

(2010) 04 UK CK 0022
In the Uttarakhand High Court

Ishwari Singh Rautela

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 17-04-2010

Acts Referred:

Citation : (2011) 2 UC 998 : (2010) 1 UD 561

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Mr. Sharad Sharma, the learned Senior Counsel duly assisted by Ms. Indu Sharma, the learned Counsel for the petitioner, Mr. D.S. Patni and Mr. A.S. Bisht, the learned Counsel for the respondent Nos. 2 and 3, i.e., the Municipal Board, Nainital and its Chairman and Mr. Subhash Upadhyay, the learned brief holder for the respondent No. 1 and 4, i.e., State of Uttarakhand and the Commissioner, Kumaon Division, Nainital.

2. The petitioner is a Junior Engineer in the Municipal Board, Nainital recently posted on 2nd January, 2009 and by the impugned order dated 1st February, 2010, the petitioner has been transferred to Bageshwar in the same capacity and, by the order of 2nd February, 2010, the petitioner is alleged to have been relieved from Nainital. The petitioner, being aggrieved by the said orders, has filed the present writ petition.

3. The controversy raised in the present petition lies in a narrow compass. The submission raised by the learned Senior Counsel for the petitioner is, that the Commissioner was not the competent authority to transfer the petitioner under Rule 25 of the U.P. Palika Centralized Service Rules, 1966 (hereinafter referred to as the Rules of 1966) which is applicable to the petitioner. Further, the petitioner has been transferred in mid session and, that too, after one year of being posted at Nainital and the last ground raised is, that the transfer order is not based in public interest but is based on a complaint made by the Chairman by the

Municipal Board and therefore, the transfer is based on administrative grounds, which is punitive in nature, which has been passed in violation of the principles of natural justice. In support of his submission, the learned Counsel for the petitioner has placed reliance upon a decision of a Supreme Court in the case of *Nabi Ahmad Khan v. State of U.P. and Ors.* (1996) 2 UPLBEC 1202 in which it has been held that the transfer order, based on a complaint, is liable to be quashed. Similar view was taken in *Pradeep Goyal v. Regional Manager, Region IInd, State Bank of India, Zonal Office, Meerut and Ors.* reported in (1992) 1 UPLBEC 223 and in the matter of *Sheshmani Tripathi v. Inspector General of Prisons, U.P., Lucknow and Anr.* reported in (1991) 2 UPLBEC 1302.

4. On the other hand, Mr. D.S. Patni, the learned Counsel for the Municipal Board submitted that the charges leveled against the petitioner were serious and there were also several complaints against the petitioner. The petitioner was not taking interest in work and was absenting himself and consequently, the Chairman of the Municipal Board recommended that instead of initiating a disciplinary action against him, he should be transferred to Bageshwar. The learned Counsel for the Municipal Board submitted that the transfer order was made in public interest and not on the administrative ground and that the transfer order does not suffer from any error of law. In support of his submission, the learned Counsel for the Municipal Board placed reliance upon a decision of the Division Bench of this Court in the case of *S.K. Goel v. State of Uttaranchal and Anr.* reported in 2005 (2) U.D. 11 and also relied upon a decision of Full Bench of this Court in the case of *Smt. Damyanti Bisht v. State of Uttarakhand and Ors.* reported in 2008 (2) U.D. 517, in which it was held that the transfer on administrative ground, which was punitive in nature, should not be interfered in a writ jurisdiction.

5. The impugned transfer order dated 1st February, 2010 issued by the Commissioner is based on the basis of a report of the Chairman, Nagar Palika. The transfer order further states that the petitioner is being transferred in public interest. The report of the Chairman is not on the record of the writ petition and consequently, the Municipal Board as well as the Commissioner were directed to produce the original record, which they have produced today and the court has perused the record of the Commissioner, which indicates that the Chairman, Nagar Palika had issued two letters No. 21/ST/2010 dated 25th January, 2010 and a letter No. 22/ST/2010 dated 25th January, 2010. A perusal of these two letters of the Chairman indicates various allegations against the petitioner with regard to his lack of interest in doing the requisite work; in making certain expenditure while refurbishing his house and, there are other complaints indicated therein. Surprisingly, the record of the Nagar Palika does not indicate the existence of the letter No. 21/ST/2010 dated 25th January, 2010 issued by the Chairman. Why is this letter missing is not known, nor any explanation has been furnished by the learned Counsel for the Municipal Board.

6. Coming back to the merits of the case, the court finds that under Rule 25 of the 1966 Rules, the Commissioner is empowered to transfer a member of the

subordinate Centralized service. For facility Rule 25 of the Rules of 1966 is quoted hereunder:

25.(1) The State Government may transfer any officer of the Centralized Services from one Palika to other.

(2) The Commissioner of the Division may transfer any officer other than the officers of the Centralized Superior Services from one Palika to other within his Division.

(3) A Palika may seek the transfer of any officer of the Centralized Services by passing a special resolution to that effect by a majority of 2/3rd members constituting the Palika.

7. In view of the aforesaid, it is clear that the Commissioner is empowered to transfer the petitioner from one district to another district. Consequently, the submission of the learned Counsel for the petitioner is bereft of merit and is rejected.

8. No doubt, the petitioner has been transferred after almost one year and in mid session. As per the guidelines issued by the State Government, a person is transferred after every three years and, in rare cases, a transfer can be issued in mid session depending on the exigency of service and/or in public interest or on administrative ground. Consequently, the order transferring the petitioner in mid session by itself will not entail any illegality. The employee, who is on a transferable post, can be transferred in mid session and it is also not necessary that he is required to spend a minimum period of three years before being transferred. In certain set of circumstances, an employee could be transferred even after one year. Consequently, on the ground that the petitioner is being transferred after one year and in mid session will by itself not justify any illegality in the impugned order.

9. Coming to the short point namely, that the transfer of the petitioner is based on a complaint, in this regard, the State Government has framed certain guidelines and one such guideline dated 5th June, 2008 issued by the Government of Uttarakhand has been dealt with by a Full Bench of this Court in the case of Smt. Damayanti (supra), wherein the Full Bench has found that the transfer on administrative grounds can be effected in the following situations namely;

1. If there are serious complaints against the person sought to be transferred; or
2. If the person sought to be transferred has misbehaved with superior officers; or
3. If the person sought to be transferred has not been taking interest in the work.

10. The guidelines indicated that the transfers on administrative ground should not be effected on motivated complaints nor transfers could be ordered in a casual manner and that the Competent Authority seeking to effect the transfer

on administrative ground is required to verify and confirm the existence as well as the truthfulness of the aforesaid grounds of transfer and only after arriving at and recording its satisfaction about the existence and truthfulness of the grounds that the incumbent could be transferred. The Full Bench in the case of Smt. Damayanti (*supra*), after considering the guidelines held that

In other words, before effecting a transfer on administrative grounds, the Authority competent to transfer must *prima facie* arrive at and duly record its satisfaction about the existence and truthfulness, after due verification and confirmation, of the allegations against the person sought to be transferred. This is a condition precedent to the transfer of the person. If this does not happen and if the *prima facie* satisfaction, upon due verification and confirmation, is not arrived at and duly recorded, any and every order effecting a transfer on administrative ground is vitiated as well as it is against the principles of natural justice. On this ground alone, such an order deserves to be quashed and set aside.

11. In the light of the aforesaid decision, the court has perused the impugned transfer order and finds that the transfer order is based on a complaint made by the Chairman, Municipal Board and that the transfer has been made in public interest. Once the transfer is based on a complaint, the said transfer order cannot be made in public interest. Consequently, the court is required to lift the veil and, upon lifting the veil and on perusing the original records, which has been placed by the Municipal Board as well as by the Chairman, the court finds that two complaints dated 25th January, 2010 have been written by the Chairman, Municipal Board to the Commissioner. The Court finds that the Chairman has indicated that there was an absence of interest in the work put by the petitioner and that there were serious complaints against him and, consequently, the Chairman recommended his case for being transferred. The Court further finds that the transfer of the petitioner is not in public interest but is based on administrative grounds. The court further finds that neither the Chairman, who has made the complaint nor the Commissioner who is the Competent Authority has verified nor confirmed the existence as well as the truthfulness of the charges leveled against the petitioner nor recorded its satisfaction about the existence and truthfulness of the grounds of transfer.

12. Consequently, the Court is of the opinion that the transfer order was on motivated grounds, which remained unsubstantiated and such transfer order on administrative grounds, being punitive in nature, is liable to be vitiated, since it was against the principles of natural justice inasmuch as before transferring an employee on administrative grounds, which is punitive in nature, the incumbent is required to be put forth the grounds and a reply is essential before taking action on such administrative grounds. Apparently this procedure has not been followed. On this ground alone, the transfer order deserves to be quashed.

13. The learned Counsel for the respondents/Municipal Board has tried to justify the transfer order by relying upon a decision of the Division Bench of this Court

in the case of S.K. Goel (supra), wherein it was held that where a disciplinary proceedings is contemplated, it is not necessary for an employee to be placed under suspension and, in a given case, the employee could be transferred to another station, if there was likelihood that he would influence or prejudice the enquiry. In my opinion, the said judgment is not applicable to the present facts and circumstances of the case inasmuch as there is nothing to indicate from the record that any disciplinary proceedings is contemplated against the petitioner.

14. In the light of the aforesaid, the court finds that the impugned transfer order even though, it was issued in public interest was actually a transfer order on administrative grounds, which was punitive in nature, and which, in the opinion of the court, is violative of the principles of natural justice. Consequently, this transfer order as well as the relieving order cannot be sustained and are quashed. The writ petition is allowed. It would however, be open to the authority to pass a fresh order of the transfer in accordance with law in the light of the observations made above. In the circumstances of this case, the parties shall bear their own costs.