

(1994) 08 SC CK 0044
In the Supreme Court Of India
Case No : Civil Appeal No. 4656 of 1993.

N.K. Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 25-08-1994

Acts Referred:

Citation : AIR 1995 SC 423 : (1994) 5 JT 298 : (1995) 1 LLJ 854 : (1995) 1 PLJR 52 : (1994) 3 SCALE 845 : (1994) 6 SCC 98 : (1994) 2 SCR 772 Supp : (1994) 3 SLJ 37 : (1994) 3 UPLBEC 1900

Hon'ble Judges : K. Ramaswamy, J;J. S. Verma, J

Bench : Division Bench

Advocate : Ram Jethmalani, Lata Krishnamurthi and Abani Kumar Sahu, for the Appellant; Altaf Ahmed, Additional Solicitor Genral, A.D.N. Rao, P. Parmeshwaran, Anil Katiyar and Sushma Suri for Respondent No. 1 and 4, for the Respondent

Final Decision : dismissed

Judgement

J.S. Verma, J.—The appellant N.K. Singh belongs to the Indian Police Service and is an officer of the 1961 batch allocated to the State cadre of Orissa. The appellant was posted as I.G., C.I.D. in Orissa when he was brought on deputation to an equivalent post of Joint Director in the Central Bureau of Investigation (C.B.I.) in February 1990. By a notification dated 7.2.1990 issued by the Government of Orissa, the services of the appellant were placed on deputation to the Ministry of Home Affairs in the Government of India for a period of five years and by notification dated 26.2.1990 issued by the Government of India he was appointed Joint Director in the C.B.I. until further orders w.e.f. 12.2.1990. The appellant was working in this capacity in the C.B.I. and was Incharge of a Special Investigation Group conducting some sensitive investigations. By an order dated 21.3.1991 which was served on the appellant on 26.3.1991, the appellant was transferred from the post of Joint Director, C.B.I. to the Border Security Force (B.S.F.) in an equivalent post of I.G.P. Aggrieved by his transfer from C.B.I. to B.S.F., the appellant filed an application before the Central Administrative

Tribunal on 25.3.1991 challenging his transfer on certain grounds. The Tribunal has dismissed that application, by the impugned order dated 5.4.1991. Hence this appeal by special leave.

2. There is no dispute that the impugned transfer from C.B.I. to B.S.F., both of which are Central Police Organisations, has no adverse consequence on the service career and prospects of the appellant and the transfer of the appellant to B.S.F. was in an equivalent post of the rank of I.G.P. It has also been fairly stated by learned Counsel for the appellant that the appellant has not suffered any setback in his service career by this transfer inasmuch as he was promoted in due course in the B.S.F. in the year 1992 to the rank of Additional Director General of Police and then promoted further to the rank of Director General in the Bureau of Police Research and Development Branch of the B.S.F. in January 1994. The real grievance of the appellant ventilated by his learned council is that the appellant has been Ceased out of the sensitive post in the C.B.I. as Incharge of the Special Investigation Group investigating into the St. Kitts affair wherein there are allegations of forgery of some documents and of involvement in that forgery of some persons having political patronage, because of his impeccable reputation as an officer beyond approach. On this basis the transfer of the appellant from C.B.I. to B.S.F. is challenged on the ground of malafides attributed mainly to the then Prime Minister of India, respondent No. 2, Shri Chandrasekhar. It is further urged that the appellant's transfer from the C.B.I. is prejudicial to public interest since it is with a view to scuttle the sensitive investigation. The incidental reference to respondent No. 3. Dr. Subramanyam Swami, the then Union Law Minister is not material and, therefore, does not merit any further reference. It must be placed on record that on behalf of the respondents, the calibre and high reputation of the appellant were not disputed but the allegation of malafides was strongly refuted as also the alleged ulterior motive for the transfer while contending that the transfer of the appellant from C.B.I. to B.S.F. was due to exigencies of administration and not for the purpose of removing the appellant from the post he held in the C.B.I. Respondent No. 2 while vehemently denying the allegation of malafides has asserted that the appellant's transfer was a necessary incident of his service and the reasons in the instant case are not judicially reviewable.

3. The Central Administrative Tribunal has rejected the appellant's application without even requiring counter affidavits to be filed by the respondents. This indeed was an unusual course to adopt when the appellant had alleged malafides on the basis of certain facts. For this reason, in this appeal, the parties were required to file their affidavits and both sides were heard at length with reference to the averments made in their affidavits.

4. There are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of

prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such cases would be rare and this factor as a vitiating element must be accepted with great caution and circumspection.

5. In the instant case, Shri Jethmalani has attempted to integrate the two aspects to widen the range of attack, even though the case pleaded is only of mala fides. However, we have considered both the aspects since certain facts pleaded to urge malafides may relate to public interest as well.

6. Shri Ram Jethmalani, learned Counsel for the appellant did not dispute that the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of malafides and violation of any specific provision or guideline regulating such transfers amounting to arbitrariness. In reply, the learned Additional Solicitor General and the learned Counsel for respondent No. 2 did not dispute the above principle, but they urged that no such ground is made out; and there is no foundation to indicate any prejudice to public interest.

7. In substance, the appellant's case, as projected by Shri Jethmalani, combining the two aspects is that the then Prime Minister, respondent No. 2, Shri Chandrasekhar was annoyed with the appellant because he felt embarrassed by the investigation made by the appellant of his complaint of phone tapping; Shri Chandrasekhar was also interested in the so-called Godman Nek Chand Ghandhi alias Chandraswami against whom allegation of forgery of some documents relating to the St. Kitts' affair was being investigated by the appellant; and therefore, to avoid any further embarrassment to Chandraswami as well as to wreak vengeance for the embarrassment in the phone tapping incident caused to him by the appellant, he had directed the transfer of the appellant from the C.B.I. to the B.S.F. There is no allegation that the appellant was replaced in this investigation by a pliable or less competent officer who may have facilitated the alleged ulterior purpose.

8. Shri Jethmalani submits that the present case falls within the narrow scope of judicial review permitted in such cases since the transfer of the appellant was prejudicial to public interest being made for the ulterior purpose of scuttling the sensitive investigation of which the appellant was in charge in the C.B.I. It is urged that promotion of public interest must govern the exercise of all public power and its negation vitiates the action taken. This is the gravamen of the charge leveled against the then Prime Minister, Shri Chandrasekhar (respondent No. 2) and constitutes the substance of the plea of malafides. The question is, whether the ground is made out.

9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiation element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.

10. It is significant that there is no allegation by the appellant that his successor in the C.B.I. was a pliable officer or that he was in any manner inferior to the appellant or unsuitable for discharging the duties of the sensitive office in the C.B.I. In fact there is not even a mention made at any stage of the appellant's successor in the C.B.I. or his credentials or even a whisper against him of any kind. He has neither been named nor impleaded as a party. It is, therefore, not a case where the inferior quality of the successor-in-office would by itself support the appellant's contention that the object of transfer was to scuttle the sensitive investigation which was being conducted by the C.B.I. under the supervision of the appellant. Even though we have looked into the particulars relating to the progress of that investigation by the C.B.I. after the appellant's transfer only for the purpose of satisfying ourselves that public interest has not been jeopardised, yet the facts of the present case and the context of absence of any allegation of the unsuitability of the successor-in-office, are sufficient to require no further consideration of this aspect in the present context. In the present case, we must proceed on the assumption that the appellant's successor in the C.B.I. was also a capable, competent and upright officer like him and, therefore, the appellant's transfer from the C.B.I. to the B.S.F. was not prejudicial to public interest. There is nothing else in the present case which requires any further examination of the public element for testing the legality of the impugned transfer.

11. The remaining scrutiny must now be confined to the private rights of the appellant based on the pleas of malafides and contravention of the Tenure Rules regulating the period of deputation in the Central Police Organisations.

12. Shri Jethmeilani has contended that according to the Tenure Rules, the appellant was; entitled to continue on deputation in a Central Police Organisation ordinarily for a period of five years; and he having been posted on deputation in the C.B.I. because of his background of experience in the investigative field, he should have been continued in the C.B.I. for the entire period of five years. On this basis, the appellant claims that his transfer, with the background of annoyance of the then Prime Minister Shri Chandrasekhar, was at least against the spirit of the Tenure Rules and supports the allegation of malafides.

13. In the detailed counter-affidavit filed by Shri Chandrasekhar, respondent No.

2, there is a categorical denial of the allegations made against him. He has asserted that even though he was unhappy with the manner in which the appellant handled the investigation into his complaint of tapping of his telephone but that had nothing to do with his transfer from the C.B.I to the B.S.F. which was made in the ordinary course and according to the exigencies of administration. It is also contended that the appellants transfer was an ordinary incident of his service which had no adverse effect on his service career. The appellant was transferred to the B.S.F. in an equivalent post and since then he has also earned two promotions in the B.S.F. which came to him in due course. It is further urged that the Tenure Rules which provide ordinarily a tenure of five years on deputation in the Central Police Organisations do not contemplate the entire period of five years in one Central Police Organisation alone and, therefore, the B.S.F. also being a Central Police Organisation, there was no infraction even of the Tenure Rules.

14. As for the effect of the transfer personally on the appellant, it is undisputed that there was no adverse effect thereof on the appellant's service career. The transfer of the appellant from the C.B.I to the B.S.F. was on an equivalent post and the appellant was given two promotions thereafter in due course as and when the promotions became due to him. There was also no infraction of any rules or professed guidelines as a result of the appellant's transfer from the C.B.I to the B.S.F.

15. Rule 8 of the Tenure Rules for I.P.S. Officers to which reference has been made by Shri Jethmalani provides that IPS Officers appointed to the posts of Inspector General of Police directly from their respective cadres will have a tenure of five years. This has to be read along with Rule 1 thereof which says that IPS officers with a minimum service of seven years would ordinarily be considered for induction in the Central Police Organisations and in the event of their not being found suitable they would be repatriated to their State cadres. A harmonious construction of the provisions in these rules indicates that the ordinary tenure on deputation of five years of IPS officers appointed to the posts of Inspector General of Police from their respective cadres in the Central Police Organisations to which they are posted has to be not necessarily in any one Central Police Organisations but in all, in one or more Central Police Organisations to which they are posted. It is, therefore, clear that the officers found suitable for being continued on deputation in the Central Police Organisations have an ordinary tenure of five years not necessarily in one Central Police Organisation but in all, in the Central Police Organisations to which they are posted. These may be more than one also. The emphasis is on the total period of deputation in Central Police Organisations being five years and not on the entire deputation continuing only in one Central Police Organisation.

16. Admittedly, C.B.I. and B.S.F. are both Central Police Organisations and, therefore, there is full compliance of the Tenure Rules if the appellant has a total tenure of at least five years in the Central Police Organisations to which he is

posted during the period of deputation. This need not be in the C.B.I. alone. Obviously, this is the manner in which the Tenure Rules have been construed and understood in their application to the officers on deputation. A letter MHA U.O. No. 1-21021/21/90- Pers. III - dated 14.6.1991 of the Ministry of Home Affairs contained in the record produced by the learned Additional Solicitor General at the hearing before us relating to the appellant, reads at under :

Subject : Appointment of Shri N.K. Singh, IPS (Ori:61) as IG in BSF.

....

DG BSF may please refer to their u.o. No. 11/5028/91-Pers/BSF dated 29.5.91 on the above subject.

Shri N.K. Singh, IPS came on central deputation as Joint Director, CBI w.e.f. 12.2.90 and transferred to B.S.F. as IG w.e.f. 2.4.91. As such, his normal term of 5 years will expire on 31.5.1995.

There is thus no infraction of the Tenure Rules in any manner by the transfer of the appellant from the C.B.I. to the B.S.F.

17. From the relevant record produced by the learned Additional Solicitor General, it is also clear that the proposal for transfer of the appellant from the C.B.I. to the B.S.F. as Inspector General of Police emanated in the ordinary course from the Ministry of Home Affairs and was occasioned by the urgent need to fill the post of Inspector General in the B.S.F. with a suitable officer consequent upon the promotion of the seniormost Inspector General in the B.S.F. as Additional Director General, B.S.F.; and the appellant was considered a suitable officer; for appointment to that post. That proposal of the Ministry of Home Affairs was approved in due course by the higher authorities including the Prime Minister.

18. Shri Jethmalani rightly urged that the record is bound to show that nothing unusual was done and the inference of malafides should be drawn by reading in between the lines and taking into account the attendant circumstances. We have referred to the record only to mention that there is nothing therein to suggest that the transfer was unusual. No other suspicious circumstance is made but to permit the contrary inference. No roving inquiry into the matter is called for or justified within the scope of judicial review of a transfer scrutinised with reference to the private rights of an individual. There is thus no basis to accept the appellant's contention that his transfer was occasioned by malafides of the then Prime Minister on account of his annoyance with the appellant for the reasons stated or that it was in any manner contrary to the requirements of the Tenure Rules.

19. There is also material to indicate that there was need of a competent IPS officer in the B.S.F. for being appointed to the post of Inspector General of Police as a result of the seniormost IGP of the B.S.F. being prompted and appointed to the post of Additional Director General, B.S.F. As the record shows, that was the

reason for moving the appellant from the C.B.I. to the B.S.F. to fill the vacancy created in the B.S.F. of a senior IGP therein. These facts reflected in the relevant record negative the plea of malafide urged by the appellant, even assuming that the appellant honestly believes in the correctness of his stand. The appellant's transfer cannot, therefore, be held to have been made by the then Prime Minister to wreak his vengeance upon the appellant. This impression of the appellant, even if honestly held, is not supported by any acceptable material.

20. It is not necessary to refer to the several decisions cited by Shri Jethmalarii since the grounds for judicial review of a transfer and the limits thereof are settled and not in dispute. One decision on which particular emphasis was laid by Shri Jethmalani may however be referred. That decision is *Regina v. Commissioner of Police of the Metropolis* (1968) 2 Q.B. 118, which is clearly distinguishable. That relates to the performance of a duty and holds that a police officer owed a duty to the public to enforce the law which he could be compelled to perform and that his discretion in the matter was not absolute. In the facts of this case and the reasons for which we have reached the conclusion that the appellant's transfer from the C.B.I. to the B.S.F. is not vitiated, we do not find this decision of any assistance.

21. We may observe that we do not approve of the manner in which the Tribunal proceeded to decide the case. Allegations of malafides having been made by the appellant on affidavit, it is difficult to fathom how the Tribunal rejected them without even requiring a counter-affidavit to rebut them. The Tribunal's perception that the allegations made on affidavit by the appellant even without any rebuttal do not constitute the plea of malafide, is obviously incorrect. The Tribunal also did not appreciate the true extent of scrutiny into such a matter and the grounds on which a transfer is judicially reviewable. The conclusion we have reached in the present case is for the reasons given by us and not those which impelled the Tribunal to reject the appellant's claim.

22. We are impressed by the track record of the appellant and the uninhibited acknowledgement and acclaim of his calibre and credentials even by the respondents in spite of the serious unsubstantiated accusations made by the appellant against them. The future promotions earned by the appellant in due course are recognition of his merit and the assurance that his needless excursion into the arena of litigation to challenge a mere transfer not detrimental to his career prospects has fortunately not had any adverse influence against him.

23. However, acceptance of the appellant's claim would imply that no other officer in the C.B.I. is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him. That indeed is a tall order and impermissible in this proceeding where the other officers are not even participants. The tendency of anyone to consider himself indispensable is undemocratic and unhealthy. Assessment of worth must be left to the bonafide decision of the superiors in service and their honest assessment accepted as a

part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make that decision. Unless the decision is vitiated by malafides or interaction of any professed norm of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

24. The private rights of the appellant being unaffected by the transfer, he would have been well advised to leave the matter to those in public life who felt aggrieved by his transfer to fight their own battle in the forum available to them. The appellant belongs to a disciplined force and as a senior officer would be making several transfers himself. Quite likely many of his men, like him, may be genuinely aggrieved by their transfers. If even a few of them follow his example and challenge the transfer in courts, the appellant would be spending his time defending his actions instead of doing the work for which he holds the office. Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill-advised.

25. We do hope that this would be a passing phase in the service career of the appellant and his crusader's zeal would be confined to the sphere of his official activity for improving the image and quality of public service of the police force, in which he holds a high office. By achieving that purpose, he would render much greater public service. These observations are apposite in the present context.

26. The appeal is dismissed for the reasons given by us. No costs.