
(2007) 04 UK CK 0058

In the Uttarakhand High Court

Case No : Writ Petition No. 1461 (S/S) of 2005

Jagdish Chandra Chhimwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Citation : (2007) 3 UC 1879

Hon'ble Judges : M.M.Ghildiyal, J

Bench : Single Bench

Advocate : J.P. Joshi, for the Appellant; Arvind Vashihtha, Asstt. Solicitor General for Union of India, for the Respondent

Final Decision : Allowed

Judgement

M.M. Ghildiyal, J.—Heard Sri J.P. Joshi, learned Counsel for the Petitioner, and Sri Arvind Vashishtha, learned Asstt. Solicitor General Union of India/Respondent.

2. By means of this writ petition, the Petitioner has prayed for the following reliefs:

i. Issue a writ, order or direction in the nature of certiorari calling for the record and quashing the impugned order dated 08-09-2005 (annexure No. 5 to the writ petition).

ii. Issue a writ, order or direction in the nature of mandamus commanding the Respondents authority not to interfere or disturb in the service of the Petitioner at National Hydrographic Office, Dehradun to the post of Graining Operator,

iii. Issue a writ, order or direction, which this Hon''ble Court may deem fit and proper in view of the circumstances of the case, iv. To award the cost of present writ petition in favour o the Petitioner.

3. Counsel for the both the parties have admitted that since counter, rejoinder affidavits have been exchanged, therefore the writ petition may be disposed of finally at the admission stage itself.

4. It is submitted by the Petitioner that he was transferred from Mumbai to Dehradun permanently on compassionate ground on 19th May 2004, was again transferred to Mumbai vide impugned order dated 08-09-2005. Normally, the court should not interfere with the transfer orders passed by the employer because it is the prerogative of the employer to transfer its employees to any place under his establishment, but considering the peculiar circumstances of his case, this Court on 4th October 2005 passed a detailed order staying the impugned transfer order dated 08-09-2005, which is quoted hereunder:

Heard. The Petitioner who is working as HSK-II, Engine Fitter, Naval Dockyard, Mumbai under Admiral Superintendent, Naval Dockyard, Mumbai, has moved an application dated 28-08-2003 to transfer him to National Hydrographic Office, Dehradun on the ground that his father is handicapped and old man and his mother is suffering from Bronchitis and Gynecological problem and nobody is there except the Petitioner to look after them. Considering the request of the Petitioner, the Respondents have transferred the Petitioner on compassionate grounds permanently to National Hydrographic Office, Dehradun with conditions that the seniority of the Petitioner in the grade will be counted from the date he reports on transfer to National Hydrographic Office, Dehradun. His post seniority will not be counted for promotion to the next higher grade. This order was passed on 19-05-2004 by the Chief Administrative Officer, Sr. Staff Officer (Civil Personnel) for Flag Officer, Commanding-in-Chief.

The Petitioner, who had already worked for 10 years relinquished his seniority in view of his family problem and joined at Dehradun on 14-06-2004 in pursuance to the aforesaid order dated 19-05-2004. Petitioner has joined his duties at National Hydrographic Office, Dehradun after losing his past seniority.

The Respondents could not show why the Petitioner has again been permanently transferred to Naval Dockyard, Mumbai.

Since, the Respondents have passed the impugned order dated 08-09-2005 by which the Petitioner has been permanently transferred to National Dockyard, Mumbai without assigning any reason and ignoring the fact that Petitioner had earlier been transferred permanently vide order dated 19-05-2004 to National Hydrographic Office, Dehradun, by losing his seniority for about 10 years. For the reasons recorded above until further orders of this Court, operation of order dated 08-09-2005 passed by Respondent No. 2 shall remain stayed and Petitioner is permitted to continue at National Hydrographic Office, Dehradun.

5. The Respondents have filed counter affidavit and have justified the impugned order. It is not disputed by the Respondents that in para-3 of the order dated 19th May 2004 (annexure No. 3 to the writ petition) the transferring authority has mentioned that the Petitioner be permanently transferred to National Hydrographic Office, Dehradun under intimation to the Headquarter. Further in para-4 of this order it is mentioned that an undertaking for the following conditions be obtained from the individual, prior to relieving him and the same

be indicated in his movement order. The conditions are (i) that the seniority of the individual in the grade will be counted from the date he reports on transfer to National Hydrographic Office, Dehradun. His past seniority will not be counted for promotion to the next higher grade, (ii) that he will have to travel to NHO, Dehradun at his own expense and no TA/DA, joining time etc. is admissible as his transfer is at his own request.

6. Learned Counsel for the Petitioner has submitted that an undertaking was submitted by the Petitioner and this fact has not been denied by the Respondents. Meaning thereby, the Petitioner has lost the benefit of services of about 10 years rendered by him at Mumbai and thus, has lost the seniority of 10 years. It is also not disputed that the movement order specifically states that the name of the Petitioner has been struck off from the strength of National Dockyard, Mumbai as the Petitioner has been transferred permanently to National Hydrographic Office, Dehradun.

7. By the impugned order dated 8th September 2005, which contains as annexure No. 5 to the writ petition, the Petitioner has again been transferred back to Naval Dockyard, Mumbai on permanent basis. Earlier vide order dated 19th May 2004, when the Petitioner was transferred, from Naval Dockyard Mumbai to National Hydrographic Office, Dehradun, his seniority was directed to be counted from the date when he joins at Dehradun, however in the impugned order there is no such assertion whether the Petitioner will be entitled to get seniority from the date when he had joined the services or from the date when he will join at Mumbai after transfer, as the name of the Petitioner was permanently struck off from the strength of Naval Dockyard, Mumbai.

8. In the counter affidavit, the Respondents have submitted that Petitioner's earlier transfer from Mumbai to Dehradun was purely a temporary arrangement and was not done in perpetuity. The term "permanent transfer" indicated in the Naval Dockyard Movement Order dated 12th June 2004 only signifies the type of movement and does not mean permanent stationing of the individual in one station. Accordingly, the Petitioner was adjusted against the vacant post of Graining Operator in National Hydrographic Office, Dehradun.

9. The stand taken in the counter affidavit is contradictory to the transfer order earlier passed by the Respondent on 19th May 2004. If this is the case of the Respondents, then what was the occasion to deprive him of the seniority for about 10 years, during which he has rendered services in Naval Dockyard, Mumbai and further what was the occasion to struck off the name of the Petitioner from the strength of Naval Dockyard Mumbai while permitting him to join at Dehradun. Further, the Petitioner has not been given benefit of seniority from the date of joining his services in the Naval Dockyard, Mumbai while transferring him to Mumbai and, in case, the earlier transfer was permanent in nature, why the Petitioner was retransferred again to Mumbai. In this respect, the Respondent in para-6 of the counter affidavit has submitted that question of seniority of the Petitioner would be decided by the competent authority once he

reverts back to his parent establishment i.e. the Naval Dockyard Mumbai. When the Respondents, while transferring the Petitioner from Mumbai to Dehradun has decided the seniority matter and has taken undertaking from the Petitioner, it is not fair on the part of the Respondents now to again transfer the Petitioner to Mumbai without deciding the question of his seniority for the period during which he has rendered his services at Mumbai. Again in para-8 of the counter affidavit, the Respondents have stated that the impugned order is a simple transfer order and the Court should not interfere with this order. It is well principle of law that the Court should not interfere with the transfer orders, but in case, the transfer has been made arbitrarily, this Court has jurisdiction to interfere with the arbitrary action of the employers. For the reasons recorded above, the writ petition deserves to be allowed.

10. Accordingly, the writ petition is allowed. The impugned order dated 08-09-2005 is hereby quashed. No order as to costs.