

**(2006) 07 DEL CK 0048**

**In the Delhi High Court**

**Case No : Writ Petition (Civil) No. 1821 of 2004**

Indian Agricultural Research Institute

APPELLANT

Vs

Shri Ram Naresh Rai and Another

RESPONDENT

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**Date of Decision : 31-07-2006**

**Acts Referred:**

**Citation : (2006) 07 DEL CK 0048**

**Hon'ble Judges : Manju Goel, J**

**Bench : Single Bench**

**Advocate : V.K. Rao, for the Appellant; Gaurav Malhotra, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Manju Goel, J.—This writ petition seeks quashing of the award dated 15.5.2003 passed by Industrial Tribunal-II, Karkardooma Courts, New Delhi in Industrial Dispute No. 50/99. The terms of reference of the industrial dispute were as under:

Whether Sh.Ram Naresh Rai and Sh.Anup Lal have been transferred out of Delhi illegally and/or unjustifiably by the management and if so, to what relief are they entitled and what directions are necessary in this respect?

2. The two respondents/workmen, Ram Naresh Rai and Anup Lal, working as Beldar in Group D were posted as Lab Attendants in supporting staff group IV. Ram Naresh Rai was the General Secretary of Bhartiya Krishi Karamchari Sangh (Regd.) and Anup Lal was working as the Organizing Secretary of Bhartiya Krishi Karamchari Sangh (Regd.). Ram Naresh Rai was transferred to Katrain (Himachal Pradesh) vide orders dated 9.10.1998. Anup Lal was transferred to Wellington (Tamilnadu) by another order of the same date. They challenged the transfers which was subject matter of the industrial dispute.

3. In the statement of claim they alleged that the management had been violating the Trade Union Act and had been preventing the workmen in

organizing the trade union and carrying on its activities and had even issued a circulated letter on 25.7.1998 threatening the employees with disciplinary action in case they participated in the meeting called by the union which was scheduled on 27.7.1998. They also allege, inter alia, that the transfer was made with a view to victimize the workmen and to break the trade union. As such, they allege that the transfer was mala fide and an act of unfair labour practice. The award is in favor of the workmen. It holds that Shri Ram Naresh Rai and Shri Anup Lal had been transferred out of Delhi illegally and unjustifiably. The Industrial Tribunal directed to treat the workman to be posted in Delhi. However, there is a history to the industrial dispute which is required to be narrated.

4. The two respondents, workmen, had filed a writ petition being W.P.(C). No. 5446/98 challenging the same order of transfer which was the subject matter of the industrial dispute. The writ petition was disposed of by a brief order dated 29.10.1998 which is as under:

CW No. 5446/98

The petitioner has challenged the order of transfer. I have perused the petition, documents and heard the learned Counsel for the petitioner. I do not find any reasons to admit the writ petition. I am satisfied that the respondents have acted on relevant consideration in issuing the order of transfer. Accordingly, the writ petition stands dismissed.

This order was challenged in a LPA. The LPA No. 490/98 was disposed of by the Division Bench of this Court vide an order dated 6.11.1998. The LPA was dismissed. The relevant part of the judgment is as under:

... It is true that the petitioners were indulging into some trade union activities around the time of transfer but that by itself cannot be a reason for concluding that their transfer was motivated by their such activities. If it be an unfair labour practice, as alleged, the remedy of the petitioner is to approach the industrial court.

So far as the violation of the service conditions is concerned, the learned Counsel for the respondents has pointed out that the appointment letter itself provides that the petitioner will be liable to be transferred to any Institute and/or office of the ICAR located anywhere in India. There is, Therefore, no violation of service conditions. No fault can be found with the impugned order of the learned Single Judge. The appeal is devoid of any merit. It is dismissed in liming.

A SLP was filed which admittedly was dismissed.

5. The respondents taking cue from the observations of the Division Bench that if it was a case of unfair labour practice, the remedy of the workman should have been to approach the industrial court raised an industrial dispute. The Industrial Tribunal, inter alia, raised the following issue:

Issue No. 3 Whether the claim of the workmen is resjudicata as claimed by the

management?

6. The Industrial Tribunal answered the issue in the negative saying that it was the management's case that the petitioners (respondents herein) should approach the Industrial Tribunal and, Therefore, the proceedings before the Industrial Tribunal were not barred by res judicata. The question of res judicata was also examined by this Court and an order on this question was passed on 25.2.2005. The petitioner who challenged the award submitted before the court that the issue of transfer stood concluded against the respondents herein as the Division Bench had declined to interfere with the order of the learned Single Judge dismissing the respondents' writ petition against their transfer. this Court ruled:

After considering the observation made by the Division Bench of this Court, this Court is of the view that the respondents were justified in approaching the Industrial Tribunal upon inter alias alleging mala fides. Accordingly there is no merit in the plea raised by the petitioner's counsel that the order of the Division Bench dated 6th November, 1998 passed in LPA No. 490/98 & CM 3172/98 will come in the way of the respondents' approaching the Industrial Tribunal for making an award in their favor. Consequently this plea of the petitioner's counsel is rejected.

7. In the light of the above, the present award has to be examined in the light of the observations already made by this Court on 25.2.2005. The award has to be examined on merits and without in any way being influenced by the observations/ decisions of the learned Single Judge and of the Division Bench mentioned above. In other words, the observations of the learned Single Judge that the management had acted on relevant considerations and the observations of the Division Bench that the service conditions had not been violated and no fault could be found with the impugned order cannot be treated to be an impediment to the adjudication of the dispute referred. Similarly, the observations of the Division Bench, that the mere fact that the petitioners (respondents herein) were indulging into trade union activities around the time of transfer cannot be a reason to conclude that their transfers were motivated by such activities, will not stand in the way of the Industrial Tribunal in going into the merits of the allegations of the workmen. It may be stated here that the Industrial Tribunal could go into the allegations of mala fides or unfair labour practice as it had the opportunity of taking evidence of the parties wherein the witnesses could be called to the witness-box for examination and cross-examination and the disputed questions of fact could be adjudicated.

8. Schedule V, Item No. 7 of the Industrial Dispute Act terms a mala fide transfer as an unfair labour practice. Before Industrial Tribunal workman Ram Naresh Rai filed an affidavit, Ex.WW1/A dated 26.3.2001, in which he deposed that he had been representing the supporting staff Group D employees of the management and was an office bearer of Bhartiya Krishi Karamchari Sangh (Regd.). He also stated in the affidavit that the union had circulated a letter for holding a meeting

to demand regularization of daily rated workers and contract labourers and the management issued the circular on 25.7.1998 threatening the employees with disciplinary action in case they attended the meeting of the union. Thus, he deposed that the management transferred the services of the two workmen as they were representing more than 2000 workers of the management and with a view to victimize the transfer was made to a place far-off from Delhi. The Industrial Tribunal does not say that the workmen was cross-examined by the management. Nor does the management claim that the statement of Ram Naresh Rai made in the affidavit, Ex.WW1/A, was challenged by way of cross-examination. The other workman, Anup Lal, also filed a similar affidavit.

9. As against this evidence of the workmen, the management examined MW-1 Shri A.K.Mathur who filed an affidavit on 11.3.2002 and relied upon documents, Ex.MW1/1 to Ex.MW1/13. He was cross-examined in which he reiterated that the transfer had been made on account of administrative reasons. The witness, however, could not show any document to show what were the administrative reasons for transfer. The witness also deposed that they did not have any particular procedure with regard to the transfer of employees. The transfer of Maheshwari wife of Anup Lal was subsequently cancelled. The Industrial Tribunal examined the evidence and concluded as under:

12. To appreciate the case of parties, I have gone through the entire material available on record. Perusal of transfer order and circumstances shows that the transfer was done to penalise the workmen. Even the wife of Shri Anoop Lal was transferred to cut the ground of availability of workman Shri Anoop Lal with his wife at Delhi. The admitted position is that the workmen were class IV employees. Subsequently, on the representation of Smt.Maheshwari w/o. Sh. Anup Lal, her transfer order was modified by the management and she was ordered to be remain postdate Delhi. The management has not brought anything on the record to show that what was the ground to transfer out the workman Shri Ram Naresh Rai to Katrain, Himachal Pradesh and Sh. Anup Lal to Tamilnadu particularly when the transfer of his wife was subsequently cancelled. The person who passed the order did not gave any justification. The management witness just took the stand that the order was passed by the Director.

13. Under the facts of the case, there is no justification to transfer the workman. Consequently, the order of transfer is held to be unjustified and it is further held that Shri Ram Naresh Rai and Shri Anup Lal have been transferred out of Delhi illegally and unjustifiably by the management. The management is required to be directed to treat the workmen to be posted at Delhi. Award is passed accordingly. File be consigned to record room.

10. Although the Industrial Tribunal has not used the words `mala fide" or `unfair labour practice" it has given its categorical findings as under:

a) A perusal of the transfer order and the circumstances show that the transfer was done to penalize the workmen; and

b) Upon the facts and circumstances of the case there is no justification to transfer the workmen. Consequently the order of transfer is unjustified.

11. This Court is not an appellate court. The award can be set aside only if it is shown that the award is perverse or is patently illegal. As can be seen from the above narration of the evidence before the Industrial Tribunal, the testimonies of the workmen were not challenged while the management failed to show the 'administrative reasons', if any, for the transfer particularly to a place which was far away from Delhi. In this situation, the finding of the Industrial Tribunal that the transfer was illegal and unjustified cannot be held to be perverse or illegal. The award, Therefore, cannot be set aside in exercise of writ jurisdiction. The writ petition is accordingly dismissed.