
(2016) 08 GAU CK 0076
In the Gauhati High Court
Case No : WP(C) No. 3970 of 2016.

Nand Lal Gupta - Petitioner @HASH Union of India and Others

Date of Decision : 31-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 GauLJ 481 : (2016) 4 GauLT 925

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : In Person, for the Petitioner; Mr. G.N. Sahewalla and Mr. G. Pegu, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Manojit Bhuyan, J. - Heard Mr. Nand Lal Gupta in person as well as Mr. G.N. Sahewalla, learned senior counsel representing respondent Nos. 2, 3, 4, 6, 8 and 9. Mr. G. Pegu, learned counsel represents respondent no. 1.

2. Having regard to the facts in issue and as agreed to by learned counsels for the parties, this writ petition is taken up for final disposal. Pertinent to mention that although respondent nos. 5 and 7 are named in person, the entire writ petition do not disclose any allegations of mala fide against them. For disposal of this writ petition, service of notice upon the said respondent nos. 5 and 7 are not deemed necessary.

3. The Order dated 17.06.2016 issued under the hand of the Regional Executive Director (Eastern Region-II), NTPC Limited is put to challenge. The issuance of the said Order dated 17.06.2016 has its own background, which is being narrated here under. The writ petitioner was serving as Assistant Manager (Operation) in the Operation & Maintenance Department under the National Thermal Power Corporation Limited (NTPC), Bongaigaon. In course of his service and sometime in May, 2014 he had developed disagreements with superior officers for having insisted on better living conditions of the labour force. As a result, he had a stand-off with the respondent no. 6 i.e. the Group General Manager (GGM). According to the petitioner, his relation with the respondent no.

6 had become strained and the respondent no. 6 came to nurture deep seated animosity against the petitioner. On 14th of May, 2016 the petitioner was shifted from General Duty to Shift Duty and considering the fact that he was ailing from kidney ailments and the Shift Duty being onerous in nature, he filed a Representation before the respondent no. 6 on 02.07.2015 requesting that he be shifted back to the General Shift Duty in his earlier Department i.e. CD-II on medical grounds. Petitioner submits that as regards his physical ailment, opinion was also rendered by the Chief Medical Officer who suggested that the petitioner requires a regulated duty schedule with proper balanced diet etc. As the medical opinion rendered by the Chief Medical Officer was not acted upon, the petitioner submitted another Representation on 18.01.2016, addressed to the Director (HR), NTPC Limited. At the same time, the petitioner had also addressed letters to the Prime Minister of India alleging harassment as well as to the Chairman and Managing Director (CMD), NTPC Limited in that regard. According to the petitioner, the NTPC Authority, instead of shifting him to General Duty, issued the Office Order dated 23.03.2016, thereby transferring the petitioner to Kaniha in the State of Orissa. The said Office Order was shown to be issued on administrative exigencies.

4. Challenge was made to the said Office Order dated 23.03.2016 before this Court in WP(C) 3296/2016. This Court while disposing of the said writ petition by Order dated 01.06.2016 had duly taken note of the grievances raised by the petitioner and also the fact that pursuant to the Office Order dated 23.03.2016, the NTPC Limited, Bongaigaon had already released the petitioner on 09.04.2016. This Court also noticed that the petitioner had submitted a Representation before the Regional Executive Director, Eastern Region-II, NTPC Limited on 12.05.2016 for cancellation of his Transfer Order to Kaniha and for considering his transfer to other locations. A categorical finding was made that the Court did not find any rights of the petitioner having been violated. However, a direction was made to the effect that since the petitioner's Representation dated 12.05.2016 was pending before the Regional Executive Director, the same be disposed of by a speaking order within a period of 1(one) month from the date of Court's Order dated 01.06.2016. It was also made clear that the Transfer Order dated 23.03.2016 will be subject to the final decision to be taken by the respondent no. 4 i.e. the Regional Executive Director.

5. In pursuance of the order of this Court dated 01.06.2016 in WP(C) 3296/2016, the petitioner's Representation dated 12.05.2016 was taken up for consideration. The same concluded with the passing of the Order dated 17.06.2016, which is impugned in the present proceedings.

6. Mr. Nand Lal Gupta makes submission as to how he has been ill-treated by the respondents concerned and how he has been sought to be transferred to Kaniha in the State of Orissa as a measure of punishment. He also submits that although this Court by Order dated 01.06.2016 had directed the respondent no. 4 i.e. the Regional Executive Director to dispose of his Representation dated 12.05.2016 by

a speaking order, however, the order passed on 17.06.2016 did not have the semblance of an order touching upon the grievances raised by him in his Representation dated 12.05.2016. Mr. Nand Lal Gupta submits that a speaking order must speak for itself by encompassing and touching upon all facets of his grievances. In this respect, he submits that the medical opinion rendered by the Chief Medical Officer did not find mention in the Order dated 17.06.2016. As a result, it is submitted, that the said Order dated 17.06.2016 is a cryptic order and cannot stand the scrutiny of law.

7. Mr. G.N. Sahewalla, learned senior counsel, representing NTPC Limited submits that this writ petition requires dismissal at the very threshold, in as much as, no cogent grounds have been shown requiring interference of this Court to the transfer Order dated 23.03.2016 or the subsequent Order dated 17.06.2016. Mr. Sahewalla submits that the issue before this Court is with regard to the legality and validity of a transfer order and having regard to the well recognised parameters within which this Court can interfere in a transfer order, the writ petition do not stand for consideration at all. Mr. Sahewalla also submits that the petitioner had since joined the new place of posting i.e. Kaniha on 05.07.2016.

8. I have heard the learned counsels for the parties and have also perused the materials on record. The scope of judicial review of an administrative order, particularly that of a transfer, is too well recognised in law. Time and again the Apex Court have held that the rule is not to interfere with a transfer order, exception being that it can be interfered only if it can be shown that the transfer order is clearly arbitrary or vitiated by mala fides or there exists infraction of any professed-norms or principles governing transfer. In the instant case, no mala fide is alleged against respondent no. 6 and/or the said respondent no. 6 as not been arrayed as a party respondent by name. The statements made against respondent no. 6 in his official capacity is that for certain disagreements, the petitioner had incurred the wrath of the respondent no. 6, who in course of time began to nurture deep seated animosity against him. A statement has also been made that the duty change of the petitioner from General Duty to Shift Duty had intentionally been done by the respondent no. 6. Certain other allegations have also been made of high-handedness and wilful harassment by superior officers. Respondent nos. 5 and 7 have been made party respondents by name. However, there is not a whisper of any mala fide alleged against them. In this respect, reference can be made as what would construe a mala fide action. Going by the definition, it means want of good faith, personal bias, grudge, inappropriate or ill-motive. It is too well settled that the determination of a plea of mala fide involves two questions, namely, whether there is a personal bias or/motive and whether the administrative action is contrary to the objects, requirement and conditions of a valid exercise of administrative power. It is also too well settled that mere assertion or a bald statement is not sufficient to bring home the allegation of mala fide. It has to be demonstrated either by admitted or proved facts and the circumstances obtaining in a given case. In the present case the

elements sufficient to prove mala fide do not stand demonstrated. Neither the petitioner has been able to establish that the Order dated 17.06.2016 had been passed contrary to professed norms or contrary to the principles governing transfer.

9. Turning to the Order dated 17.06.2016, it clearly appears that the same had been made by taking into consideration the primary grievances raised by the petitioner in its Representation dated 12.05.2016. The gist of the Representation dated 12.05.2016 is primarily on the health issue of the petitioner with request that he be posted to any location where he can have easy access to health facilities and to such location where he can have the support and care of his family in time of need. The Order of 17.06.2016 discloses that NTPC Authority were quite aware of the health condition of the petitioner. Mention is also made that the NTPC Project in Kaniha, which is a 3010 mega watt project, is the second largest Super Thermal Power Station having about 1200 employees. The said power station at Kaniha has a well equipped hospital with multiple Specialist Doctors and paramedical staffs, providing 24 x 7 medical facilities with emergency treatment facilities. Besides, it is also tied up with multi-speciality hospitals at Cuttack and Bhubaneswar. Names of some hospitals/super speciality hospitals also find mention in the Order dated 17.06.2016. The said order also makes observation that the medical needs of the petitioner can equally be well attended to in any of the hospitals mentioned therein. In addition, it is also indicated that in view of his work experience as well as his health condition, he has been posted to Kaniha, keeping in view the manpower requirement at the Super Thermal Power Station at NTPC at Kaniha. Lastly, it is also indicated that post-surgery follow-ups of the petitioner can well be best served at the hospitals in and around the Thermal Power Station. The recitals in the order dated 17.06.2016 is a speaking order for all intents and purposes.

10. Pertinent to note that at this stage the petitioner makes strong objection to the Order dated 17.06.2016 stating that there are absolutely no super-speciality medical facilities in and around Kaniha and the said disclosures made in the order are false. On a pointed query by this Court, the petitioner could not refer to any statement made in the writ petition demonstrating that there are no super-facility hospitals, as has been indicated in the Order dated 17.06.2016.

11. Having regard to the above and the parameters within which the scope and power of judicial review is available to this Court and also having regard to the case as laid out by the petitioner, I find no sufficient ground for interfering with the Order dated 17.06.2016. To reiterate, challenge has been made to the transfer of the petitioner from Bongaigaon to Kaniha and in the absence of substantial and cogent reasons within the four corners of law governing the scope of this Court in interfering with a transfer/administrative order, I find no merit in this writ petition and the same stands accordingly dismissed. Parties are left to bear their own costs.