
(1973) 12 AHC CK 0007
In the Allahabad High Court
Case No : Special Appeal No. 261 of 1973

Nanak Chand Khanna

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-12-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2
Constitution of India, 1950 — Article 16

Citation : AIR 1974 All 471

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : S.N. Shukla, S.R. Misra and B.N. Sapru, for the Appellant; Laljo Sinha and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandra, J.—The appellant was employed as a booking clerk in the North-Eastern Railway. In January, 1961 he was transferred to Deoria. On 13th October, 1969 the Divisional Superintendent passed an order transferring him to Haldharpur Flag Station in the district of Ballia. The appellant made a representation whereupon this order was modified on 12th May, 1970, and instead, he was transferred to Katka Flag Station in the Varanasi Division. The appellant filed a suit in the court of the Additional Munsif, Deoria for a declaration that the two transfer orders were illegal, and for an injunction restraining the Railway authorities from implementing those orders, or from transferring the plaintiff to any other flag station. Along with the plaint the appellant, filed an application for an ad interim injunction. The learned Munsif issued an ad interim injunction as prayed. The Railway authorities put in appearance and filed objections to the injunction. On 4th December, 1971, the learned Munsif confirmed the ex parte injunction order. The defendants went up in appeal, but the same was dismissed by the learned District Judge, Deoria on 4th April, 1973.

2. The defendants thereupon instituted a writ petition in this Court. A learned

Single Judge held that it was incumbent upon the civil court to have found that there was a prima facie case in favour of the plaintiff. This was not done. The issuance of the injunction was, hence, illegal. Merely because the balance of convenience was, in the opinion of the civil Courts, in favour of the plaintiff, was not sufficient to merit the grant of an injunction. On these findings the writ petition was allowed and the interim injunction order issued by the courts below was quashed.

3. It is well settled that an injunction can be granted only if the plaintiff makes out a prima facie case and the balance of convenience is in his favour. The two conditions must co-exist before an order of injunction can be passed. It has also been held that orders of injunction are issued in rare cases. In *Badri Prasad Vs. Chokhey Lal*, it was observed that cases in which either an attachment or an injunction ought to be issued before judgment, are, extremely rare, and the plaintiff ought to be able to satisfy the court of the practical certainty of success, and of the existence of grave danger and of a real fear that a dishonest defendant undoubtedly liable, is making away with the probable fruits of the judgment.

The view of the learned District Judge that he will not express any opinion on the question whether there was a prima facie case in favour of the plaintiff, because expression of opinion on that point might cause prejudice to either party during the trial of the suit, discloses palpable ignorance of the true legal position. Without a finding that there is a prima facie case in favour of the plaintiff, an order of injunction cannot validly be passed. If in order to determine whether there is a prima facie case, an opinion has to be expressed on any controversial question, the same cannot be avoided on the plea that it might prejudice either of the parties. An expression of opinion at this stage of the case cannot possibly prejudice the parties at the hearing of the suit, because it is an expression of opinion on the materials then available on the record.

4. The plaintiff did not allege in the plaint that he had a right to remain posted at Deoria, or that in law the defendants were not entitled to transfer him. He challenged the order of transfer on a variety of grounds. One was that the order of transfer had not taken into consideration the safety of the plaintiff's life in the light of past history. The past history was that the appellant was involved in a murder case in which he was acquitted. Such an involvement was, in our opinion, irrelevant to the question whether he should permanently be posted at Deoria, or should be transferred to some other station. Moreover, orders of transfer are purely administrative; the law does not require the authorities to indicate the reason or considerations which impel them to make an order of transfer. There is no allegation in the plaint which may satisfy any rational mind that this bald allegation has any substance. The order of transfer passed on 13th October, 1969 was subject to a representation by the appellant. In the representation he set out these very grounds. On a consideration of that representation the authorities passed another order on 12th May, 1970. Prima facie, it cannot be

said that the authorities did not take into consideration the allegation regarding the safety of the plaintiff's life. Similarly, it cannot be said that prima facie it has been established that the authorities did not apply their mind to the facts and circumstances of the case and the alleged safety of the appellant.

5. It was then said that the transfer order violated Railway Board's order dated 19th November, 1968. By this order the Railway Board directed the keeping in abeyance of the periodical transfer scheme of Class III staff. There is nothing in that order which prohibits transfer absolutely. Actually, from the various orders passed by the Railway Board in this connection, it appears that the periodical transfer scheme was kept in abeyance, but it was subject to the power of the Railways to make selective transfer for administrative reasons. The order dated 29th October, 1970 shows that the transfer of the appellant was on administrative grounds. There is no allegation in the plaint which may establish that the order was not made on administrative grounds.

6. The order of transfer was also challenged as violative of Article 16 of the Constitution on the ground that persons who were similarly posted, were being dealt with differently. In support of this submission the appellant has not furnished any material to indicate which persons placed in the same group as the petitioner were given what differential treatment. In Clause (f) of paragraph 7 of the plaint the order was challenged on the ground that it violated Railway Board's order dated 16th February, 1970. This order said:

"At stations where the custody of ticket is not with the Station Master or Chief Booking Clerk at least the Head Booking Clerk in grade 205-280 is made responsible for the safe custody of tickets."

The question whether this order was at all justiceable or enforceable in favour of the appellant is material. But we do not go into it at this stage. All that this order says is that at least a Head Booking Clerk in the grade of Rs. 205-280 is made responsible for the safe custody of tickets. If the appellant was in the grade of Rs. 150-240 and was not given the grade of Rs. 205-280, obviously he could not be made responsible for the safe custody of tickets, in view of this order of the Railway Board. There is no allegation, much less any proof, that as a result of the order of transfer, the appellant was made responsible for the safe custody of tickets at this new place of posting. We fail to see how the Railway Board's order dated 16th February, 1970 was violated by the order of transfer.

7. It will thus be seen that the various grounds upon which the plaintiff challenged the validity of the transfer order had, prima facie, no substance. Simply because the civil courts thought that the balance of convenience was in favour of the plaintiff, furnished no adequate ground to merit the grant of an order of injunction. The question of balance of convenience is not merely dependent upon a comparison of the convenience of the parties. A plaintiff who wants an order of injunction must satisfy the court that he will suffer irreparable harm if the injunction is not issued. That the plaintiff miserably failed to establish.

In the result, the appeal has no merit and is accordingly dismissed with costs.