

(2019) 07 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil Writ Petition No. 11181 Of 2019

Nemi Chand

APPELLANT

Vs

Ajmer Vidhyut Vitran Nigam Limited And Ors

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Citation : (2019) 07 RAJ CK 0040

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Madhav Mitra, Abhishek Sharma, Anil Upman

Final Decision : Allowed

Judgement

A challenge has been made by the petitioner, AEN, to the order dated 26-6-2019 passed by the Secretary (Admn) Ajmer Vidhyut Vitran Nigam

Limited (AVVNL) transferring him from the post of ACOS Jhunjhunu to AEN (O&M) Gudha.

The facts of the case are that the petitioner an A.En., following several transfers i.e. ten within a period of five years, vide order dated 6-3-2019 came

to be transferred from Malsisar to ACOS Jhunjhunu. The respondent No.2 Gaurav Dhaka posted there since 16-6-2014 was transferred as AEN

(O&M) Gudha. The case of the petitioner is that within a period of four months he was again transferred vide order dated 26-6-2019 from ACOS

Jhunjhunu to AEN (O&M) Gudha, merely to accommodate the respondent No.2, who had earlier been posted as ACOS Jhunjhunu since 16-6-2014.

Mr. Madhav Mitra submitted that the stark fact that the respondent No.2 was brought back as ACOS Jhunjhunu within four months of his transfer on

6-3-2019 makes it evident that the impugned transfer order dated 26-6-2019 is

not actuated either by an administrative exigencies or public interest. It is instead vitiated by malice in law inasmuch as the discretion to transfer has been exercised merely to accommodate the respondent No.2 at Jhunjhunu. That cannot be the purpose of the vesting of discretion in an employer to transfer an employee. Until discretion to transfer is reasonably exercised, it will mutate into feudalistic patronage which cannot be countenanced under the rule of law. Mr. Madhav Mitra submitted that a transfer within four months, as in the petitioner's case, is inherently contrary to public interest. A transferred employee necessarily takes time to comprehend the work and familiarize in an office and if he is transferred out before he can so do and perform work in public interest it would be detrimental both to administrative exigencies and public interest. Mr. Madhav Mitra submitted that in the reply to petition, the respondent AVVNL merely vaguely postulates "nigam interest" in transferring the petitioner. That fig leaf cannot and should not cloud the gross unreasonableness and arbitrariness in transferring out the petitioner within four months and bringing in his place respondent No.2, who had earlier been posted there in different capacities for about five years.

Respondent No.1 AVVNL has filed reply to the writ petition and prayed for dismissal of the same on the ground that an employee has no right to challenge his transfer order when transferred in "nigam interest" of which it is the best judge. Since an employee is transferred on administrative exigencies he is duty bound to comply rather than rush to the court as if vested right has been infringed.

Private respondent No.2 Gaurav Dhaka has also filed reply to writ petition and submitted that he was promoted to the post of A.En on 30-6-2016 and not worked in that capacity for five years as wrongly alleged. It has been submitted that the petitioner has not stated correct facts in the petition only to create prejudice against the respondent and hence the writ petition be dismissed.

Heard counsel for the parties and perused the order dated 26- 6-2019.

The impugned order dated 26-6-2019 clearly indicates that for transferring the petitioner from ACOS Jhunjhunu to AEN (O&M) Gudha he has been paid TA/ DA and given joining time etc. while the respondent No.2 has not been paid any such allowance which prima facie establishes the fact that

the respondent No.2 was transferred on his request. Even though that may not be conclusive, the indisputable fact on record is that the respondent

No.2 has been brought back to Jhunjhunu in four months of his being transferred out therefrom after having been posted there for about five

yearsâ?"may be in different capacities including on his promotion as A.En. on 30-6- 2016. To bring back the respondent No.2 to Jhunjhunu the

petitioner has been transferred out in four months of his posting at Jhunjhunu. â?"Nigam Interestâ?" cannot foreclose the courtâ?"s scrutiny and blind

it to the facts of the case. A bald argument without supporting material cannot stonewall the courtâ?"s jurisdiction. What reason prevailed to bring

back respondent No.2 to Jhunjhunu within four months and post out the petitioner therefrom also within four months has not been even attempted to

be explained/ justified before the court. As rightly submitted by Mr. Madhav Mitra transfer after a very short span i.e. four months when challenged,

needs to be justified on material to satisfy the brooding spirit of rights, reasonableness and fairness permeating the Constitution. The discretion to

transfer an employee however wide cannot be a dark hole which no light can illuminate. The court has the power to scrutinize whether the discretion

to transfer has been exercised for administrative exigencies and public interest or whether it is being arbitrarily used as an instrument of patronage. It

is well settled that a transfer order can be interfered with if it is vitiated by malafide and breach of statutory rules. A ground based on malafide to

challenge a transfer includes legal malafide i.e. abuse of power as also unreasonable and unjustified use of power when such a conclusion may be

culled out from the facts of a case. In the instant case, a transfer in four months, more so to bring back respondent No.2 back to a station, where he

was posted for about five years in whatever capacity fails the test of reasonableness and fairness. The power to transfer is not conferment of a feudal

prerogative which can be used to keep employees in thrall. Only policy, administrative exigencies and public interest can justify transfer. To transfer

an employee within a short periodâ?"four months in this case to accommodate anotherâ?"without justifiable cause disclosed to court when challenged,

is de hors administrative exigencies the grossest abuse of power and detrimental to public interest.

The upshot of the aforesaid discussion is that the impugned order of transfer qua the petitioner and respondent No.2 cannot withstand judicial scrutiny.

The transfer order dated 26-6-2019 impugned before this court reflects arbitrary and unjust exercise of discretion by the respondent AVVNL. It is therefore quashed.

Petition stands accordingly allowed.