court went on to examine the private right of the appellant based on the pleas of mala fides and contravention of the Tenure Rules.

14. The Supreme Court in that case held in paragraph 16 that the proposal for transfer of the appellant (Mr. N.K. Singh) from the CBI to the BSF as Inspector General of Police emanated in the ordinary course from the Ministry of Home Affairs and was occasioned by the urgent need to fill the post of Inspector General in the BSF with a suitable officer consequent upon the promotion of the senior most Inspector General in the BSF as Additional Director General, BSF and the Ministry of Home Affairs considered the petitioner (Mr. N.K. Singh) to be the most suitable person to occupy that post. Ultimately, the case was dismissed by the Supreme Court.

15. However, this Court considered it necessary to refer to paragraph 10 of the judgment which is the crux of the petitioner's case. The Supreme Court stated that it does not approve the manner in which the Tribunal proceeded to decide the case where allegations of mala fides having been made by the appellant of that case on affidavit. It was improbable for the Tribunal to have rejected them without even requiring a counter-affidavit to rebut them. The Supreme Court

held that the Tribunal's perception that the allegations made on affidavit by the appellant even without any rebuttal do not constitute the plea of mala fide to be incorrect by the Supreme Court.

16. The opening line of the paragraph itself of the Supreme Court says "We may observe" which goes to show that it was an orbiter of the Supreme Court. Without a doubt, an orbiter of the Supreme Court would also be binding upon all inferior courts until and unless there is a specific ratio of the Supreme Court which is contrary to the orbiter of a previous judgement.

17. In that particular case, mala fide was specifically alleged by the petitioner of that case against him by the Union of India. In this particular case, there is no mala fide which the petitioner has been able to make out that the respondent has towards him as to how they are personally or otherwise inimically inclined towards the petitioner on account of discharge of any official action taken by him. The contention that is only to accommodate the respondent No.2 cannot be stated to be malafide against the petitioner. Malafide has to be specific which shows a negative intent on the part of a person exercising authority on the petitioner on account of any action taken by the petitioner. That aspect being conspicuously absent in the petition or in the arguments cannot be deemed that there was malafide on the part of the respondent towards the petitioner. It is not adequate enough to merely plead malafide. It must be substantiated as to how the malafide has occurred and on what account the person exercising that malafide intention against the petitioner was motivated by way of discharge of any official function of the petitioner. Undisputedly, the petitioner, as so stated by the learned counsel for the petitioner, himself being an Assistant Grade III, the issue of malafide being non-specific and unsupported by any material against any of the respondents cannot be taken into account merely because it is alleged in the petition and that too, without substantiation. In this regard, the observation of the Supreme Court in paragraph 23 of the judgment deserves to be quoted "Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill- advised."

18. The observation of the Supreme Court, which has been quoted hereinabove, has been laid down as a ratio in several judgments of the Supreme Court and that of this Court also that transfers are not to be interfered with until substantial cause is made out by the petitioner.

19. Therefore, this petition lacks merits and is hereby dismissed.