

(2006) 06 GAU CK 0021
In the Gauhati High Court
Case No : Writ Petition (C) No. 1370 of 2005

M. Bhubon Singh and Others

APPELLANT

Vs

National Hydro Electric Power Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes (Central) Rules, 1957 — Rule 61
Industrial Disputes Act, 1947 — Section 33

Citation : (2006) 3 GLT 213

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Advocate : B.P. Sahu, for the Appellant; N.P.C. Singh and Th. Babloo, for the Respondent

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—At the outset, Shri B.P. Sahu, learned Counsel appearing for the Petitioners submits that as the writ Petitioner No. 3, Shri M. Achouba Singh, had already joined the new place of posting in pursuance of the impugned transfer and posting order dated 23.9.2005, so far the writ Petitioner No. 3 is concerned, the present writ petition is infructuous. The present joint writ petition is perusing only by the writ Petitioner No. 1, Shri M. Bhubon Singh and the writ Petitioner No. 2, Shri K. Gaithaojai R. Naga.

2. The factual matrix in nut shell leading to the filing of the present writ petition is that the Petitioner No. 1, Shri M. Bhubon Singh, Master Tech. (Mech.) Gr. II and the Petitioner No. 2, Shri K. Gaithaojai R. Naga, Asst. Gr-III, are serving in the National Hydroelectric Power Corporation Ltd. (for short "NHPC"), i.e. at Loktak Power Station, Manipur. The Chief (HR)-Estt., Loktak Power Station, Manipur under the "NHPC issued an order being No. PNE/IX/6/2005 dated 23.9.2005 whereunder the writ Petitioners along with some other incumbents were transferred from Loktak Power Station, Manipur to different places of

postings with immediate effect. Under the said transfer order dated 23.9.2005, Petitioner No. 1, Shri M. Bhubon Singh, had been transferred to Siyom HE Project, NHPC and Petitioner No. 2, Shri K. Gaithaojai R. Naga to Subansiri Upper HE Project, NHPC. It is the admitted case of both the parties that there is no rules and regulations framed by the NHPC regarding the transfer and posting of its employees except the executive instructions or/policy of the NHPC for transfer and posting of its employees under office order being No. PPL-595 (A) dated 23.9.2002, a copy of which is available at Annexure-A/6 to the present writ petition. Admittedly, under the said policy for transfer dated 23.9.2002, there are categories postings such as:

A. HARDEST POSTINGS : CLUSTER I

Leh, Laddakh, Kargil

B. HARD POSTINGS

Cluster-II

Uri Stage I & II, Krishanganga, Dulhasti, Pakai Dul, Bursar, Loktak, Loktak Down, Stream Siang, Subansiri, Kambang and Sippi and any other projects located in the similar vicinity as may be notified by the Corporation from time to time.

According to Para 3.4 of the said policy of transfer dated 23.9.2002, transfer shall be made from hard to soft posting or vice versa on the basis of requirement and completion of the tenure of an employee at a particular location. Further, according to para-3.5, in case due to some reasons or the other transfer of an employee is not possible from hard to soft or vice versa then he will be considered for transfer out from one cluster to the other and not within the, same Cluster. It is also the admitted case of both the parties that according to Para No. 3.14 of the said policy of transfer, transfer shall, generally, be done during the month of January or along with orders of promotion, except under exigencies and under Para No. 3.15, the management, however, reserves the right to make transfers on administrative grounds.

3. Admittedly, the writ Petitioners had been transferred under the said transfer order issued by the Chief (HR)-Estt. Dated 23.9.2005 from HARD POSTINGS to another HARD POSTINGS inasmuch as the Loktak Down Stream, Loktak Power Station, Siang and Subansiri are within the HARD POSTINGS come under Cluster-II of the said transfer policy dated 23.9.2002.

4. The Petitioners being aggrieved by the said impugned transfer order dated 23.9.2005 had approached this Court by filing a joint writ petition being W.P. (C) No. 1187 of 2005 challenging the said transfer order dated 23.9.2005 before the Gauhati High Court, Imphal Bench. This Court by passing a judgment and order dated 11.11.2005 had disposed of the said writ petition, i.e. W.P. (C) No. 1187 of 2005 with the observation and direction that the writ petition is disposed of by directing the Director. HR NHPC that he shall dispose of the representation filed by the Petitioners against the said transfer and posting order dated 23.9.2005 as

early as possible preferably not later than within a period of 2 (two) weeks from the date of receipt of a certified copy of the order along with a copy of the writ petition. It is said that as the Respondents did not dispose of the said representation filed by the Petitioner and others within the stipulated period of 2 (two) weeks, the Petitioners approached this Court by filing another writ petition being W.P. (C) No. 1322 of 2005 before the Gauhati High Court, Imphal Bench with a prayer to quash and set aside the impugned transfer order dated 23.9.2005 as the representation submitted by them has not been disposed of within the stipulated period as per direction of this Court order dated 11.11.2005 in W.P. (C) No. 1187 of 2005. While the W.P. (C) No. 1322 of 2005 was pending before this court, the Respondents issued the letter/order dated 15.12.2005 stating that the representation filed by the writ Petitioners cannot be entertained. For easy reference, the impugned letter dated 15.12.2005 is quoted hereunder:

NATIONAL HYDROELECTRIC POWER CORPORATION LIMITED (A GOVT. OF INDIA ENTERPRISE) LOKTAK POWER STATION, MANIPUR HUMAN RESOURCES DEPARTMENT Ref.: No. NH/LOK/HR/LAW/14/2005/174-75

Dt. 15.12.2005 To,

1. Shri D. Thanghaulen, General Secretary, All Tribal Workers' Union, Loktak Power Station.

2. Shri R.K. Radhamohon Singh, General Secretary,

Loktak Project Karamchari Sangh, Loktak Power Station. Sir/s

I compliance to the order of the Hon''ble High Court of Gauhati, Imphal Bench dated 15.11.2005 your representation dated 7.10.2005 has been carefully examined by Director (HR) of the Corporation soon after making a copy available to him and within the time stipulated by the Hon''ble High Court and I am directed to inform you us under:

At the very outset it may be stated that the office order No. PNE/161/2005 dated 23.9.2005 was issued from the Corporate office taking into consideration the requirements of manpower in the Projects. The relevant provisions contained in the I.D. Act were also kept in view. The allegations made in the said representation are therefore contrary to the true facts and have no substance or merit therein. The reply to the points raised by the Union in the charter of Demand and in the said representation is however given as under :

Enhancement of O & M. Strength

O & M Strength has been finalized taking into consideration the guideline of CERC which is a tariff regulatory statutory authority according to which the total strength of Executive/Supervisors and Workmen should not exceed 220 whereas, even as on the date 654 workmen are on roll of the Power Station. Surplus employees beyond the criteria fixed by the CERC has its impact on tariff and on the ultimate consumer and no beneficiary state agrees to share the same which ultimately can lead to non-viability of the Power Station.

In view of the above enhancement of O & M strength can not be a viable proposition. Transfer and posting of workmen Transfer of workmen is always done an requirement taking in to consideration the available surplus manpower. Loktak Power Station is still carrying workmen strength of 654 against the O & M requirement of 220 odd workmen. The surplus employees are there since the commissioning of Power Station in the year 1983 and even after transfer, the Power Station is still having excess manpower.

The O & M strength of Loktak Power Station was finalized after incorporating CERC guidelines & job profile study in line with external bench marking. As per CERC norms the strength of Loktak Power Station should not exceed 220 whereas it is already 654 currently.

Therefore it is clear that O & M strength of Loktak Power Station is already on much higher side and needs to be pruned for overall survival of power station as well as ultimate objective of providing "economic" power to the consumer.

Management always considers of workmen based on specific requirement and available manpower in the surplus category and grade. It shall not be feasible to transfer only non-Manipur employees since even if all the Non-Manipuri employees whose number as on date is 102 are transferred, the surplus manpower in workmen category will till remain as 332 odd workmen.

Corporation adjusted the local employees in Loktak D/Stream Project but since work remains suspended for a long period which has ultimately necessitated the withdrawal of manpower and all efforts have been made to adjust Manipuri employees at Loktak Power Station and only non-Manipuri employees have been transferred to Projects in other states than North-East. Management will take utmost care to adjust local people as and when the work of Loktak D/stream project is taken up.

Further, posting of local employees at Loktak Power Station cann't be considered as a hard posting and accordingly employees have been posted in other projects due to exigency of work and considering the requirement of employees in the overall interest of the organization.

With respect of your contention the alleged violation of Section 33 of I.D. Act it may be informed that the transfer of the workers have been done under the specific service condition and based on the requirement and availability of manpower from the surplus pool. There has not been any change in the terms and conditions of the service of the said workmen or the terms of their employment. Transferability of these workmen to any of the Project was a condition of service applicable to them even before the commencement of the proceedings.

Management has always taken care to first consider for transfer only the Non-Manipuri employees and Manipur employees have been transferred based on specific requirement and availability in required post and grade. Employees so

transferred in the interest of the corporation and based on specific requirement have already joined their respective place of posting" considering their overall carrier growth with few expectations who might have got other interests.

Constitution of Work Committee.

Works Committee has already been constituted and made functional in the Power Station.

In view of the facts stated above, the Management decision has been taken in the interest of the Corporation and overall well being of the employees and everyone is expected to co-operate for healthy growth and sustainability of the Corporation.

Yours faithfully, Sd/-(Ksh. Joy Kumar Singh) Dy. Manager (Admn.)

5. The Petitioner filed this writ petition challenging the said order/letter dated 15.12.2005 and also the impugned transfer order dated 23.9.2005 on the main ground that (1) the writ Petitioners who are in the HARD POSTINGS cannot be transferred to another HARD POSTINGS under the said policy of transfer dated 23.9.2002; (2) even if there are excess workman in the discipline or/section where the Petitioners are working, a number of non-Manipuri who are working in the concerned Section had already filed a number of representations to the Respondents for transfer and posting from the Loktak Power Station of NHPC to another projects or/Power Stations, but without considering the case of the said non-Manipuri workmen, the Respondents had arbitrarily with the mala fide intention of punishing the writ Petitioners had issued the transfer and posting order dated 23.9.2005; (3) admittedly, there is a conciliation proceeding between the employees and worker organization of L.P.S., NHPC, Manipur and its management before the conciliation Officer. The Petitioners being the of-ice bearers of the employees and worker organization of LPS, NHPC, Manipur are actively participating in the said conciliation proceedings and as such they are the "protected workmen" under the Industrial Dispute (Central) Rules, 1954; (4) the Chief (HR)-Estt. who himself issued the impugned transfer and posting order dated 23.9.2005 had already been serving in the LPS, NHPC for more than 2 (two) decades, and (5) the impugned transfer and posting order dated 23.9.2005 was issued with bias against the writ Petitioners.

6. The Respondents had filed their affidavit-in-opposition in the present writ petition. In their affidavit-in-opposition, the Respondents are not denying that there is a pending conciliation proceeding between the employees and the worker organization of LPS, NHPC, Manipur and its management before the Conciliation Officer, Manipur. Further, they are not denying the letter of the Deputy Labour Commissioner, Manipur dated 24.9.2005 to the Chief (HR)-Estt. Loktak Power Station, NHPC Ltd. that during the course of pending conciliation proceedings between the employees and worker organization of LPS, NHPC Ltd., Manipur and its management before the Conciliation Officer, Manipur there were several instances of issuing the transfer order of the employees of Loktak Project

in the present transfer and posting dated 23.9.2005 includes some key functionaries of the worker organisation. The office bearers of employees or worker organizations are being given "protected workmen" under Rule 61 of the Industrial Disputes (Central) Rules, 1954. For easy reference, the said letter of the Dy. Labour Commissioner, Manipur dated 24.9.2005 is quoted hereunder in entirety:

Govt. of Manipur Labour Department No. 8/99 (Misc.) Lamphel Dt. 24th Sept. 2005

To,

THE CHIEF ENGINEER

Loktak Power Station (NHPC Ltd.)

Sub : In the matter pending conciliation proceedings between the employees and workers orgn. of the Loktak Power Station (NHPC Ltd.) Manipur and its management

And

In the matter of transfer and posting policy and in the said power station regarding.

Sri,

I have the honour to state that during the course of pending conciliation proceedings between the employees & workers organization of LPS (NHPC) Manipur and its management before the Conciliation Officer, Manipur, there were several instances of issuing transfer orders of employees of Loktak Project as per agreed terms. However, presently, transfer order No. PNE/lx/6/2005 Dt. 23rd Sept., 2005 includes some key functionary of the workers organization. In this connection, it is pointed out that some of the office bearers of employees or worker's organization are being given "Protected Workmen" under rule 61 of the Industrial Disputes (Central) Rules 1957 which may not be mandatory in the transfer and posting as such of those protected workmen. As per copy furnished to this office under No. PHE/1X/6/2005 dt. 3rd September, 2005, it is learnt that in said orders at SI. No. 8 G. Gaithoujei R. Naga, Asst. Gr-II, 151105 F was found elected president of the All Tribal Workers Union, Loktak Power Station (NHPC) Manipur.

It is therefore requested that an arrangement may kindly be made by which way the transfer and posting of such key functionary of the organization may be stayed so as to avoid any possible unrest in the Loktak PS (NHPC) Manipur in the near future.

This may please be treated most important and Urgent.

Yours faithfully, Sd/-(G. Mahabir Sharma) I/C Dy. Labour Commissioner, Manipur.

7. The Respondents in their affidavit-in-opposition are only stating that the writ Petitioner had not been declared "protected workmen" under the Industrial Disputes (Central) Rules, 1957. In this regard, the learned Counsel appearing for the Petitioners strenuously submitted that because of the failure on the part of the Respondents to take up necessary action for declaring the Petitioners as "protected workmen" under the relevant provisions of the Industrial Disputes (Central) Rules, 1957, the Petitioners cannot suffer and they cannot be deprived of their rights and protection being a protected workmen under the Industrial Disputes (Central) Rules, 1957. According to the well known principle that "no party cannot be allowed to take advantage of his wrong". In this regard, we may refer to the old decision of the Full Bench of the Judicator of Kerala High Court in *Gandhi Sons, Bombay Vs. Sales Tax Officer, Special Circle, Mattancherry and Another*,

8. The Constitution Bench of Hon'ble Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, through majority view, held that so long as the transfer is made on account of exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior from higher post it would be valid and not open to attack under Article 14 and 16 of the Constitution of India but the Articles 14 and 16 strike at arbitrariness in said action and ensure fairness and equality of treatments and also the malafide exercise of power and arbitrariness will make the transfer illegal.

9. The Apex Court in *B. Varadha Rao Vs. State of Karnataka and Others*, held that:

4...It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe:

The norms enunciated by government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the government servants.

10. Transfer of a government servant who is appointed to a particular cadre of transferable post from one place to another is an ordinary incident of service. No government servant can claim to remain in a particular place or in a particular post unless his appointment itself is to a specific non-transferable post. Therefore, a transfer order per se made in exigency of service does not result in alteration of any of the condition of service, express or implied, to the

disadvantage of the concerned government servant. However, a transfer order which is mala fide and not made in public interest but made for collateral purpose with oblique motive and in exercise of colourable exercise of powers is vitiated by abuse of powers and is bound to challenge before the court being wholly and illegally or void. The learned Counsel appearing for the Respondents had also referred to the decision of the Apex Court in *State of U.P. and Others Vs. Gobardhan Lal*, wherein the Apex Court held that:

8. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provisions (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their hither authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

The learned Counsel for the Respondents also referred to the decision of the Apex Court in *National Hydroelectric Power Corpn. Ltd. v. (1) Shri Bhagwan (2) National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others*, wherein the Apex Court held that:

5...It is by now well settled that often reiterated by this Court that no government servant or employee of a public undertaking as any legal right to be posted former at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest of efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting in such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own administration for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned...

11. The learned Counsel appearing for the Petitioner by heavily relying on the decision of the Apex Court in Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare and Others, submits that the general principle of service jurisprudence is that in the absence of any statutory rules governing the service conditions of employees, the executive instructions and or/decisions taken administratively would operate in the field. It is the submission of the learned Counsel for the Petitioners that such being the settled position of law the said policy of transfer order dated 23.9.2002 shall hold good in the matter of transfer and posting of the employees of the NHPC inasmuch as employees of the HARD POSTINGS cannot be transferred to another HARD POSTINGS. To the contrary, learned Counsel appearing for the Respondents submits that in the exigencies, the management reserves the right to transfer on administrative grounds. But in the instant case, the management/Respondent did not give any administrative exigencies under which in the interest of the Corporation (NHPC Ltd.) the writ Petitioners are required to be picked up for transferring from one HARD PLACE to another HARD PLACE in their affidavit-in-opposition. From the ratio laid down by the Apex Court in the above cases, it is clear that the transfer order which is mala fide and not made in public interest but made for collateral purposes with oblique motive and colourable exercise of powers is vitiated by the abuse of power and is bound to challenge before the court being wholly and illegally void.

12. The Apex Court in B. Varadha Rao (Supra) held that the continuing of the superior incumbent in the superior and more responsible post for a long time is not conducive to good administration. In the present case admittedly the Chief (HR)-Estt. of the Loktak Power Station has been continuing in Loktak Power Station for more than a couple of decades. It is also the case of the Petitioner that the impugned transfer and posting order dated 23.9.2005 is nothing but the result of the mala fide action of the Chief Engineer for the collateral purpose of defeating the pending conciliation proceedings between the employees and worker organization of LPS (NHPS), Manipur and its management before the Conciliation Officer, Manipur. In this regard, the learned Counsel appearing for the Petitioner by relying on the said letter of the Dy. Labour Commissioner, Manipur dated 24.9.2005 submits that the impugned transfer and posting order

dated 23.9.2005 had been made for posting of the writ Petitioner from Power Station, Loktak Division for the purpose of defeating the said conciliation proceedings and also for denying the benefits of being the protected workmen under Rule 61 of the Industrial Disputes (Central) Rules, 1957.

13. This Court in *Dayal Das v. State of Assam* 2002 (2) GLT 109 held that normal posting period under office memorandum of the Personal Department, Govt. of Assam and or/the guidelines for transfer and posting of the employees of the government shall not be disturbed without any special reason recorded in writing for departing from the guidelines of transfer and posting.

14. For the reasons discussed above, this Court is of the considered that an interference to the transfer order and posting of the writ Petitioners 1 and 2 under the impugned transfer and posting order dated 23.9.2005 is called for. Accordingly, the impugned transfer and posting order dated 23.9.2005 so far as the Petitioners 1 and 2 are concerned are hereby quashed and set aside. Writ petition is allowed accordingly. Parties have to bear their own costs.