

(1972) 10 CAL CK 0007
In the Calcutta High Court
Case No : C.R. No. 5930 (W) of 1972

N.N. Singh and Others

APPELLANT

Vs

General Manager, Chittaranjan Locomotive Works and Others

RESPONDENT

Date of Decision : 03-10-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 2 Rule 2, 141
Constitution of India, 1950 — Article 166, 166(1), 19(1), 19(1)(c), 226

Citation : 77 CWN 334

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Sadhan Gupta, Mrs. Manju Gupta and M. Basu, for the Appellant; Nani Coomar Chakraborty and Samarendra Nath Banerjee, for the Respondent

Judgement

Salil Kumar Datta, J.—This Rule was obtained on April 26, 1972, against the orders of transfer of the petitioners from Chittaranjan Locomotive Works (hereinafter referred to as CLW) to other Railways at different places in southern and western India. According to the petitioners, they are employees of CLW and are also the top office bearers of CLW Labour Union (hereinafter referred to as the Union). This Union is the only representative union of Class III and Class IV workers and employees. The Union by its organised action succeeded in bringing numerous concessions to the workmen and employees of CLW from the hands of the unwilling administration. The union again enjoys overwhelming popularity among the workmen and the employees of the CLW. Various attempts were made by the Union for getting recognition from the authority but such recognition was persistently refused. A strike was organised by the Union on January 16, 1968, and, inspite of threat and propaganda by the Administration, the strike was successful. The Administration, thereafter, suspended some of the employees and deducted wages of workers for the strike period. But these orders were subsequently withdrawn as a result of strong agitation by the Union. There are two Co-operative Societies at the CLW in which the nominees of the Union are

invariably elected. There was a strike again on September 19, 1968, in which the Central Government Employees as also the employees and workmen of the CLW participated. Penal actions were taken by the Administration against the workmen and the members of the Union for observing the strike but on strong agitation by the Union these measures were withdrawn. As a result of the successes the Union incurred displeasure of the authorities of the CLW and the Railway Board, and, the authorities were determined to prevent the Union from championing the cause of the employees and workmen of CLW and to disrupt the Union. It appears that in July 1971 the Railway Board sent wireless message directing transfer of the top executives of the Union. Steps were also taken to terrorise the workmen and employees, and on untrue charges Dilip Bose and S.R. Das the Vice President and the General Secretary respectively of the Union were arrested and detained under the Maintenance of Internal Security Act. Thereafter, separate transfer orders were issued on the petitioners; they are annexure "A" series to the petition. The particulars relating to transfer orders are set out below:

(A)

(B)

(C)

Name

Office held in the Union.

Railways & Place transferred.

Purnendu Banerji,

Vice President

Southern Rly. Madras.

N.N. Singh, Petitioner No. 2, Charge-man (A),

President

Central Rly. Parel, Bombay.

N.K. Mukherji, Petitioner, No. 3, Charge-man (C).

Working President.

Southern Rly., Trichinapalli.

Umapati Choudhury, Petitioner No. 4, Clerk Grade II.

Vice-President.

Western Rly., Bombay.

Animesh Bose, Petitioner No. 5, Fitter.

Organizing Secy.

Southern Rly., Tambaram.

Dilip Bose, Clerk Gr. I.

Vice-President.

Western Rly., Bombay.

S.R. Das, Head Clerk, DEN.

General Secy.

Western Rly., Bombay.

The orders referred to above were all issued by the authorities on the April 20, 1972, and the said orders of transfer were to take effect also from the said date. It was stated in the orders that the transfers were in administrative interest and incumbents are transferred in their present pay and grade and their original seniority on transfer was to be maintained. The petitioners were also directed to vacate their quarters with immediate effect. It was further stated that the orders of transfer had the approval of the General Manager.

2. It was stated in the petition that some of the persons so transferred are the directors of the Co-Operative Credit Societies and some are the members of the Area Committee and some again are the members of the Central Staff Council at Chittaranjan. The working of all these organisations will be seriously prejudiced if the transfers orders are given effect to. It was stated that the orders are malafide and had been made with a view to "smash" the Union by transferring all its leading office bearers to distant places. The petitioners' fundamental right to form Union was also thereby affected and no administrative reason or convenience was there in transferring the petitioners to such distant places. The transfers were made really to punish the petitioners and other office bearers of the Union for their trade union activities.

3. On these allegations the petitioners moved this Court in Constitutional Writ Jurisdiction praying for a Writ in the nature of Mandamus commanding the respondents to cancel or withdraw the impugned orders of transfer and to forbear from giving effect to, the same. There was a further prayer for production of the relevant records with a view to quash the said orders by issuance of a Writ in the nature of Certiorari. On the application, aforesaid, the present Rule, as has been already stated, was issued.

4. The respondents, who have made their appearance through Mr. Samarendra Nath Banerjee Advocate, are opposing this Rule and have filed an affidavit-in-opposition. It has been stated in the affidavit-in-opposition that the petitioner No. 1 Purnendu Banerjee was no longer a party to this petition as he wanted to withdraw from this proceeding with liberty to file a suit. The petition of motion was verified by Purnendu Banerjee and on his withdrawal from the proceeding, at

the present moment when the rule is being heard there is no verified petition before the Court in support of the rule. In the circumstances the rule should stand discharged straightway. It was further stated that petitioner N.N. Singh has already joined his transferred post without protest while the petitioners Nos. 3 and 5 had been avoiding arrest in respect of criminal proceeding against them. The application by them, accordingly, is not maintainable. It was also stated that a joint application claiming relief against separate orders of transfer is not maintainable in law. Further, under Rule 146 of the Railway Establishment Code Vol. I, it is open to the President to transfer a railway servant to any other railway establishment in India. This power can be exercised by the Agent, which means the General Manager in respect of the Railway servants under him, or to his delegated authority and the transfer orders have been made in the exigency of service. Other non-gazetted staff who are not members or office bearers of any Union were also transferred in the exigency of service. The transfer orders were made in July 1971 by B.C. Ganguly, the then Chairman of the Railway Board, who was an ex-officio Secretary of the Government of India and competent to pass such order of transfer. It was further stated that the transfer order had no bearing on the trade union activities of the petitioners but were made, as already stated, in the exigency of service and in public interest. Such exigency, it was stated, is dependent on suitability, aptitude, past conduct and reputation of the incumbents all clubbed together and is primarily a matter for the authorities concerned. As the political situation was in low ebb because of inter party rivalry and the authorities wanted to be assured that the production in the Unit did not deteriorate while there were violent demonstration in August 1971, no immediate steps were taken to implement the said orders. The situation in December 1971 improved slightly but for War with Pakistan and subsequent events the assistance of the civil authorities that was necessary and as a precautionary measure was not available till March 1972, and accordingly, there was no delay in such state of affairs in implementing the order. This was done by individual transfer orders which were all issued on April 20, 1972. It was further stated that there was no recognised Union in CLW and there are 4 or 5 un-recognised Unions of which the petitioners' Union is one. It was denied that the petitioners' Union was a representative Union and the claim made by the Union was disputed as the Management has no knowledge of the alleged overwhelming popularity of the petitioners' union. The policy of the Government it was stated is also not to recognise any Union. Dilip Basu and S.R. Das were arrested at the instance of the Police in respect of the criminal cases against them and the said arrests were not made at the instance of the Administration. The Union's claim of wresting concessions from the Authority in favour of CLWs workmen and employees was also denied. As regards the strike of January 16, 1968, it was stated that the strike was not declared legal and any explanation from any of the employees, if found satisfactory was accepted, and if it was not found satisfactory, or if no explanation was submitted, the absence was in such cases were regularised by grant of leave without pay. The petitioners Nos. 1 and 5 were placed under suspension due to grave misconduct as they obstructed

other employees from joining their duties, while the petitioner No. 2 was suspended on account of arrest by Police in connection with a Police case. As it was found that charges could not be established and the Police did not proceed with the case the suspension orders were withdrawn. It was also said that the Administration had no knowledge if the petitioners' union members were invariably elected as directors and office bearers of the Cooperative Societies. Further the strike by the Central Government Employees on September 19, 1968 was declared illegal and against observance of strike appropriate actions like break in service, suspension and termination of service were taken, but there was no victimisation. The orders were withdrawn subsequently because the Government adopted a liberal policy in this regard. It was further stated that the transfers were in the exigency of service and not for any of the purposes as alleged. All allegations against the management in particular the allegations that the management with the help of Police was trying to terrorise the workers to disrupt the Union were denied. It was also stated that the transfers were in due course of administration and no vindictive action thereby was taken by the administration. Vacating of the quarters was also necessary for accommodation of the relieving staff and the petitioners could ask for time for vacating quarters if necessary. It was stated further that all actions were taken by the administration in bonafide discharge of duties and there was nothing malafide in the orders of transfers and the Administration never tried for breaking the Union. It was also stated that there was no question of prejudice being caused to the working of the staff committee, area committee or the societies, as these elective offices if held by the petitioners and other transferred employees as alleged, in the usual course are to be filled in by co-option when such vacancies occur because of such transfers. These transfer orders were neither arbitrary nor vindictive nor was it in violation of any fundamental right of such officers to form an Union; there was no stigma in the transfer orders and they did not affect the service conditions of the incumbents in any way, and accordingly, there was no question of punishment. These orders are lawful orders passed by competent authorities and the petitioners can have no remedy against the said orders.

5. An affidavit-in-reply was filed on behalf of the petitioners which was affirmed by Animesh Bose. In this affidavit apart from dealing with the allegations made in the affidavit-in-opposition, the petitioners have also introduced some new facts which cannot be permitted to be raised at this stage. It was stated that the impugned orders were not made in bonafide exercise of powers under Rule 146 of the Establishment Code Vol. I. The orders were vindictive, as is obvious from the orders themselves, as they took effect forthwith from the date of the order and the concerned employees were required to vacate their respective quarters immediately, while invariably some time was granted to the employees for vacating the quarters on transfer. Some other employees were transferred as they were suspected to be Naxalites which is also impermissible. In any event, the order relating to such other employees has no bearing on the petitioners. It was further stated that the Chairman of the Railway had no authority to pass the

order of transfer nor does the order passed comply with the Rules framed for the purpose. It was reiterated that the order was mala fide and it was passed to victimise the petitioners and not for exigency of service or in public interest. It was stated that exigency of service implies that the transfer of an employee becomes necessary if the work done by such employee cannot be done with equal efficiency by others there or when none equally efficient is available. The implementation of the orders of transfer was held up because of the strong agitation in CLW. The other Unions have no following and the petitioners' union has, to the knowledge of the Administration, has a large support of the workers and employees. The transfer order was accordingly passed with the obvious object of disrupting the union and the Chairman of the Railway Board was persuaded by the CLW Administration to pass such mala fide order. All other allegations in the affidavit-in-opposition were denied and those in the petition were reiterated. It was also stated that there was nothing wrong in the signing and verification of the petition, as the allegations were never withdrawn while N.N. Singh joined his post under protest. It was lastly said that the impugned orders are for "smashing" the Union and as such orders even affected the functioning of its executive committee resulting in the complete deadlock in the working of the Union.

6. Mr. Nani Coomar Chakraborty learned Advocate appearing for the respondents has taken preliminary objections to the maintainability of the Rule. His first objection is that Purnendu Banerjee, the petitioner No. 1, is no longer a party to this proceeding, re-order of the Court dated June 19, 1972, his name was deleted from the petition on the prayer of Mr. Sadhan Gupta learned Advocate for the petitioners. The reason was that as the said petitioner wanted to file a suit he did not want to proceed with this Rule. This Writ petition was signed by the said petitioner on his behalf and also on behalf of the remaining petitioners and the said petitioner verified the Writ petition for himself as well as for the other petitioners. It was stated in the affidavit supporting the petition that he was duly authorised by the other petitioners to sign and verify the petition on their behalf. It was contended by Mr. Chakravarty that as he had withdrawn from the proceeding there is no alive petition or any petition at all signed or verified on behalf of the other petitioners in order to enable them to claim relief in this proceeding. This is also in violation of the rules framed by this Court under Article 226 of the Constitution so that there is no other alternative for the Court than to discharge the Rule straightway. Mr. Gupta in opposing the contention raised by Mr. Chakraborty has submitted that although the petitioner No. 1 has withdrawn from the proceeding he has not withdrawn the allegations made therein and his withdrawal is for the purpose of filing a suit for complete relief against the order of his transfer.

7. It is a well known principle of law of pleading as also provided the rules of this Court framed under Article 226 of the Constitution that any person can sign a pleading though he may not be a party to the proceeding if he is duly authorised for the purpose by such party. It is competent for him also to affirm

any affidavit in support of the pleading if he is acquainted with the facts of the case when he is duly authorised therefor by the parties to the proceeding to affirm the pleading, and such person need not himself be a party to the proceeding. In this case the petitioner No. 1, it appears, claimed that he is acquainted with the facts of the case and he has also signed and verified the petition on behalf of the other petitioners as being duly authorised by them for the purpose and there is no withdrawal by him of the allegations made in the petition, even though he has himself withdrawn from the proceeding. Accordingly, it cannot be said that there is no duly signed or verified petition before this Court. In the circumstances I am of the opinion that this preliminary objection is without any substance.

8. The other preliminary objection raised by Mr. Chakraborty relates to the joint petition filed by all the petitioners in the rule. As we have seen, the petitioners before us are five in number, and all of them are individually affected by the impugned orders of transfer. According to Mr. Chakra borty such joint petition is not maintainable when the relief claimed is against separate orders transferring each of the petitioners. Further, after the withdrawal of petitioner No. 1 or of the acceptance of the transfer by N.N. Singh this application because of its failing in respect of some such persons, must fail in respect of all. Reliance was placed on the decision of (1) Ganesh Nayak and others v. Land Acquisition Collector and others, 65 C.W.N. 908 in which it was held by Sinha, J. (as he then was) that two persons cannot join in a single application for an order of mandamus to enforce separate claims. It was also held in dealing with a joint award for land acquisition that where a joint application is made by several petitioners and one of the petitioner is disentitled to relief, no relief can be granted to others on such application. This decision was followed in (2) Kanailal Mondal and Others Vs. State of West Bengal and Others, , and it was observed, in dealing with a land acquisition award, that the petitioner's claim being joint, the Court cannot make apportionment if one fails because of his conduct by availing the procedure for reference. If the claim of one is attended by some total defects when a joint petition is made, no relief can be granted to the rest.

9. Mr. Gupta has disputed the above contentions by referring to some other decision which are presently being considered. In the case of (3) Manindra Nath Pal and Others Vs. Municipal Commissioners of Baranagore Municipality and Another, it was held by Sinha, J. again that it would be sufficient to follow analogously provisions of Order 1 of the Code in writ proceedings. In (4) Chaman Motor Service v. Appellate Authority, S.T.A. AIR 1957 Nag 102, it was held that the orders may be assailed by a single petition if they arise out of one and the same matter, and they are interconnected. In the case of (5) Mahabirprasad Durgaprasad Vs. B.S. Gupta and Another, , it was held that a composite petition under Article 226 of the Constitution would be maintainable when ground of attack in respect of all the years of assessment is the same. In the case of (6) Annam Adinarayana and Another Vs. State of Andhra Pradesh and Another, , it was observed as follows:

An application under Article 226 of the Constitution is a proceeding in a court of civil jurisdiction. If so section 141 Civil P. C. is directly attracted. The provisions of orders 1 and 2 of the Code can be invoked as far as they can be made applicable to the proceedings in a writ application under Article 226. Ordinarily, two or more persons cannot join in a single petition to enforce separate claims. But where the right to relief arises from the same act or transaction and there is a common question of law and fact or where though right to relief claimed does not arise from the same act or transaction, the petitioners are jointly interested in the causes of action, one petition is maintainable at their instance.

10. In the case of (7) Gadadhar Ghosh Vs. State of West Bengal, , a declaration for acquisition of lands comprising a large area was challenged by fifty three petitioners without leave under Order 1 Rule 8 of the CPC though the petitioners were owners of separate plots. It was held in that case, as an exception to the principle in Ganesh Nayak's case, that joint application would be permissible against common or class injury done by a common order or orders and it was held that though the petitioners were the owner of different plots--as they were aggrieved by one declaration, the complaint was of a common injury about the establishment of a slaughter house, accordingly the petition was maintainable.

11. The ratio of the decisions mentioned above appears to be that where separate claims are involved there cannot be a joint petition for a Writ of Mandamus for separate reliefs in enforcement of separate claims. This rule, however, is subject to the exception that where right to relief arises from the same act or transaction or where a common question of law and fact is involved or where the parties are jointly interested in the causes of action, one petition will be maintainable.

12. Again if the claim for relief made by the petitioners be joint and it is not possible to make any severance of the claims of each petitioner, in such case if one petitioner is disentitled to the claim, the entire petition would fail. But where the claim of the petitioners for relief is joint and arises out of the same act or transaction, or involves common question of fact or law and the relief claimed by one petitioner is severable from the other petitioners' claim, in such a case even if the petition fails in respect of some such petitioners, the entire application will not fail and Writs of Mandamus will be available in respect of the claim as pertaining to such other petitioners.

13. The impugned order of transfer in this case was made by B.C. Ganguly the Chairman of the Railway Board by telegraphic message. The same is annexure A-I to the affidavit-in-opposition and reads thus:

Government of India Ministry of Railways (Railway Board)

General Manager, Locoworks Chittaranjan.

No: E. (NG) 11-71 TR/29. The following transfers are ordered in public interest. The Staff should be released on twentythird. They may proceed on joining time

as necessary and as due before proceeding to their new places of duty (1) Shri N.N. Singh Chargeman Wheel Shop CLW transferred as Chargeman Parelworkshop Central Railway (2) Shri Nirmal Mukherjee Chargeman Steel Foundry CLW is transferred as Chargeman Golden Rock Workshop Southern Railway (3) Shri Umapati Chaudhury Clerk Accounts Section CLW transferred as Accounts Clerk Western Railway Bombay (4) Shri D.K. Basu Clerk Works Office CLW Chittaranjan is transferred as Clerk Chief Engineer's Office Western Railway (5) Shri P. Banerjee Clerk Stores Office CLW Calcutta is transferred as Clerk Stores Office Southern Railway Madras (6) Shri S.R. Das Head Clerk Den's Office CLW is transferred as Head Clerk Central Railway Bombay (7) Shri A. Bose Fitter Electric Loco is transferred as Fitter Electric Loco Southern Railway Tambaram.

Ganguly Railways

14. This order is challenged as malafide as being passed not in the interest of public service or in exigency of service. This challenge thus involves common question of law and fact. It will appear from the annexure A series to the said affidavit that individual orders of transfer were issued, on the basis of the above order of the Chairman Railway Board, on each of the employees mentioned in the said order, now of whom four are the petitioners before the Court. The petitioners claim, though joint, are severable as each of them is concerned with the separate order therein as relates him. If therefore any of the petitioners desires not to proceed with his rule or his claim loses force by reason of his acceptance of the order the dismissal of his claim on that ground will not lead to the dismissal of the application itself. Further the petitioner No. 1's name has already been deleted from the petition while N.N. Singh, who is stated to have joined his transferred post without protest, has not withdrawn from the proceeding and if the impugned order is not upheld as malafide, he would also be entitled to relief. Accordingly, this preliminary objection, in my opinion has also no substance.

15. The preliminary objections thus overruled, we now proceed to deal with the merits of the case.

16. At the time prayer for interim order was considered the court was informed that the petitioners Nos. 3 and 5 were evading warrants of arrests issued against them. It was then made clear that the cases of persons who were evading process of law cannot be taken into consideration. I am now informed that they have since submitted to the process of law and there is at present thus no impediment for considering their cases in this state of affairs.

17. Mr. Gupta's first contention is that the order of transfer has not been issued by the competent authority. According to Mr. Gupta such order should be issued by the President under Rule 146 of the Railway Establishment Code Vol. I which reads as follows :

Rule 146. Transfers--Ordinarily, railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first

appointment and shall have no claim as of right for transfer to another railway or railway establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to non-gazetted railway servants, the power of the President under this rule, in respect of transfer within India, may be exercised by an Agent or by a lower authority to whom the Agent may re-delegate his power.

18. The President has framed rules under Article 77(3) of the Constitution for allocation of business which are known as Government of India (Allocation of Business) Rules 1961. The business of the Government of India is to be transacted in the Ministeries, its departments, Secretariats and Offices mentioned in the first schedule of the Rules while the distribution of subjects is specified in the Second schedule. The Ministry of Railways (Railway Board) is the department, which under the said rules is to transact and deal with the matters relating to government railways. In the Manual of Office Procedure, Ministry of Railways (Railway Board) Rules Diglot Edition 1970, it will appear from rules 205 onwards that the Chairman and other members of the Railway Board are the ex-officio secretaries to the Government of India in their respective spheres and the Chairman again is the Principal Secretary of the Ministry in its over-all charge with over-riding powers over members except in matter of finance. The decision of the Chairman as such is a decision of the Government of India. The impugned order containing the decision regarding transfer was not issued in the name of the President of India as required under Article 77 (2). The provisions of Article 166(1) relating the Governor are similar to those in Article 77 (1) which relates the President and the said provisions have been held to be directory. If such order impugned in this rule is not expressed in the name of the President it is to be established that in fact, such order was passed by the Government of India or the President as was held in respect of Article 166 in the case of (8) R. Chitralekha v. State of Mysore, AIR 1964 S.C. 1923 followed in (9) Bejoy Lakshmi Cotton Mills Ltd. Vs. State of West Bengal and Others, . Admittedly the impugned order was passed by the Chairman, Railway Board. Further Records have been produced in Court to show the approval of the General Manager of CLW for issue of separate orders of transfers and accordingly separate orders have been issued by the officers subordinate to him to the officers covered by the above order of the Chairman. In Rule 101(2) of the Code "Agent" means the General Manager in respect of the railway servant employed under him. Mr. Chakraborty has produced a chart showing delegation of powers on such subordinate authorities in Southern Railway but none has been produced in respect of the CLW, though it was stated that they are *pari materia* with those of the Southern Railway. Whatever be the position, the relevant order has been issued by the Chairman, Railway Board and the General Manager approved of the issue of the separate Orders on the basis thereof which orders thus have his sanction. As such, in my, opinion, there is no scope for challenging the legal validity of the transfer orders on the ground that they are not issued by the

competent authority.

19. Mr. Gupta next has contended that the impugned orders deprived the petitioners of their right to form trade unions or to carry on trade union activities as guaranteed by clause (c) of Article 19(1) of the Constitution. The Constitution guarantees right to every citizen under the above, clause to form associations and unions but such a right however is guaranteed not in regard to or with reference to any particular place. If by the conditions of service, an employee is transferable to any railway establishment in India, such transfer is in terms of employment of the employee. Accordingly, a transfer made in terms of employment of the incumbent cannot be said to have infringed his fundamental right under Article 19(1) (c) of the Constitution and it is nobody's case that the petitioners would be debarred from exercising their right to form Unions at the transferred places. The contention of Mr. Gupta is thus untenable.

20. The last contention of Mr. Gupta is that the impugned orders in any event are colourable exercise of powers and thus are mala fide inasmuch as though they are said to be in exigencies of service or in public interest, they are actually intended to disrupt completely the CLW Labour union which has large popularity and support in the workmen and employees of CLW. This will be evident, it is contended, from the orders of transfers of all important top seven officials of the Union at a time by the same impugned orders. The orders again were given effect on the date of issue of the orders to the concerned union officials, directing them to vacate their respective quarters immediately. By such orders the employees have been transferred to far off places like Bombay, Madras, Trichinapally and Tambaram in the different railways like Southern, Central and Western railways though under rule 146 a transfer to a different railway is not to be made ordinarily. The employees have not been transferred to different stations because they possess such specialised qualifications for which their transfer was necessary or essential in the public interest or in the exigency of service. The motive of such transfer on masse is not the reason as has been disclosed but for "smashing" the union and disrupting its activities.

21. The scope, nature and extent of judicial control over the exercise of powers by administrators or administrative tribunals have been considered in "Wade and Philips" "Constitutional Law" (Seventh Edition) (pages 635-650) in manner following:

.....an important element in reconciling the existence of wide administrative powers with the principle of the rule of law is the control over the exercise of powers that is secured by the Courts.

As to limitation of judicial control, it is observed :

Although the exercise of most discretionary powers may be questioned in Courts, this does not mean that the courts can substitute their own decision for that of the body or person to whom a discretion has been entrusted.... when administrative action is challenged in the courts, the courts can intervene only if

statutory power has been exceeded or if a discretion has been wrongfully exercised. Such a wrongful exercise of discretion may arise from consideration of irrelevant issues, from failure to consider relevant issues, from wrongly interpreting the statute which granted the power or from improper motives. In practice it may not be easy to determine this in the case of a public authority which cannot be required to disclose its administrative procedure or to produce its files in Court.

Further "when a power is exceeded any acts done in excess of the power will be invalid as being ultra vires.... The courts will intervene not only to prevent powers being exceeded, but also to prevent their being abused. Control of the improper exercise of powers may also be regarded as an application of the ultra vires doctrine. The exercise of a discretion without taking into account all relevant considerations is equivalent to a failure to exercise it. The exercise of a power for an improper purpose is not an exercise of a power conferred for purposes denned in the statute which confers it. Acts which are prima facie lawful may be invalidated if they are done for a wrong purpose or by a wrong procedure..... Any exercise of a power for an improper purpose is invalid as not being done bonafide. Improper purposes include, but not restricted to, malice or personal dishonesty on the part of the officials or councillors making the decision.

22. The transfers of railway employees are provided in Rule 146 of the Establishment Code Vol. I, and such transfers relate to management and control of establishment and offices of the railway as matters of administration. The authorities in charge are the sole judges about the propriety, necessity or the desirability of such transfers. Such orders cannot also be interfered with if they are found to be not in excess of powers under the law and the authorities passing the orders are competent in law to pass such orders. Such orders again are not challengable if they do not involve any penal consequences in employees in respect of their emoluments, prospect in service and the like. Unless there is in the impugned orders any violation of the provision of the Constitution or statute or rules founded on them having the force of law or such orders are in excess of powers of the issuing authority under the law, the court cannot probe into the orders to enquire their propriety or necessity and question the order to substitute its judgment in place and stead of the decision taken by the said authorities who are the best judges of the situation and legally competent to pass such orders.

23. At the same time it may be obvious or apparent on the facts evident, admitted or established, that the orders of the authorities though otherwise legal and valid have not been issued for the professed purposes as in this case in public or administrative interest or in the exigencies of service but they are only passed for other purposes in the garb of ostensible purposes. The court of law in such cases has thought it fit and competent for itself to probe in and scrutinise such orders to see if they have been passed for other purposes under colourable exercise of powers or if such orders are accordingly malafide. It was observed in

the case of (10) Lachman Dass Vs. Shiveshwarkar and Others, , referred to by Mr. Chakraborty, in dealing with rule 146 of the Code as follows :

The question about the transfer of an official is primarily for the authorities concerned. A variety of factors may weigh with the authorities while considering the question of transfer-viz. the suitability of the official for the post, his aptitude past conduct, reputation, the period for which he had been on that post and a number of other grounds which may be clubbed together under the head "exigencies of service". It is not for this Court in a petition under Article 226 of the Constitution to go into the matter and adjudicate about the advisability or propriety of the transfer. The Court can only interfere if the transfer is violative of any legal provision or is otherwise malafide. Except in such limited contingency, the order of transfer is neither open to judicial review nor justiciable.

In the Bench decision of this Court in (11) Mihir Kumar Sarkar v. State of West Bengal in 76 C.W.N. 831 (46) it was observed:

An executive decision or an action or an administrative decision is liable to be struck down if it is used malafide or for a collateral purpose.

24. Following the above principles it was held by me in the case of (12) Dr. (Sm.) Pushpika Chatterjee Vs. State of West Bengal and others, that the order of transfer could not be sustained when it appeared on record that the order was not passed in the interest of public service or for administrative purposes. In the recent unreported decision in the case of (13) Guruprosad Mazumdar and Others Vs. Railway Board and Others, the court examined the allegations of malafides relating to the impugned orders of transfer of some members of railway protection force and found on the materials before it that there is no basis for such complaint.

25. The administrative orders, not otherwise justiciable, thus come under Court's scrutiny if there are allegations of malafides or colourable exercise of powers behind such orders, even though they are free from violation of any constitutional or statutory provisions. Such orders again are liable to be interfered with if the allegations noted above are established or evident on materials on record in absence of any rebuttable evidence.

26. Applying these principles we are faced here with transfer orders whereby seven persons have been transferred to far off places in different parts of India like Bombay, Madras, Trichinapally and Tambaram under the different railways like the Southern, Central and Western Railways. All these persons are the top executives of the CLW Labour Union holding positions like President, Vice-President, Organising Secretary and General Secretary. As it appears, they cannot be said to possess qualifications specially suitable to the offices to which they have been transferred and then too, all of them have been transferred together at a time by the same order. The individual orders again took effect on the same date as the date of issue of such orders. The incumbents have been asked to vacate their quarters immediately. Mr. Chakraborty is correct when he

states that the allegations of malafide, being matters of great seriousness, must be firmly averred and conclusively established and the instant petition does not satisfy those tests and requirements. There is no doubt that there are no allegations as such against the Chairman, Railway Board or any of the authorities in the Railways in particular excepting the general allegations. It is again to be remembered that it may not always be possible to establish malafides by the rigid tests. At the same time question of malafide or the colourable exercise of powers may be self-evident and patent in the un-disputed facts and circumstances of the cases concerned. The spate of transfers we are here concerned with, according to the authority, is in the exigencies of service or in public interest or for the administrative reasons. It is not the case of the respondents that in the name of trade union activities, the petitioners or their union were indulging in anti-national activities at CLW affecting its production and activities necessitating on masse transfer of the union top executives. On the contrary it has also been stated that the transfer orders have no bearing on the trade union activities of the employees who have been thereby transferred. Assuming it to be so, we do not find any disclosure in the affidavit-in-opposition or any evidence in rebuttal as to how public interest is served or the exigencies of service are met by such transfers of such employees in such distant places in the different railways in India. It has not also been claimed that there are cogent reasons for such transfer which in public interest should not be disclosed, so that the Court could even examine the reasons behind such action, may be in confidence if such privilege was necessary. On the face of records it is not possible to hold that there is any exigency of service or any public interest as reasons behind the order. Transfer of any railway employees is provided in Rule 146 which states that ordinarily a railway servant is to be attached to the establishment to which he is first appointed.

27. On a careful consideration of the relevant facts as disclosed it does not appear that the service of the officers because of their qualifications could be better utilised in those stations or that they were made on the requisition of those railways. If the transfers are not for the trade union activities, as stated in paragraph 18 of the affidavit-in-opposition, no ostensible or patent reason has been disclosed for such transfer of seven top officials of the Union at a time. In absence of any disclosure or evidence in rebuttal the petitioners' contention that the transfer are intended for disrupting the union gains firm foot hold. The transfers, in any event, thus appear on material on record as not made in usual course of business or in bonafide discharge of duties or in public interest or for exigency of service as claimed by the respondents and in the circumstances the impugned orders must be held as having been made for collateral purposes and thus malafide.

28. Accordingly, the order of transfers of the four petitioners before me as issued by the Chairman Railway Board being annexure A-I to the affidavit-in-opposition and individual orders being annexure "A" series to the petition relating to Messrs N.N. Singh, N. Mukherjee, Animesh Bose and Umapati Choudhury cannot stand

and have to be interfered with. The application in the circumstances succeeds and the Rule is made absolute. Let a Writ in the nature of Mandamus do accordingly issue forbearing the respondents from giving effect to the said orders mentioned above so far as they relate to the petitioners and let there a Writ in the nature of Certiorari also issue quashing the said orders as relating the petitioners.

There will be no order for costs in this rule.

As prayed for by Mr. Samarendra Nath Banerjee, learned Advocate for the respondents, let there be stay of the operation of this order for four weeks following the reopening after the long vacation. Let status quo as on to-day in respect of the petitioners Nos. 3, 4 and 5 be maintained during this period.