

(2013) 04 CAL CK 0054
In the Calcutta High Court
Case No : W.P.C.T. No. 133 of 2012

Member Secretary, Central Silk Board	APPELLANT
Vs	
Swapan Kumar Chakraborty	RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Citation : (2013) 4 CHN 100

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Malay Kumar Basu, Arun Kumar Basu and Nandalal Nayak, for the Appellant;Chiradip Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The petitioners are aggrieved by the order of the Central Administrative Tribunal, Calcutta Bench in O.A. No. 460 of 2011. By the impugned order dated 24th January 2012 the Tribunal has set aside the transfer order issued to the respondent transferring him from Kolkata to Malda. The respondent was initially appointed as a Lower Division Clerk with the petitioners on 31st December 1983. He was later promoted to the cadre of Upper Division Clerk and posted at Bangalore from 15th December 1986. Thereafter, the respondent was promoted as an Assistant and posted in the Kolkata Office of the petitioners from 1st September 2008. On 22nd April 2008 the respondent was transferred from Kolkata to Chaibasa, Jharkhand, on a representation for mutual transfer being made by the petitioner and his colleague. The petitioner was transferred to Kolkata while his colleague was sent to Chaibasa from Kolkata with effect from 7th May 2010.

2. In less than a year the respondent was informed that he was being transferred from Kolkata to Malda. He submitted a representation to the petitioners on 8th April 2011. However, his prayer for retaining him in Kolkata was rejected on 9th May 2011.

3. Being aggrieved by the transfer order issued to him, the petitioner filed O.A. No. 460 of 2011 before the Central Administrative Tribunal, Calcutta Bench. The respondent contended in his application that he had been transferred from Kolkata to Malda within a span of nine months when the transfer policy applicable to the employees of the petitioner clearly stipulated that the minimum tenure at a station should be for five years for persons in Group--A and three years for other employees. The respondent contended that the order of transfer had been issued only with a view to harass him and that it was violative of Clause 4(ii) of the Transfer policy of the Central Silk Board. He further mentioned that he was transferred from Chaibasa to Kolkata on the basis of a mutual transfer because of the personal problems that he was facing due to the illness of his parents and wife.

4. The petitioners filed a reply through the Joint Secretary (Technical), before the Tribunal. They contended therein that the respondent had worked in his home State, that is, the State of West Bengal for almost his entire service career, except for a period of one year at Bangalore and approximately another year at Chaibasa. According to the petitioners the respondent had worked for a total period of twenty one years four months in Kolkata during his entire tenure of service of 27 years and five months. He had worked in this city in four spells. The petitioners further pleaded that the respondent had to be transferred because they had accepted the request made by one Gopal Deb, Assistant to transfer him to Kolkata in view of his wife's illness and daughter's education. It was in these circumstances that the petitioners had transferred the respondent to Malda.

5. The Tribunal, after considering the pleadings and the submissions made by the parties before it held that although the Court did not normally interfere with orders of transfer, when the petitioners themselves had conceded that the respondent had been transferred in order to accommodate somebody else in his place, it indicated that the transfer order was bad. The Tribunal then referred to Clause 4(2) of the transfer policy and held that the policy had been violated by transferring the respondent before he had completed three years at that station. The Tribunal relied on the judgment of the Bombay High Court in the case of Seshrao Nagorao Umap Vs. State of Maharashtra and others,

6. Mr. Malay Kumar Basu the Learned Counsel for the petitioners submitted that a transfer order issued to an employee cannot be challenged before any forum unless the order is mala fide or there is a violation of a statutory provision or because the transfer order had been passed by an authority which was not competent to pass such an order. He fortifies his submissions by placing reliance on the judgment of the Supreme Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, , Rajendra Roy Vs. Union of India (UOI) and Another, Rajendra Singh Vs. State of U.P. and Others, and Udai Vir Singh Rathi (ACP) Vs. Union of India (UOI) and Others,). According to the Learned Counsel the transfer had been effected in public interest because of Administrative exigencies and, therefore, the order of transfer could not be questioned.

7. On the other hand Mr. Chiradip Sinha appearing for the respondent submitted that when the petitioners had expressly admitted that the transfer of the respondent was occasioned only to accommodate one Gopal Deb in Kolkata the order was demonstrably vitiated. He further submitted that the policy of the petitioners with regard to transfers clearly and in unambiguous terms stipulates that a person who, like the respondent, is below the rank of a Group-A employee, is entitled to continue at the same place for three years. He places reliance on the Judgment of the Bombay High Court in the case of Seshrao Nagorao Umap (*supra*).

8. It is trite that transfer orders should not normally be interfered with by Courts of Law as it is the prerogative of the employer to transfer an employee, based on the exigencies of work. In the case of Shilpi Bose (*supra*) the Court considered whether a transfer made by a competent authority on the request of Government servants should be interfered with by the Court.

9. In the case of Shilpi Bose (*supra*) the appellant before the Supreme Court and another person sought a mutual transfer. The authority accepted the representations of the employees and transferred them in public interest. The High Court held that the establishment was not empowered to transfer primary school teachers on their request. However, the Supreme Court concluded that there was no justification for this inference drawn by the High Court that, transfers cannot be made with a view to accommodate employees. It is in these circumstances that the Supreme Court held that when a competent authority issues a transfer order with a view to avoid hardship to a public servant, it should not be interfered with by the Court merely because the transfer order was passed on the request of the employees concerned. Mr. Basu sought to press this judgment into service by submitting that the Supreme Court has approved of transfers being prompted on a request made by an employee. The Learned counsel pointed out that it was because of the request made by Gopal Dev to bring him back to Kolkata that it was necessary to transfer the respondent who had spent almost his entire career in Kolkata.

10. We are unable to see the relevance of the judgment in Shilpi Bose's case (*supra*) in the facts and circumstances of the present case. Shilpi Bose had been transferred on the basis of a mutual transfer and the High Court had found that this was not in accordance with law. The Supreme Court in these circumstances had held that since both the employees wanted a mutual transfer, Courts should not question the same if it is done in public interest and the transfer order has been issued by the competent authority. In the present case the respondent had not applied for a mutual transfer. Instead it was only because of the request of Mr. Gopal Deb to transfer him to Kolkata that the respondent had been transferred to Malda. There is no similarity between Shilpi Bose's case (*supra*) and the present case. A mutual transfer cannot be equated in these circumstances with a transfer made in order to accommodate one employee on his request.

11. In Rajendra Roy's case (supra) the Supreme Court held that it was necessary for an employee to establish that the transfer order issued against him is mala fide or is in violation of rules of service or contrary to the guidelines for transfer without any proper justification. The Court observed that when a transfer order is passed against an employee to wreak vengeance against him, such an order of transfer requires to be struck down. The Court noted that though a transfer causes plenty of difficulties and dislocation in the family set-up of the concerned employee it cannot be the sole reason for setting aside the transfer order.

12. It is no doubt true that there are no pleadings in the application filed by the respondent that the order of transfer was mala fide. However the fact that the respondent had been transferred to Malda only in order to accommodate Gopal Deb in Kolkata gives rise to the inference that the transfer order was actuated by mala fides. The policy governing transfers of employees in the petitioners' establishment has been framed some years ago. The policy indicates that an employee may submit a request to post him at a particular place by 31st December of each year. There is no dispute that the respondent was occupying a Group C post. Under Clause 3.1(ii) of the policy an employee is expected to serve compulsorily in one of the three states of his choice for at least three years, other than his home state, except for those who are about 50 years of age as on 1st April of the year when the order of transfer is issued. Clause 4 of the policy, which deals with general issues, provides that transfers should as far as possible be effected between 1st April and 31st May of each year. The minimum tenure at a station can be five years for Group - A employees and three years for others. Clause 6 provides that the "guidelines would not confer any entitlement on the employees and the management shall have the discretion to transfer or retain persons to the best advantage of the organization, irrespective of the period spent by the person in a post or place". The transfer policy stipulates that a person in the cadre of the respondent is entitled to continue at a station for three years. The petitioners must show good reasons for deviating from this policy. The only reason for not following the policy is that the petitioners desired to accommodate Gopal Deb. The respondent was transferred prematurely on 23rd March 2011 whereas transfers under the policy are to be carried out generally and as far as possible between 1st April and 31st May of each year. There is no dispute that the petitioner had spent only nine months, approximately, in Kolkata after his mutual transfer from Chaibasa. In these circumstances it is not possible to accept the contention of the petitioners that their action is valid.

13. Mr. Basu had argued that the guidelines cannot be termed as statutory rules; the guidelines have been framed only to ensure that the transfer policy is followed in a reasonable manner and transfers are not effected arbitrarily and whimsically. It is true that these guidelines do not have the statutory force of law but when the petitioners themselves have framed the guidelines they are sacrosanct, unless discretion is exercised by the management to transfer

employees to the best advantage of the organization, irrespective of the period spent in a particular post or place. There is no material on record that the respondent had been transferred for the better management of the organization; rather the material on record indicates that the respondent was transferred to oblige Gopal Deb.

14. In the case of *Rajendra Singh (supra)* the Supreme Court concluded that no Government servant has a vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. A Government servant is liable to be transferred for administrative exigencies from one place to another. The Court further held that 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 contrary. The Court further held that the scope of judicial review of transfer orders is limited and an order of transfer can be questioned if it is vitiated because of the violation of some statutory provisions or it suffers from mala fides. We have already noted that the transfer order is contrary to the guidelines for the reasons mentioned earlier. In our opinion, the guidelines must be implemented strictly unless there is an overwhelming reason to depart from the same.

15. In the case of *Seshrao Nagorao Umap (supra)* the Division Bench of the Bombay High Court considered a similar case as the one before us where the Government Servant had been transferred in order to accommodate another. The Court held, by relying on the observations of the Supreme Court in the case of *E.P. Royappa Vs. State of Tamil Nadu and Another*, , as follows;-

5. A provision for transfer is intended to check creation of vested interest, nepotism and corruption. It is true that nobody has a right to say that he cannot be transferred without his consent. However, like any other Executive or administrative power, the power of transfer must be exercised in good faith and as per the guidelines laid down in that behalf The Government is bound by its own policy decision and must enforce it faithfully. While implementing the policy it cannot pick and choose. It is equally true that such executive instructions of a policy decision cannot confer any enforceable legal right nor an order issued in breach of it, will become per se illegal. These instructions could be directory in nature. There could be exceptions to the general rule due to exigencies of service or due to some administrative reasons, but the exception cannot be permitted to become a rule. It is equally well settled that Courts should not interfere with the orders of transfers, which are issued in the exigencies of service and in discharge of administrative or executive power. However, if the order is issued in mala fide or in colourable exercise of power then the Court is bound to interfere, since the mala fide exercise of power is not considered to be legal exercise of power. Once a policy is laid down by the Government it must apply equally to every employee.

16. When a policy is framed by the petitioners for transferring its employees so that no vested interest is created in them by stationing them in one place for years together, the transfer orders cannot be issued in colourable exercise of the

power of the employer.

17. In our opinion, the petitioners have not made out any case for us to interfere with the order passed by the Tribunal. The fact that the respondent continued in Kolkata for years together is not due to any fault of his. The respondent was in fact transferred on every occasion by orders issued by the petitioners without there being any application from the respondent. It was only in the case of his transfer on 30th December 1997 from Bangalore to Kolkata that he was transferred on a request made by him. Again the respondent sought a mutual transfer from Chaibasa to Kolkata which is permissible under the rules. That the respondent was retained in Kolkata or his home state for a number of years cannot be attributed to a fault on the part of the respondent.

18. In these circumstances the petition is dismissed. No order as to costs. Urgent certified photocopies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Anindita Roy Saraswati, J.

I agree.