
(1994) 08 RAJ CK 0003
In the Rajasthan High Court
Case No : .C.S.A. No. 313 of 1993

Kishori Lal Verma

APPELLANT

Vs

Hindustan Zinc Ltd. and Another

RESPONDENT

Date of Decision : 19-08-1994

Acts Referred:

Citation : (1995) 2 LLJ 35 : (1994) 2 RLW 414 : (1995) 1 WLC 221

Hon'ble Judges : N.K. Jain, J;Milap Chandra Jain, J

Bench : Division Bench

Advocate : Mridul and R.N. Upadhyaya, for the Appellant; N.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Milap Chandra Jain, J.—This special appeal has been filed u/s 18, Rajasthan High Court Ordinance against the order of the learned single Judge dated May 25, 1993 by which he has rejected the writ petition filed by the petitioner-appellant (in short petitioner) for quashing the order dated January 16, 1993 passed by the respondent No. 1 (Annexure 1), transferring the petitioner from Head Office, Udaipur to Sargipali (Orissa) and also the order of the same date (Annexure 2) relieving him.

2. The case of the petitioner is thus. The transfer order Annexure 1 has been passed on account of his Union activities. It is illegal, arbitrary, discriminatory and violating usual norms and procedure of transfers. It is malafide, There was no administrative reason or exigency warranting his transfer. He was and is organizing Secretary of the Hindustan Zinc Executives" Association. Since the management was not paying heed for its demand for about 2-3 years, it was resolved in its meeting held on December 10, 1992 (Annexure 3) that all executives would wear black badge w.e.f. January 15, 1993 to January 25, 1993 as a mark of protest. In pursuance thereof, black badges were worn by a large number of executives at various units and in the Head Office the petitioner alone wore the black badge on January 16, 1993. The same day, the Director (Finance)

called and reprimanded him and thereafter, transfer order Annexure 1 was served upon him. During last 2-3 years, two transfers were made from Udaipur to Delhi and Calcutta and they were cancelled. The transfer of personal assistants is most unusual and rare. They were effected only on their request and not otherwise. Whenever vacancies occurred in the cadre of personal assistant, respondent-Company issued circulars inviting applications from: the interested personal assistants and advertisements used to be made in the newspapers if no application was received and such a procedure was not adopted for vacancy at Sargipali. In their reply, the respondents denied that the transfer; was illegal, arbitrary, and mala fide. They have averred that it was done due to administrative reasons and exigencies, requisition was received from Sargipali unit for posting a personal assistant and in pursuance thereof this transfer order was passed. By chance, it was passed the day on which the appellant wore black badge and it has no connection with it. It has also been averred that the petitioner has suppressed material fact regarding withdrawal of Rs. 15,000/- as advance T.A. and on this ground alone the writ petition deserves to be dismissed.

3. It has been contended by the learned counsel for the petitioner that the learned single Judge has seriously erred to hold that the transfer order Annexure 1 was passed for administrative reasons and exigencies and it is not mala fide. He also contended that it was passed on the same day on which the petitioner put the black badge on his arm and he was also relieved the same day against the practice prevailing in the respondent's establishment. It was passed due to petitioner's participation in the Union activities. There can be no direct evidence of malice and it has to be inferred from the facts and circumstances. He further contended that there was no requisition from Sargipali unit for posting of a personal assistant, this ground for the transfer of the petitioner is not correct as is proved from the affidavits of the petitioner and the various documents filed by him under Order 41 Rule 27, CP.C. He also contended that by order Annexure 1 the petitioner was to work as P.A. with Superintendent of Mines, Sargipali, in fact he is taking work with a stenographer, he (petitioner) has been deputed with Senior Manager (Mines) and there is no work there. He lastly contended that the petitioner drew Rs. 15,000/- to file writ petition to get the order of his transfer set aside and to meet the expenses of his family. He relied upon *R.N. Sharma v. Union of India* 1983 RLR 41 and *State of Punjab Vs. Ramjilal and Others*,

4. In reply, it has been contended by the learned counsel for the respondents that it is specifically mentioned in the terms of appointment (Annexure R/3) that the petitioner could be transferred to any place in India, his duly accepted all the terms of appointment mentioned in (Annexure R/3), it was by coincidence that the transfer order Annexure 1 was passed the day the petitioner wore the black badge and it was passed as a requisition was also received from Sargipali unit for posting a personal assistant. He also contended that the transfer order is neither mala fide nor arbitrary, it has been passed because of the administrative reasons and exigencies. He further contended that the application moved under Order 41, Rule 27, C.P.C. deserve to be rejected as no case has been pleaded in the writ

petition for which documents are sought to be taken on record. He further contended that if the respondent wanted to transfer him due to vengeance they could have transferred him earlier when he filed civil suit against them in the Year 1988 and also at the time he was promoted in the year 1991. He also contended that the writ petition deserves to be dismissed on the ground that the petitioner has suppressed material fact of withdrawal of Rs. 15,000/- as advance T.A. He lastly contended that the Courts interfere with the transfer order only when mala fide is well proved. He relied upon Rajendra Roy Vs. Union of India (UOI) and Another, Harbans Lal Vs. Collector or Central Excise and Customs, Chandigarh, and M. Sankaranarayanan, IAS Vs. State of Karnataka and others,

5. In this special appeal, the appellant has filed two applications under O.41, R.27 C.P.C. for taking documents enclosed with them on record. The first application has been moved for the following documents:

(1) Petitioner's note marked to Superintendent of Mines, Sargipali requesting him to issue an order directing the Stenographer Shri Tarafdar to hand over the charge to him (Annexure A/1).

(2) Petitioner's Note intimating Superintendent of Mines that the volume of work with him is very limited and he has to sit idle practically for whole of the day (Annexure A/2).

(3) Application addressed to the SOM, Sargapali for making available an empty barrel of 200 litre capacity from Stores on payment basis (Annexure A/3).

(4) Petitioner's Note to make payment of his salary through his S.B.A/C No. 18/105, State Bank of India, Sargipali (Annexure A/4).

(5) Leave application dated August 31, 1993 for taking 10 days leave (Annexure A/5).

(6) Receipt of payment of Rs. 60/- as cost of one empty barrel (Annexure A/6), and

(7) Petitioner's Note regarding payment of the bill of M/s. Shubham Travels (Annexure A/7).

The second application has been moved for the following documents :-

(1) Petitioner's application for making available from Stores an empty barrel of 200 liters on payment basis (Annexure A/8) (also Annexure A/3).

(2) Gate pass regarding the said empty barrel (Annexure A/9).

(3) Monthly Performance Report in respect of the month of January, 1994 (Annexure A/10).

(4) Note of Junior Engineer dated May 10, 1994 marked to Senior Manager (Mines) (Annexure A/11).

- (5) Order sanctioning leave encashment for a month dated May 13, 1994 (Annexure A/12).
- (6) Note regarding sanction of Leave Encashment (Annexure A/13).
- (7) Attendance Register of the month of March, 1991 (Annexure A/14)
- (8) Office order dated December 9, 1992 transferring H.C. Mathur, Project Engineer and Shri B.K. Sharma, Assistant Engineer (Annexure A/15).
- (9) Order dated January 7, 1993 transferring Madhukar Vyas (Annexure A/16).
- (10) Office order dated January 13, 1993 transferring four Personal Officers (Annexure A/17).
- (11) Office order dated January 16, 1993 relieving the petitioner (Annexure A/18).
- (12) Office order dated May 16, 1988 relieving Shri R.K. Mehta, Training Officer w.e.f. June 3, 1988 (Annexure A/19).
- (13) Office order dated February 28, 1989 relieving Shri M.L. Nagda, Senior Manager w.e.f. February 28, 1989 (Annexure A/20).
- (14) Office order dated March 3, 1989 relieving K.M. Jain w.e.f. March 4, 1989 (Annexure A/21).
- (15) Office order dated July 14, 1992 relieving Shri Azad Jain, Sr.A.O.w.e.f. July 17, 1992 (Annexure A/22).

The documents Annexures A/3 (also Annexure A/8), A/4, A/5, A/6, A/7, A/9, A/11, A/12, A/13 and A/14 have nothing to do with the mal-ice as pleaded in the writ petition. The Attendance Register of the month of March, 1994 (Annexure A/14) simply shows that Shri Tarafdar was working as Stenographer. The office order, Annexures A/15, A/16, A/17, A/19 and A/22 simply show the relieving order in respect of the officers whose names are mentioned in them were passed after couple of days of the order transferring them. It has also been stated by the petitioner in the additional affidavit filed in the special appeal that no requisition was sent from Sargipali unit to the Head Quarter (Udaipur) for the posting of a personal assistant. It may be simply mentioned here that such a case had not been put forward in the writ petition. Documents to prove averments not pleaded in the writ petition cannot be taken on record. Therefore, both the applications moved under Order 41. Rule 27, C.P.C. are rejected.

6. It has been observed in *E.P. Royappa Vs. State of Tamil Nadu and Another*,

"Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility".

7. It is to be seen whether the wearing of black badge by the appellant was the cause of his transfer. The following facts and circumstances indicate that it was not the cause:-

(i) If the respondents would have been vindictive, they could have transferred the appellant in the year 1988 when he filed a suit against the respondents for his promotion but this was not done. On the contrary, the respondents promoted the appellant to the post of personal assistant vide (Annexure R/3).

(ii) If the respondents would have been annoyed with the appellant's participation in the Union activities, they could have transferred the appellant outside head office at the time of his promotion vide Letter No.Pers/E/7(13) dated January 16, 1991 (Annexure R/3) of the respondent addressed to the appellant.

(iii) It is not the case of the appellant that a copy of the resolution dated December 10, 1992 (Annexure 3) requiring the executives to wear black badges w.e.f. January 15, 1993 to January 25, 1993 was sent to the respondents or they had its information. It was by coincidence that the transfer order was passed on January 16, 1993 on which day the appellant wore black badge.

(iv) It is not the case of the appellant that he was confirmed on this post of personal Assistant under the term No. 1 of appointment (Annexure R/3). He could have been reverted but it was not done.

(v) Under the term No. 2 of the appointment (Annexure R/3), the appellant was liable to serve at any part of India at the discretion of the management and the appellant accepted all the terms of appointment without any reservation and condition.

(vi) Neither any law nor any agreement requires that the respondents could not transfer the appellant, being Organising Secretary of Hindustan Zinc Executives" Association.

It is entirely for the employer to decide when, where and at what point of time an employee is transferred from his present posting.

(vii) It is admitted in para No.5/c of the writ petition that Superintendent of Mines, Sargipali has been without a personal assistant. Requisition was received in December, 1992 vide para 10 of reply.

8. Admittedly, the petitioner was and is holding the post of personal assistant - a post of great confidence and trust. The employer has a right to even remove such an employee who betrays his confidence and trust in accordance with law, what to say of his transfer.

9. Admittedly, the petitioner moved an application for T.A. Advance on the prescribed form on January 29, 1993 and obtained Rs. 15,000/- the same day. This fact was not disclosed in the writ petition filed subsequently on February 10, 1993. In his letter dated March 2, 1993 (Annexure R/1), the petitioner states-

"As regards the drawal of advance of Rs. 15,000/- is concerned, I may point out that since I was relieved with immediate effect on January 16, 1993 I had no alternative but to draw the advance not with an intention to proceed to Sargipali but to use the amount to place my grievance before the Hon"ble High Court and for maintaining my family during the period the Court takes a decision in the matter. However, I authorise you to recover this amount from my C.P.F."

When the petitioner had no intention to comply with the order of his transfer he had no right to draw Rs. 15,000/- as T.A. in advance. In his affidavit dated August 5, 1993 he has stated in its para No. 5 that he joined his new place of posting at Sargipali on June 1, 1993. After availing joining time he was required to join at Sargipali. He did not join there for four months. No explanation has been put forward by him for not complying with the transfer order for four months. These act and omission on the part of the petitioner also warranted dismissal of his writ petition.

10. Transfer of a trade Union leader does not ipso facto imply that the transfer is an act of victimisation. Trade Union activities performed by the office bearers of the Union are solely for the benefit and welfare of the workmen and not connected with the establishment itself or the members of the public whose interest the establishments are intended to serve. The duties rendered by the office-bearers to the Union are not part of the duties rendered to the establishment. The establishment can function without the Union but the Union cannot function without the establishment. The prime duty of the employee is to serve the establishment and then only the Union. No doubt Trade Union activity has won universal recognition and it has a twin objective, viz., safeguarding the interests of the workers and ushering industrial peace. For whatever reason the management may have deemed it fit or conducive to grant duty relief the legal status of that act is only that of a concession and not a matter pertaining to the condition of service. It has been observed in *Jogendra Tiwari v. Food Corporation of India* 1992 (2) LLN 67 , para 6, as follows:-

"We have already indicated that the learned Judge has gone through the file and was of the view that because of the exigency of the situation, the management had to take this action and there was no manifest mala fide that could be ascertained from the records. Only because the transfer order was passed in a situation arising out of rivalry between the two Unions, it cannot be held that the order passed by the management was a mala fide one. There is no discrimination only because of the fact that leaders of the one Union were transferred and others were kept in the same depot. The object of the order of transfer was not to restore normalcy as is found by the learned trial Judge."

11. In *State of Punjab Vs. Ramjilal and Others*, the State of Punjab (respondent) did not file counter-affidavit and did not produce any document. In *R.N. Sharma v. Union of India* 1983 RLR 41 out of 4000 Station Masters in the Western Railway, only the office bearers of the All India Station Masters" Association were transferred to terrorise them for taking part in Union activities without any

rationale. The Railway Administration did not show any cause for the transfer of the office bearers only, in its reply nor produced any material justifying their transfer. Therefore, these cases are not applicable to the facts of the present case and the appellant cannot derive any advantage of them. The learned single Judge has rightly arrived at the conclusion that in the given case the petitioner has not been able to prove mala fides. The discretion exercised by the learned single Judge is neither arbitrary nor illegal so as to call for any interference in the special appeal. That apart, after the decisions which are cited by the counsel for the appellant, the law has been further developed by their Lordships of the Supreme Court in recent judgments.

12. It has been observed in *The Management of the Syndicate Bank Ltd. Vs. The Workmen*,

".... There is no doubt that the banks are entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch. There is also no doubt that the management of the Bank is in the best position to judge how to distribute its employees between the different branches. We are, therefore, of opinion that Industrial Tribunals should be very careful before they interfere with the orders made by the banks in discharge of their managerial functions."

13. It has been observed in *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, as follows, (p. 592):

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Govt. servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Dept. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

14. It has further been observed in *Union of India and Others Vs. S.L. Abbas*, as follows:-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the object. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must

consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

15. It has been observed in *State of Punjab v. Joginder Singh Dhatt* (supra), para 3 as follows:-

"We have heard learned Counsel for the parties. This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused."

Similar observations have been made in *Rajendra Roy v. Union of India* (supra) para 7. In view of the aforesaid facts and circumstances coupled with above quoted observations of Their Lordships of the Supreme Court, there is no substance in the special appeal. It deserves to be dismissed with costs.

16. Accordingly, the special appeal is dismissed with costs.