

(2019) 05 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3397 Of 2019

Mohammed Mobin Mansuri

APPELLANT

Vs

Ajmer Vidhyut Vitran Nigam Limited And Ors

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 89(8A)
Rajasthan State Electricity Board Travelling Allowance Rules, 1971 — Rule 27A, 27(A)
(1)(a), 49, 291
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 RAJ CK 0080

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Sunil Joshi, Ravi Bhansali, Vipul Dharnia, Manoj Bhandari

Final Decision : Dismissed

Judgement

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"1. That impugned order dated 28.02.2019 (Annexure-9) passed by the Secretary (Administration), Ajmer Vidhyut Vitran Nigam Limited Ajmer may kindly be quashed and set aside.

2. Cost of this writ petition may kindly be awarded in favour of the petitioner.

Any other appropriate direction or order, which this Hon'ble Court deems fit in the facts and circumstances of the case may kindly be granted."

2. This Hon'ble Court had passed the following order on 08.03.2019 in this writ petition:

"It is submitted by learned counsel for the petitioner that as per Column - (10) of the Travelling Allowance admissible to Nigam employees on transfer under Rule 27A, it is specifically stipulated that it would be mandatory to mention in the

transfer order that such transfer is made in public interest/administrative reasons. In absence of such specific mention in the transfer order, the transfer shall be treated on request of the concerned employee.

It is submitted that by order dated 28.02.2019 (Annexure-9) the petitioner has been transferred with immediate effect without indicating that the said transfer was in public interest/administrative reasons, whereas, the petitioner has not made any such request for transfer and, therefore, the order dated 28.02.2019 (Annexure-9) is bad.

In view of the submissions made, issue notice. Issue notice of stay application as well. Both the notices are made returnable within a period of four weeks.

Notices when issued be given 'dasti' to counsel for the petitioner.

In the meanwhile and till further orders, effect and operation of order dated 28.02.2019 (Annexure-9) shall remain stayed.

Connect with SBCWP No.2281/2019."

3. Brief facts of this case, as noticed by this Court are that the petitioner was appointed on the post of Lower Division Clerk on the basis of work charge, and his services were regularized on 14.11.1994. Thereafter, the petitioner has been appointed as Assistant Accounts Officer on 21.8.1998, and vide order dated 26.04.2018, the petitioner has been promoted on the post of Accounts Officer and posted as AO (O&M), Chittorgarh.

4. The respondent-Department issued an order dated 22.6.2018, by which the petitioner has been transferred from AO (O&M), Chittor to AO (Rev-CO), Ajmer, and in compliance of the said order, the petitioner has joined the duties.

5. The respondent-Department has also issued an order dated 30.06.2018, by which the petitioner was again transferred from AO (Rev-CO), AVVNL Ajmer to O/o ZCE (U/Z), AVVNL, Udaipur, and in compliance of the said order, the petitioner has joined the duties.

6. The respondent-Department has issued another order dated 01.10.2018, by which the petitioner was transferred from AO (Rev.), Udaipur to AO (O&M), Dungarpur, and the petitioner has joined at AO (O&M), Dungarpur accordingly.

7. The petitioner was again transferred back vide order dated 05.10.2018 from AO (O&M), Dungarpur to AO (REV.), Udaipur, and in compliance of the said order, the petitioner has joined the duties.

8. The respondent-Department has again issued an order dated 14.01.2019, by which the petitioner has been further transferred from AO (O&M), Udaipur to AO (REV.), Udaipur, and compliance of the said order, the petitioner has joined his duties.

9. Mr. Sunil Joshi, learned counsel for the petitioner has shown to this Court a letter dated 26.02.2019 of the desire by the local MLA whereby the

recommendation of transfer of respondent No.4 from AO (REVENUE), AVVNL, Udaipur to AO (O&M) AVVNL, Udaipur was made.

10. Learned counsel for the petitioner submitted that allegation of the petitioner is that in pursuance of the aforementioned desire, the respondents authorities have passed an order dated 28.02.2019, by which the petitioner has further transferred from AO (O&M), Udaipur to AO (REV.), Udaipur.

11. Learned counsel for the petitioner further submitted that there is a transfer guideline, which requires that the transfer not to be made before three years.

12. Learned counsel for the petitioner also submitted that Rule 27-A of the Rajasthan State Electricity Board Travelling Allowance Rules, 1971 provides for admissibility of the travelling allowance on transfer, which reads as under:-

"Rule 27(A)(1)(a)- An employee who is transferred from one station to another in Board's interest and not at his own request shall be entitled to travelling allowance at the rate given Appendix C."

13. Learned counsel for the petitioner also submitted that the travelling allowance has not been given to the petitioner, despite the fact that the transfer was made by the respondent-Department and not at the request of the petitioner himself, and thus, that was not a voluntary transfer, which shows the illegality committed by the respondent-Department.

14. Learned counsel for the petitioner has harped upon the fact that the respondents-authorities, while passing the transfer order has neither written or mentioned public interest nor the administrative reasons therein, for the said transfer at different place.

15. Learned counsel for the petitioner further submitted that the post, on which the petitioner has been transferred vide the impugned transfer order, is not a sanctioned post.

16. Learned counsel for the petitioner also submitted that the political desire has resulted into the present order of transfer, which is illegal at the threshold.

17. In support of his submissions, learned counsel for the petitioner relied upon the judgment rendered by the Hon'ble Court in Vijay Vishnoi Vs. JVVNL & Ors., reported in 2016(1) WLC (Raj.) UC 459, relevant portion of which reads as under:

"4. On examining the ratio of the judgment rendered by a Single Bench of this Court in the case of Champa Lal Parihar. Vs. State of Rajasthan & Ors. reported in 2006(1) WLC (Raj.) 212, this Court is satisfied that the controversy at hand is fully covered by the above mentioned judgment wherein it was held as under :-

"14. It is admitted position that vide impugned order dated 4.7.2005 (Annexure-3), the petitioner has been transferred from Luni to Bhinmal. As per the aforesaid transfer order, he will not be entitled to claim for any travelling allowance and joining period. It is also admitted position that the petitioner has

not made any request for his transfer to any other place, whereas the impugned transfer order (Annexure-3) stipulates that the petitioner has been transferred on his own request. Apart from that as per Rule 291 of the Rules, if the petitioner is transferred from one district to another district, he will lose his seniority and will be placed at the bottom of the seniority list of the cadre to which he belongs. It may be mentioned that frequent, unscheduled and unreasonable transfers uproot a family, cause irreparable harm to a Government servant and derive him to desperation. It disrupts the education of his children and leads to numerous other complications and other problems, which ultimately result in hardship and demoralisation".

18. Learned counsel for the petitioner has also placed reliance on the decision rendered by this Hon'ble Court in Udai Singh Machiwal Vs. Ajmer Vidhyut Vitran Nigam Limited & Ors. (S.B. Civil Writ Petition No.14624/2017 decided on 18.01.2019), relevant portion of which reads as under:

"Learned counsel for the petitioner submits that the issue raised in the present writ petition is squarely covered by the judgment of this Court in Vijay Bishnoi Vs. JVVNL & Ors. Limited: 2016(1) WLC Raj.(UC) 459, wherein it has been held that the orders of transfer passed in the guise of working arrangement cannot be sustained and therefore, the writ petition deserves to be allowed.

The learned counsel for the respondents is not in position to dispute that the issue raised in the writ petition is squarely covered by the judgment in the case of Vijay Bishnoi (Supra).

The impugned order dated 27.10.2017 was stayed by order dated 16.11.2017. In view of the above fact the situation, wherein, the respondents have passed order of transfer of the petitioner in the name of working arrangement, the same cannot be sustained and therefore, the same is quashed and set aside."

19. Learned counsel for the petitioner has also relied upon the judgment rendered by this Hon'ble Court in Ajay Maheshwari Vs. AVVNL, Ajmer & Ors. (S.B. Civil Writ Petition No.5193/2016 decided on 25.05.2016), which reads as under:-

"Heard.

Challenge has been made to the order dated 30.11.2015 (Annexure-1) and order dated 25.04.2016 (Annexure-2) on the ground that the same have been passed without any administrative exigency. It is contended that the petitioner has been directed to report and work in the office of Assistant Engineer (O & M), Ajmer Vidhyut Vitran Nigam Limited, Jhadol and the impugned order that has been issued is wholly against the provisions of the Rules applicable to the employees of the Nigam, wherein it is mandatory to mention in the transfer order itself that the said transfer is being passed in public interest for administrative exigency. Counsel for the petitioner argues that the transfer orders are totally silent in this regard and moreover, the order that has been passed to avoid paying any TA/DA.

Reliance has been placed on a judgment rendered in Vijay Bishnoi Vs. JVVNL & Ors. limited in Western Law Cases (Rajasthan) (UC) 2016 Volume 1 Page 459, wherein in similar situation when transfer order had been passed without mentioning either the administrative exigency or providing TA/DA, the said transfer order had been set aside.

Per contra, learned counsel appearing on behalf of the respondent- Nigam argues that it is not a transfer order, but it is only on account of work arrangement and for the smooth functioning of the said Division that the petitioner has been sent to work at Jhadol.

The facts and circumstances of the present case clearly show that the petitioner has been sent on transfer. Relying upon the aforesaid judgment which is totally applicable to the facts and circumstances of the present case, the impugned order quo the petitioner are hereby quashed.

The respondent is free to pass an order afresh, if the need so arises qua the petitioner.

The writ petition stands disposed of accordingly."

20. Reliance has also been placed by learned counsel for the petitioner on the judgment rendered by this Hon'ble Court in Chander Kanta Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.11022/2015 decided on 24.11.2015), relevant portion of which reads as under:-

"Admittedly, the post of Gram Sevak falls within the Non-Gazetted Staff and, therefore, even otherwise there was no requirement of even placing the said aspect before the Minister as claimed by the respondents. Besides the above even if the same was to be placed before the Minister, the hierarchy as indicated hereinbefore cannot be made to work from top downwards i.e. from Minister to the Secretary to the Additional Commissioner which would be against the established practise and wholly contrary to the settled position wherein the approval etc. is to be granted by a higher officer and in the present case on passing of the order by the Minister, the Secretary and the Additional Commissioner are merely required to follow the same, which cannot be the procedure.

In view of the above, the order/proposal Annex.R-2 can only be said to be wholly without jurisdiction, the said proposal cannot partake the character of order of the Government and consequently passing of the order Annex. P-7 by the respondents transferring the petitioner from one Panchayat Samiti to other also cannot be sustained.

Besides above, it is well settled that the desire and/or direction of the Minister concerned cannot be termed as direction and/or decision of the State Government and, therefore also for lack of pre-requisite for exercise of jurisdiction under Section 89 (8-A) of the Act the action impugned cannot be sustained."

21. On the other hand, Mr. Ravi Bhansali, learned Senior Counsel assisted by Mr. Vipul Dharnia, and Mr. Manoj Bhandari appearing on behalf of the respondents, submits that the aforequoted order dated 08.03.2019 clear shows that the basis of the initial argument made on behalf of the petitioner is Rule 27A of the Rules of 1971 and also that the public interest and administrative reasons were not mentioned in the order of transfer.

22. Learned Senior Counsel for the respondent further submitted that the impugned transfer order cannot be said to be illegal as the transfer has happened between the two posts where the person has to discharge the duty in the same building, and therefore, the whole argument of payment of travelling allowance on the basis of the Rules of 1971 pertaining thereto, particularly, Rule 27A, falls flat, and that, the petitioner is merely reeking up the present controversy, even without any reason.

23. Learned Senior Counsel for the respondent also submitted that all the transfer orders passed by the respondents authorities are in the same format without there being any mention of public interest and administrative necessity, which are inherent in the orders so passed.

24. Learned Senior Counsel for the respondent further submitted that the transfer within the same city and the same building is not likely to prejudice the petitioner.

25. Learned Senior Counsel for the respondent also submitted that the petitioner upon being transferred vide order dated 14.01.2019, which is Annexure-7 of the writ petition and he has already rendered service on the post as mentioned therein, and therefore, at this stage, it is not open for him to say that it was not a sanctioned post.

26. Learned Senior Counsel for the respondent further submitted that the ground of transfer and non payment of travelling allowance is not applicable in the present case, as the same requires the transfer to some distant place, and not in the same building.

27. Learned Senior Counsel for the respondent also submitted that the petitioner was transferred vide order dated 28.02.2019 from AO (O&M), Udaipur to AO (REV.), Udaipur and the petitioner was transferred vice versa.

28. Learned Senior Counsel for the respondent further submitted that the allegation that the communication dated 26.02.2019, which was a desire of the local MLA, became the basis of the transfer order so passed, is incorrect and baseless.

29. Learned Senior Counsel for the respondent also submitted that no political interference was there and no malafide has been attributed to anyone nor any person has been incorporated as a party by the petitioner.

30. Learned Senior Counsel for the respondent further submitted that the

petitioner has been transferred from AO (O&M), Udaipur to AO (REV.), Udaipur, which is in the same building, and thus, the question of granting travelling allowance is of no consequence, and the same cannot become a ground to challenge the transfer order.

31. Learned Senior Counsel for the respondent also submitted that the transfer order dated 28.02.2019 has been passed on pure administrative exigency and earlier orders were also passed on the same ground.

32. Learned Senior Counsel for the respondent further submitted that the transfer orders passed on earlier occasions on 22.06.2018, 30.06.2018, and 01.10.2018 as well as 14.01.2019, having the same language and format, were never challenged by the petitioner and were complied with by him, and that, the impugned transfer order has already been acted upon.

33. Learned Senior Counsel for the respondent has placed reliance on the judgment rendered by the Hon'ble Supreme Court in *Union of India Vs. Janardhan Debanath & Anr.*, reported in AIR 2004 SC 1632, relevant portion of which reads as under:-

"12. A bare reading of FR-15 makes it clear that except in cases where the transfer is (a) on account of inefficiency or mis-behaviour or (b) on a written request the government servant cannot be transferred or except in a case covered by Rule 49 appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien. The clear intention of the prescription is that except the two categories indicated above, in all other cases the pay to be paid on transfer shall not be less than of the post on which he holds a lien. Exception is made in case of a transfer where it is on account of inefficiency or mis-behaviour. In a case where transfer is on account of inefficiency or mis-behaviour, the same can be made to a post carrying less pay than the pay of the post on which he holds a lien. Similar is the position where a transfer is made on a written request. Where the transfer is otherwise than for inefficiency or mis-behaviour or on a written request made by the transferred employee, the protection of pay is ensured. The High Court seems to have completely misconstrued the rule as if there cannot be any transfer in terms of FR 15 on account of inefficiency or mis-behaviour. The view is clearly contrary to the pronounced intention of FR 15.

13. That brings us to the other question as to whether the use of the expression 'undesirable' warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in *Jagdish Mitter v. The Union of India* (AIR 1964 SC 449, para 21, p.456) to contend that whenever there is a use of the word 'undesirable' it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression 'undesirable' in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The

manner, nature and extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially and same yardstick, norms or standards cannot be applied to all category of cases. Transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

14. Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects which can be gone into in an appropriate proceeding, if at all there is any adverse order in the matter of seniority or promotion. It was also submitted that transfer was within the same circle i.e. the North Eastern Circle and, therefore, the question of any seniority getting affected by the transfer prima facie does not arise".

34. Learned Senior Counsel for the respondent has also relied upon the judgment rendered by the Hon'ble Allahabad High Court in Mohd. Raees Qureshi Vs. State of U.P. Thru. Prin. Secy. Transport & Ors., reported in 2019 SCC Online All

1671, relevant portion of which reads as under:

"27. In the case of Dharmendra Kuimar Saxena v. State of U.P. reported in 2013 LawSuit (All) 1796 this Court has held as under:

"After careful consideration of the law laid down by the Supreme Court, I am of the view that this Court cannot interfere with the transfer matter as the Government servant has no vested right to continue at a place of his choice. The Government can transfer the officer/employee in the administrative exigency and in public interest. However, if a transfer is made against the executive instructions or transfer policy, the competent authority must record brief reason in the file for deviating from the transfer policy or executive instructions and the transfer must be necessary in the public interest or administrative exigency. If an officer/employee, who is aggrieved by his/her transfer makes a representation to the competent authority, his/her representation must be decided objectively by a reasoned order."

28. In view of the above, the legal position on the issue of transfer can be summarized as under:

(1) Transfer is an incident/condition of service.

(2) It does not adversely affected the status or emoluments or seniority of the

employee.

(3) The employee has no vested right to get a posting at a particular place or can choose to serve at a particular place for a particular tenure.

(4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employees are required.

(5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

(6) An employee should not be subjected to frequent transfer.

(7) There is a very little scope of judicial review by the Court/Tribunal against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or mala fides is established."

35. After hearing learned counsel for the parties as well as perusing the record of the case alongwith the precedent law cited at the Bar, this Court is of the opinion that the transfer orders are incidental to service and the basic ground of grant of the travelling allowance under Rule 27A of the Rules of 1971, which prompted this Hon'ble Court to pass the earlier order on 08.03.2019, is not applicable in the present case as the transfer of the petitioner has been made from one floor of the same building to another floor of the same building. The said transfer virtually amounts to change in nomenclature, and thus, not having any prejudicial impact upon the petitioner. Therefore, the said transfer cannot be held to be bad.

36. This Court finds that the desire by a local MLA has not been proved by the petitioner to be having any malicious impact upon the present petitioner, and that, no body has been impleaded as a party and no malafide at large has been alleged by the petitioner.

37. This Court also finds that the respondents authorities have categorically come with a stand that the transfer was in public interest and for administrative reasons, and thus, no interference is called for therein at this stage. Hence, after examining the complete record of the case, this Court is of the opinion that the impugned transfer order is in accordance with law and does not call for any interference.

38. The judgments cited by learned counsel for the petitioner are not applicable in the present case.

39. Consequently, the present writ petition is dismissed. Stay Application No.3289/2019 also stands dismissed accordingly.