

(1999) 10 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 308 of 1999

Manik Saha (DR.)

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 04-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Tripura Dental Services Rules, 1995 — Rule 11

Citation : (2000) 1 GLT 91

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee and R. Debnath, for the Appellant; U.B. Saha, S. Talapatra and J. Majumder, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—The Petitioner Dr. Manik Saha a Dental Surgeon of Tripura Dental Service by way of this writ petition under Article 226 of the Constitution of India has challenged his transfer order.

2.1 have heard Mr. K.N. Bhattacharjee, learned senior counsel appearing for the Petitioner, Mr. U.B. Saha, learned Government Advocate, for the Respondent Nos. 1 & 2, and Mr. Section Talapatra, learned Counsel for the Respondent No. 3. By the consent of the parties the writ petition is finally disposed of.

3. The Petitioner Dr. Manik Saha joined Tripura Dental service at some time in the year 1987. During the course of service he applied for Degree course under the Central Pool MDS Seats scheme, was selected and obtained degree in Oral & Maxillo-facial Surgery. After obtaining the degree on his initiation and efforts a unit known as Oral & Maxillo-facial Surgery was set up in Dr. B.R. Ambedkar Medical Hospital, Hapania Agartala (properly known as Dr BRAM Hospital). He was made incharge of the said unit. By impugned order dated 24.2.1999 he has been transferred from the said Hospital to Tripura Sundari Hospital, Udaipur vice Dr. Asis Khan, Respondent No. 3.

4. The grievance of the Petitioner is that he is in the only person holding degree in Oral & Maxillo-facial Surgery, on his initiation and efforts the aforesaid Unit was set up in the Dr. B.R.A.M. Hospital, Dr. Asis Khan who has replaced him a simple B.D.S. cannot discharge duties in the aforesaid unit. He has been transferred to accommodate Dr. Asis Khan and so the transfer is malafide. After his transfer the aforesaid unit in Dr. B.R.A.M. Hospital will remain neglected, on the other hand, at the transferee hospital Udaipur there is no such Oral & Maxillo-facial Surgery unit and, as such, his talent will remain unutilised, therefore, the transfer is not in public interest. Apart from the allegation that the Petitioner's transfer has been made to accommodate Dr. Asis Khan, there is no other allegation of malafide.

5. Learned Counsel for the Petitioner relied upon the decisions of this Court in *Ramzanati Ahmed, Appellant v. Taiyab Aliahmed and Ors. Respondents*, 1998(2) GLT 242 and in *Pranabjyoti Deka (Dr.) Appellant v. State of Assam and Ors.* 1998 (2) GLT 378.

6. The transfer is an incident of service, so part of the Petitioner's career. Rule 11 of the Tripura Dental Services Rules, 1995 to which the Petitioner belongs clearly provides that officers appointed to the service shall be liable to serve anywhere in Tripura. It is settled law that the Courts are very reluctant to and seldom interfere in transfer matter, unless the transfer is malafide in contravention of the statutory rules, norms of transfer or aggrieved person is the victim of transfer in some way. A Division Bench of this Court earlier in *Narayan Bhattacharjee v. State of Tripura* (1988) 2 G.L.R. 247 admirably has summarised the principles relating to transfer as follows:

(a) The Government or its functionaries have power to transfer its employees employed in a transferable post as transfer is an incident of service to meet the exigencies of the administration. No right is conferred on a government servant for being posted at a specified place.

(b) The authorities in-charge of an employee are the sole judges about the necessity or desirability of such transfer as they have to decide how to distribute and utilise the service of their employees. The provision of transfer is intended to check creation of vested interest, nepotism and corruption.

(c) This power of transfer, however, should be exercised only bonafide and reasonably and in public interest. If any transfer of an employee is made on extraneous consideration or for achieving an alien purpose or an oblique motive it would amount to malafide and colourable exercise of power. A transfer is malafide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in exigencies of service.

(d) In case a transfer order is malafide or (sic) oblique motives, such as by way of punishment or for collateral reasons the Writ Court can interfere with the orders of transfer.

7. In *State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others*, the Supreme Court has observed that "The Courts of Tribunals are not appellate forum to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunal are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. When, as in this case, the transfer order is issued on administrative grounds the Court cannot go into the expediency of posting an officer at a particular place."

8. Coming, to the instant case, as stated above the only allegation of malafide in that the transfer has been effected to accommodate Dr. Asis Khan, the Respondent No. 3. Where a person is transferred, he has to be replaced by some one, so there is no question of malafide if as a sequel of the Petitioner's transfer Dr. Asis Khan Respondent No. 3 has been posted in his place. The Petitioner is said to have been acquired a degree in Oral & Maxillo-facial Surgery, in fact it is a branch of oral surgery falling under the Dental Department of the Hospital. The aforesaid unit has been placed under the supervision of a Dental Surgeon under over all supervision of Head of the Department of Dental Surgery in Dr. B.R.A.M. Hospital. If the people of the area has been benefited by the services rendered by the Petitioner, as the Petitioner claims, the people of the area to which the Petitioner has been transferred must also get the benefit of services of the Petitioner. If the unit is not in the said hospital the Petitioner after joining there may move the Government for establishment of the said unit and the Government in due course if found necessary shall establish the said Oral & Maxillo-facial Surgery Unit in the said hospital. No one is indispensable. If the Petitioner would not have in a position to supervise the said unit on account of some other reasons, the some other person would have replaced him. In such a petition like the present one in the case of *N.K. Singh Vs. Union of India and others*, at page 107 and 108 the Supreme Court observed:

However, acceptance of the Appellant's claim would imply that no other officer in CBI is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him. That indeed is a tall order and impermissible in this proceeding where the other officers are not even participants. The tendency of anyone to consider himself indispensable is undemocratic and unhealthy. Assessment of worth must be left to the bonafide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at

times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the Courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

9. So in the present case the transfer of the Petitioner is not at all malafide, by the same impugned order dated 24.2.1999 thirteen Dental Surgeons including the Petitioner have been transferred to different places. The transfer is not in contravention of any statutory rules or norms of transfer, the Petitioner's transfer cannot be said to be out of victimisation. As regards the decisions of *Ramzanali Ahmed v. Taiyab Aliahmed* (supra) and *Pranabjyoti Deka (Dr.) v. State of Assam* (supra) relied upon by the learned Counsel for the Petitioner, the facts of those cases were entirely different, have no application in the instant case. In the first case the transfer was colourable exercise of power under some political pressure, in the second case the transfer had been made at the behest of the Minister, to accommodate some other person. No such allegation had been made in the present case nor any such facts are born out from the record.

10. Learned Counsel for the Petitioner has also expressed grievance against the release order dated 26.2.1999, which the Petitioner has been released from the present post. The learned Counsel urged that the Petitioner is holding a Gazetted post and he cannot be transferred in such a way without handing over charge of the post. If the officer does not comply or avoid the transfer order, the appointing authority has no option but to relieve the transferred official from the post earlier held by him in the way in which Petitioner has been released from the post held by him. As transpired during the course of the arguments, the Petitioner has been working at Agartala since 24th October, 1990, he or any other Government servant holding a transfer post cannot claim for being posted at a particular place for such a long period.

11. No ground for interference in the transfer of the Petitioner is made out The writ petition is devoid of merit and, accordingly, is dismissed.