

(1994) 08 AP CK 0012
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 258 of 1994

Harsharanjit Singh

APPELLANT

Vs

Rashtriya Chemicals and Fertilisers Ltd. and Others

RESPONDENT

Date of Decision : 03-08-1994

Acts Referred:

Fertilizer Corporation of India Employees (Conduct, Discipline and Appeal) Rules, 1972
— Rule 4

Citation : (1994) 3 ALT 270 : (1995) 1 APLJ 22 : (1995) 2 LLJ 488

Hon'ble Judges : Lingaraja Rath, J;B. Subhashan Reddy, J

Bench : Division Bench

Judgement

Lingaraja Rath, J.—The writ petitioner, who is the appellant, assails the judgment of the learned Single Judge refusing to interfere with his transfer from the post of Senior Vigilance Officer in the Vigilance Department of the first respondent to its marketing Department in the regional office at Hyderabad, Andhra Pradesh, as Deputy Marketing Manager. The submission urged by the appellant before the learned single Judge that he having been appointed to the post of Assistant Vigilance Officer and thereafter promoted as vigilance Officer an Senior Vigilance Officer, could not be shifted from the Vigilance Department was negated in the judgment under appeal because of Rule 4 of the Fertilizer Corporation of India Limited Employees" (Conduct, Discipline and Appeal) Rules, 1972 (hereinafter referred to as "the Rules") requiring an employee to serve the Corporation in its business in such capacity and at such places as he may, from time to time be directed.

2. The short facts relating to the case are that the appellant was an army personnel and while working in the Border Security Force, on his own application was appointed through process of selection in the Fertilizer Corporation of India, which was later on re-organized as the first respondent-Company, as Assistant Vigilance Officer. The appointment was with effect from 11-8-1973. He became Assistant Vigilance Officer Grade-I later on through selection and on 8-9-1977 was confirmed as Vigilance Officer and thereafter became a Senior Vigilance

Officer. On 16-5-1991 he was transferred as deputy Marketing Manager, on his existing pay and scale of pay, to the regional office, Andhra Pradesh and was directed to be released from the Vigilance Department with instruction to report to the Marketing Manager, Regional Office at Hyderabad. He handed over charge on the same day and on 20-5-1991 represented to the Marketing Manager at Bombay for time to join at Hyderabad. He however did not join the post and the order of suspension was served upon him on 18-6-1991. Thereafter he joined at Hyderabad on 22-7-1991 and is as yet continuing under suspension the enquiry being not over.

3. In the counter affidavit filed by the respondents the facts appear that the appellant was earlier an operator in the Fertilizer Corporation of India from 20-11-1962 to 13-1-1964 and on 14-1-1964 he was released to join the Army while retaining his lien in the Corporation. He rejoined as an Operator on 1-1-1970 and continued upto 14-8-1970 in the post and thereafter left the Corporation to join Bihar Battalion of N. C. C. and again came back to the Corporation on 11-8-1973, when he was appointed as the Assistant Vigilance Officer at Ramagundam unit.

4. It is the case of the appellant that he was selected and appointed as Assistant Vigilance Officer and was to be continued only in that department and that in the establishment of the first respondent, the hierarchy of Marketing Managers and Deputy Marketing Manager is totally different from that of the Vigilance Officers. The Vigilance Officer is supposed to report to the Chairman and managing Director whereas the Marketing Manager has to report to the concerned Regional Office. The seniority of Vigilance Officers is maintained in the General Administration Department whereas the Marketing Managers and Deputy Marketing Managers have separate seniority and line of promotions. During the arguments it is submitted that the promotion in the Vigilance Department is from Assistant Vigilance Officer to Vigilance Officer, then to Senior Vigilance Officer and thereafter as Chief Vigilance Officer and the last promotion is as Executive Director of Vigilance. The appellant was only to have earned seniority and promotion in that line and could not have been shifted to the Marketing Department.

5. The appellant's claim was contested by the first respondent on the stand that as an officer of the first respondent his services are liable to be posted anywhere in the Corporation in any post, and that being the rule of the respondent, the appellant cannot take objection to the transfer.

6. Rule 4 of the Rules is as follows :

"4. Scope of an Employee's service : Unless in any case it be otherwise distinctly provided the whole time of an employee shall be at the disposal of the Corporation and he shall serve the Corporation in its business in such capacity and at such places as he may, from time to time, be directed."

7. It is submitted by Mr. G. Bikshapathy, learned Counsel for the appellant, that

though Rule 4 appears to be in wide terms yet intrinsically it is susceptible only to the meaning that an employee of the Corporation can only be transferred within his own range of transferability, which according to him, means transferability to the same post at different units of the Corporation but does not contemplate transfer outside the discipline to which he belongs.

8. Reliance is placed by the learned counsel for the appellant on the decisions in Prem Parveen v. Union of India 1973 (2) SLR 659, U. C. Sarangi v. State of Orissa 1974 (2) SLR 345, T. Ramamurthy v. V. C. & M. D., Nizam Sugar Factory Ltd., 1992 (2) A.W. R. 229, V. C., L. N. Mithila University v. Dayanand Jha 1986 (30 SCC 7 as also E.P. Royappa Vs. State of Tamil Nadu and Another, ; Mr. P. Ramachandra Reddy, learned Counsel for the respondents, places reliance on Union of India v. S. L. Abbas 1993 II CLR 168 as also E.P. Royappa Vs. State of Tamil Nadu and Another, .

9. In Prem Parveen v. Union of India 1973 (2) SLR 659 where the question for consideration was Fundamental Rules 14 and 15, the Court held that F. R. 15 does not in terms authorise transfer of a Government servant from one cadre to another cadre; that a combined reading of Rules 14 and 15 implies that what they are talking of is transferability within the same cadre; and that logically it does not stand to reason that a person recruited to a particular cadre should be compelled against his wishes to serve outside the cadre even when the permanent post to which he holds the lien exists within the cadre.

10. A division bench of the Orissa High Court in U. C. Sarangi v. State of Orissa 1974 (2) SLR 345 considered Rule 54 of the Orissa Service Code and held that Rule 54, vesting power of transfer in the Government, is only applicable to a case where one is appointed to a service or to a cadre but it is not applicable where a person is appointed to a specific post in which case transfer outside the post is not authorised invoking Rule 54.

11. In a more recent case in T. Ramamurthy v. C. V. & M. D. Nizam Sugar Factory Ltd., 1992 (2) A.W. R. 229, a learned single Judge of this court held that where a person appointed as General manager (Marketing) in Nizam Sugar Factory Limited is transferred as General Manager (Machinery Division), which is not an interchangeable post, such appointment is not valid.

12. In Vice-Chancellor, L.N. Mithila University Vs. Dayanand Jha, an attempt by the Vice Chancellor to transfer a principal of a college as Reader in another college was not upheld, even though the two posts were carrying the same grade and pay, on the ground that the posts were not equivalent. It was pointed out that while determining equivalence of posts the true criterion is the status and the nature and responsibility of the duties attached to the two posts. The mere circumstances that the two posts carry the same scale of pay is not enough.

13. In E.P. Royappa Vs. State of Tamil Nadu and Another, , which was a case relating to transfer under the Indian Administrative Service (Cadre) Rules, 1954, it was held by the majority that even though a member of the Indian

Administrative Service can be appointed to a non-cadre post created by the State Government, yet it is open to the member of the service to contend, that notwithstanding the declaration of equivalence, the non-cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that held by him; and that where i.e., appears to the Court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status and responsibility, or the declaration of equivalence is mala fide or in colourable exercise of power or is a cloak for displacing a member of the Indian Administrative Service from a cadre post which he is occupying, the Court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant.

14. The principle deducible from the citations is that though Rule 4 of the Rules vests authority in the first respondent to transfer the holder of a post to another post, yet the power is limited. The power has to be exercised keeping in view the equivalence of posts determined in accordance with the principles enunciated by the apex Court and that the rule authorises transfer only within the range of transferability. The power of transfer becomes exercisable if the appointment had been made to a cadre or service. But, merely because the two posts carry the same scale of pay, an inter se transfer between the two posts is not a foregone conclusion.

15. Reliance placed on the decision in *Union of India v. S. L. Abbas* (supra) on behalf of the respondents is of little application as it was a case regarding transfer of a husband and wife to the same place. The Supreme court pointed out that the guidelines issued by the Government in that regard does not confer upon the employees a legally enforceable right and that the Courts ought not to interfere with the order of transfer unless it is vitiated by mala fides and is made in violation of any statutory provisions.

16. We are not concerned with such a position here. The question raised here is the interpretation of the rule framed by the Board of Directors of the first respondent exercising powers under Article 68 (14) of the Article of Association, which is intended to be of general application to the employees of the Corporation.

17. In the affidavit filed on 1-8-1994 the first respondent has cited several instances of transfers from the Vigilance Department to other departments and vice versa. To that, a counter affidavit has also been filed by the appellant explaining such transfers as not germane and being different to the present case.

18. On the submissions of the learned Counsel several questions emerge to which the documents filed in the case do not provide an answer. No doubt, by

the order of appointment the appellant was appointed as Assistant Vigilance Officer, but it is not known whether the appointment was to a particular service or a cadre. It is not known as to whether there is any classification of posts in the first respondent; whether the vigilance wing is a separate wing, or whether the normal channel of promotion in the Vigilance wing, is as is claimed by the appellant, upto the post of Executive Director (Vigilance).

19. Mr. P. Ramachandra Reddy, learned Counsel for the respondents, is not able to explain as to whether the posts in the Vigilance, Marketing and other wings of the first respondent are inter-transferable; whether the seniority of officials in the different wings is considered on the total length of service and whether each of the officials in different posts are considered for promotion of the next higher post in whatever wing they occur. It would be inconsistent to hold that while posts are inter-transferable, as is claimed by the respondents, the promotional posts are not to be filled up on consideration of all the persons in the equivalent grade. For example, if a person holding the post of Vigilance Officer but transferred to the Administrative or the Marketing wing is not to be considered when the question of promotion to the post of Senior Vigilance Officer, comes, it would be possible, when promotion is due, to side-track him and instead effect promotion of a person who was his junior as Vigilance Officer, and even promote a person who was not in that wing at all. For such reasons, it is desirable that every public Corporation, like the first respondent, should have specific rules regarding classification of the services well defining the concept of particular disciplines, cadres or services so that the scope of arbitrariness or discriminatory application of rule like Rule 4 is brought down to the minimum. It is of interest to note that the rules are styled as "Conduct, Discipline and Appeal Rules", and not also as the classification rules.

20. While giving such consideration to the question urged, we also find that the appellant never made any representation to the first respondent urging his claim of non-transferability on the above questions and rather came and joined at Hyderabad. It is of course submitted by Mr. G. Bikshapathy, learned Counsel for the appellant, that since the appellant is continuing under suspension there was no occasion for him to urge the questions. While that may not be strictly correct, yet since the appellant is still continuing under suspension, and until the enquiry proceeding is over, the question of his assuming charge of any post does not arise. As a Writ of Mandamus cannot be issued, since there has been no demand by the appellant and refusal by the first respondent to consider the relief claimed, we dispose of this writ appeal with direction that the appellant may, within a period of one month from to-day, make a representation to the first respondent urging the questions that are urged here regarding his non-transferability as a Deputy Marketing Manager. If the representation is made, the first respondent shall consider and communicate speaking orders to the appellant keeping in view the position of law as discussed above. We however, make it clear that neither our decision in this writ appeal nor the decision taken by the first respondent on the representation made, shall have any bearing on the

disciplinary proceeding that is being conducted against the appellant.

21. The writ appeal is disposed of accordingly. No costs.