

(2017) 07 DEL CK 0088

In the Delhi High Court

Case No : 9262 of 2016, CM No 37410 of 2016

**NARENDRA SINGH Vs BUREAU OF INDIAN STANDARDS THROUGH: THE
DIRECTOR? GENERAL & ANR**

Date of Decision : 31-07-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 07 DEL CK 0088

Hon'ble Judges : V. Kameswar Rao

Bench : SINGLE BENCH

**Advocate : K.K. Rai, ?Charu Ambwani, Anshul Rai, B.K. Sood, Sandeep
Thukral, ? Harish Gaur**

Judgement

1. The present petition has been filed by the petitioner with the following prayers:-

"In the above mentioned facts and circumstances, it is most respectfully prayed that this Hon"ble Court may graciously be pleased to pass appropriate orders:

a) Issue an order, direction in the nature of writ by invoking Article 226 of the Constitution of India so as to set aside and quash the impugned order of transferred issued by the respondent no.2 vide memorandum dated 30.8.2016 as it is violative of Clause 6.1 of the Placement Policy for Group A Scientific Cadre Officers which is issued and approved by the Bureau of India Standards vide office order dated 9.10.2015;

b) Issue an order, direction in the nature of writ by invoking Article 226 of the Constitution of India so as to set aside and quash the impugned order of transferred issued by the respondent No.2 vide memorandum dated 30.8.2016 as it is violative of Clause 7.2 of the Placement Policy for Group A Scientific Cadre Officers which is issued and approved by the Bureau of India Standards vide office order dated 9.10.2015; c) Issue an order, direction in the nature of writ by invoking Article 226 of the Constitution of India so as to set aside and quash the impugned order of transferred issued by the respondent No.2 vide

memorandum dated 30.8.2016 as it is violative of Clause 5.1 of the Placement Policy for Group A Scientific Cadre Officers which is issued and approved by the Bureau of India Standards vide office order dated 9.10.2015; d) Pass an order or direction retaining the Petitioner on the post of Scientist " E" as Head (Electronics and IT) at the LITD, Head Quarters, Bureau of India Standards, New Delhi; e) Pass such other order or orders as this Hon"ble Court may deem fit in the facts and circumstances of the case."

2. The facts as noted from the writ petition are, the petitioner had joined the respondents on April 24, 1984 as Scientist "B". He got promotions till Scientist "E".

While working as Scientist "E" in April, 2013 he was transferred to the Western Regional Office (WRO), Mumbai and after working for two years in Mumbai, he sought his transfer back to Delhi on humanitarian grounds. The said request of the

petitioner was accepted by the respondent No.2 and the petitioner was transferred from

WRO, Mumbai to LITD, Head Quarters at New Delhi. On his transfer, the petitioner has been working on the post of Scientist "E" as Head, LITD. On August 30, 2016, the

petitioner was transferred to KKBO, Kolkata.

3. Mr. K.K. Rai, learned Senior Counsel for the petitioner attack the impugned order of transfer on two grounds; (i) breach of Placement Policy issued vide office order

dated October 9, 2015 and (ii) reasons for transfer to Kolkata are fallacious and not

tenable.

4. Insofar as the submission at serial No. (i) above is concerned, he would draw my

attention to the Placement Policy at page 40, more specifically clauses 5.1, 6.1 and 7.4,

to contend (1) that Head LITD, is appointed on the basis of seniority, aptitude, competence etc. The petitioner being much higher in the seniority list than the incumbent appointed as Head LITD, the transfer order entails civil consequences and

could not have been issued; (2) he could not have been transferred to a place

outside

Delhi, if his retirement is within two years; (3) that the petitioner's wife is working in

Delhi and his daughter is studying in Class XII.

5. Insofar as the submission at serial No.(ii) above is concerned, he would draw my

attention to the counter-affidavit filed by the respondents to state that the reasoning

given by the respondents that he has been posted in Kolkata in view of the voluntary

retirement taken by one Mr. M.S. Ray Scientist "E", which rendered the post vacant and

the petitioner was not found suitable to the post of Head, LITD as the same is an emerging field where a person with electronic background was required, are not tenable

inasmuch as Mr. M.S. Ray was posted in Eastern Region Lab Kolkata and had taken

voluntary retirement but the petitioner was transferred to the certification activity in

Eastern Regional office under Kolkata Branch office (KKBO) Kolkata. They are two different offices headed by two different DDG's. The exigency of being posted at

Kolkata is not more than the petitioner being retained as Head LITD. According to him,

it is a malafide exercise, only to dislodge the petitioner from Headship. That apart, he

would state the petitioner has been working on the ongoing initiatives of the

Government and delivering results and the petitioner has been working as Head, LITD

since his transfer from Mumbai in 2015. The plea of exigency and not fit to head LITD

are contradictory stands. He would rely on the following judgments in support of his

submissions:-

(i) (1999) 3 SCC 696 Virender S. Hooda and others v. State of Haryana and

another ;

(ii) (1983) 4 SCC 582 B.S. Minhas v. Indian Statistical Institute and others ;

(iii) (1993) 1 SCC 148 Rajendra Roy v. Union of India and another ;

(iv) (2007) 13 SCC 154 Poonam Verma and others v. Delhi Development Authority ;

6. On the other hand, Mr. B.K. Sood would justify the transfer of the petitioner to Kolkata for the reasons stated in the counter affidavit. That apart, he states, no prejudice has been caused to the petitioner on his transfer to Kolkata as the status,

emoluments drawn by the petitioner shall be maintained on his joining at Kolkata. That

apart, he states, that the Electronics being an emerging field and also the fact that the

petitioner has not initiated his APAR, the work as carried out by the petitioner could not

be ascertained to judge his suitability to continue as Head LITD. In any case, it is a well

known fact that the petitioner has not contributed to any scientific activity in the organization. It is expected of the petitioner to keep pace with the ongoing initiative of

the Government which he has failed and administrative exigencies demanded that the

petitioner be transferred to Kolkata and in his place a new incumbent be posted as Head LITD and there is no mala fide in the impugned action, the same needs to be upheld.

Mr. Sood would rely upon the following judgments in support of his contention.

(i) W.P.(C) No. 10768/ 2015 Chitra v. Central Warehousing Corporation and Ors decided on December 03, 2015;

(ii) (1993) 4 SCC 357 Union of India and Ors v. S.L. Abbas ;

(iii) 2004 (11) SCC 402 State of Uttar Pradesh v. Gobardhan Lal .

7. Having heard the learned counsel for the parties, what is need to be decided is whether the transfer of the petitioner to Kolkata is justified. Before, I deal with the rival

contentions, I must determine the scope of this petition. I note, the petitioner

has made

a prayer for retaining him as Head LITD. Such a prayer can be considered, only if the

incumbent posted as Head LITD is made a party in this petition. The petitioner having

not made her a party, the petition with regard to that prayer is not maintainable. Mr. Rai

fairly concedes to that position and states, the said prayer is not pressed. If that be so,

the reliance placed on Clause 5.1 of the Placement Policy is inconsequential. Now, insofar as the submissions of Mr. Rai attacking the impugned order are concerned, it is

necessary to reproduce two clauses of the Policy being 6.1 and 7.4:-

6. Eligibility for ROTATIONAL TRANSFERS 6.1 An officer will become due for periodic rotational transfer after nine years of his service at one station. 7. REQUEST TRANSFERS: 7.4 Officers may request for a posting to a certain station where she/he wishes to settle down after superannuation, 2 years prior to such superannuation, which may be considered subject to the past records of postings at the station, as well as administrative reasons."

8. The plea, the transfer order violates Clause 6.1, which stipulates an officer will become due for periodical rotational transfer after nine years of his service at one station, is appealing on a first blush but on a deeper consideration it is noted, the petitioner has been a beneficiary of a transfer, in violation of Clause 6.1 inasmuch as,

the petitioner was transferred back to Delhi within two years of his transfer there. If

exigencies require, a transfer before 9 years, the same can be made. This plea of Mr.

Rai is not convincing and needs to be rejected.

9. Insofar as the exigencies pleaded by the respondents, which according to Mr. Rai

are fallacious are concerned, suffice to state, this Court cannot substitute the opinion of

the employer determining exigencies. Even otherwise, the plea of Mr. Rai that Mr. Ray

had retired from ERO which is a different office from KKBO, is concerned, the same is

a disputed question of fact, and cannot be gone into in writ jurisdiction. That apart, the

petitioner does not deny Mr. Ray is also from the Electrical field, which is the field of

the petitioner and was Scientist "E" and was working in Kolkata, the place where the

petitioner has been transferred. As held above, it is for the employer to decide the place

of posting of an officer and Courts would be reluctant to interfere with the same, unless

malafide alleged and are proved, which would vitiate the same. That apart, Mr. Sood's

submission that the status, emoluments etc shall not be effected in Kolkata, is appealing.

So, this submission of Mr. Rai is also liable to be rejected.

10. Insofar as the plea of Mr. Rai by relying upon clause 7.4 of the Placement Policy,

is concerned the same does have some weightage. On a closer look at clause 7.4, it is

seen that if an officer wishes to settle down at a station, he is required to make such a

request two years before the superannuation, which shall be considered by the employer i.e the respondents herein, subject to past records of postings at the station as

well as the administrative reasons. It is also noted that the petitioner had on August 30,

2016 submitted a representation to the respondents for reconsideration of the transfer.

He, in his representation, did mention about his retirement in the month of January,

2018, which I note is six months away. The representation also refers to the fact his

wife is working in Delhi and he has a School going daughter studying in Class XII.

These aspects would have some bearing on the transfer of the petitioner but these

factors need to be considered by the employer. Unfortunately, the representation has

not been considered. In these circumstances, rejecting the other contentions of Mr. Rai,

the only relief that can be granted to the petitioner is, to call upon the respondents i.e the

Competent Authority to consider the representation dated August 30, 2016 of the petitioner in proper perspective and pass appropriate orders on the same within a period

of four weeks from the receipt of copy of this order. Till such time, an order is passed,

interim order dated October 07, 2016 shall continue. Insofar as the judgments relied

upon by Mr. Rai are concerned, the same are to the effect:-

(i) Inference of mala fide must be based on firm foundation of facts pleaded and established and not merely on insinuation and vague allegations. It was also held when

the post is transferable and no representation against the transfer on the ground of

personal hardship is made, it was held by the Supreme Court challenge to transfer on the

basis of some vague allegation of mala fide is not sustainable. The said judgment is of

no help to Mr. Rai. [Ref. Rajendra Roy (supra)]

(ii) Administrative authority bound to adhere to the procedural standards fixed by it

to avoid arbitrariness failing which the action taken by it could be invalid [Ref. B.S.

Minhas (supra)]

(iii) Policy decision held is binding if not contrary to the Rules [Ref. Virender S. Hooda (supra) and Poonam Verma and others (supra)].

11. None of the judgments have any applicability to the facts of this case and

also in

view of my finding/conclusion above. The writ petition is disposed of. No orders as to

costs.

CM No. 37410/2016 (for stay)

Dismissed as infructuous.