
(2020) 11 DEL CK 0053

In the Delhi High Court

Case No : Civil Writ Petition No. 8308 Of 2020, Civil Miscellaneous No. 26928 Of 2020

Pramod Kumar

APPELLANT

Vs

Pawan Hans Ltd Thr Chairman Cum Managing Director And Others

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 11 DEL CK 0053

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : M.D. Jangra, H. Banerjee

Final Decision : Dismissed

Judgement

Jyoti Singh, J

Hearing has been conducted through Video Conferencing.

1. Petitioner herein is aggrieved by the impugned Relieving Order dated 30/31.07.2020 served on the Petitioner allegedly through WhatsApp on

31.07.2020 as well as Relieving Order dated 07.08.2020.

2. Petitioner was appointed with the Respondents on 19.05.1988 as a PHL Helper (Aircraft Maintenance). Petitioner was thereafter recategorized as

Junior Aircraft Technician with effect from 01.07.2008, Aircraft Technician with effect from 01.07.2013 and Junior Engineer with effect from

01.07.2017. According to the Petitioner he has been performing his duties sincerely and dedicatedly for the last 32 years and is presently in his last leg

of service as he has only four years to superannuate.

3. The grievance of the Petitioner as succinctly put is that the Petitioner is trained to carry out repairs and maintenance only on certain kinds of

Helicopters and aircraft equipments which have been mentioned in his work permit issued by the Competent Authority such as Bell 206, Bell 407, B-3

and Dhruv ALH Helicopters and not on any other Helicopters or equipments. Mr. Jangra submits that vide the impugned order Petitioner stands

posted to Shimla, which will entail working on MI-172 Helicopter for which the Petitioner does not have the necessary training and expertise.

4. Second ground urged by the learned counsel is that the Petitioner is left with only four years of service before he superannuates and during the last

leg of his service he has to search for suitable match for his elder daughter and also look after the interest of the two other daughters, one of whom is

preparing for UPSC Competitive Examination and the other has passed Class 12th and the process of her admission is on.

5. Third and the last ground for challenging the Transfer Order is that the action of transfer of the Petitioner is malafide and has been actuated by the

fact that the Petitioner had approached the NCLT and the Labour Court and had pointed out certain financial irregularities against certain officers

which was disliked by the senior officers of the Respondents.

6. Mr. Banerjee learned counsel for the Respondents, on the other hand, responding to the contentions of the Petitioner submits that it is not correct

for the Petitioner to state that he is disabled from carrying out the work of repairs and maintenance on MI-172 Helicopter, which is being operated in

Shimla. He submits that as and when technicians are transferred to a particular place of posting, they are trained to work on the Helicopters in

operation at that place and after the training requisite permit is granted.

7. Insofar as ground of last leg posting is concerned, Mr. Banerjee submits that the posting of the Petitioner cannot be categorized as a last leg posting

as he has a long period of four years before he superannuates and the Respondents at this stage want to capitalize on the expertise that the Petitioner

has for working on the Helicopters. He submits that while the Respondents are sensitized to the fact that the children of the Petitioner are preparing

for their competitive examinations and need to be looked after, however, it is not possible for Respondents to accede to the request of the Petitioner on

this ground as his expertise and technical knowledge is urgently required at

Shimla. Mr. Banerjee denies the allegations of any mala fide and submits that the transfer is on account of administrative exigency. He also submits that other employees have also been posted and have joined their place of transfer while the Petitioner is evading joining at Shimla.

8. I have heard the learned counsels for the parties.

9. The law with regard to the scope of interference by a Court sitting in judicial review under Article 226 of the Constitution of India being extremely

limited is well settled. The Supreme Court in *Somesh Tiwari v. Union of India*, (2009) 2 SCC 592 and *Shilpi Bose (Mrs) v. State of Bihar*, 1991 Supp

(2) SCC 659 has held that it is not for the Court to decide the postings of the employees as this is the prerogative and domain of the employer. The

right of an employee to be posted to a particular place is subservient to the administrative exigencies of service. The employer is the best person to

decide which employee is required to be posted at which place in order to utilize his expertise, knowledge for the benefit of the organization. Petitioner

is a trained Junior Engineer with technical knowledge and experience. The Respondents have taken a conscious decision to utilize his services for

maintenance of the Helicopter and related equipment at Shimla and the Court cannot substitute its decision for that of the Respondents and decide

how the services of the Petitioner can be best utilized.

10. The principle concern of the learned counsel for the Petitioner is that the Petitioner is not adequately trained to work on MI-172 Helicopter and

does not even have the requisite permit to do so. In my view the concern is addressed by the submission of Mr. Banerjee, learned counsel for the

Respondent that once the Petitioner joins his place of posting at Shimla he would be given the necessary training on the said Helicopter and a permit to

that effect would also be issued.

11. It has been repeatedly affirmed by the Supreme Court that transfer is an administrative order and an incident of service and should not normally be

interfered with being the prerogative of the employer. I may at this stage allude to the judgement of the Supreme Court in *Somesh Tiwari (supra)*,

relevant para of which is as under:-

16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is

ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is

proved. Mala fide is of two kinds— one malice in fact and the second malice in law. The order in question would attract the principle of

malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the

allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of

transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment.

When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.??

12. In this context it is useful to refer to another judgement of the Supreme Court. In *Shilpi Bose* (supra) the Court observed as follows:-

??4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons

unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant

holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to

the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in

violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should

approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the

government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public

interest. The High Court overlooked these aspects in interfering with the transfer orders.??

13. From the observations of the Supreme Court it is clear that transfer is an incident of service and unless a strong case is made out by an employee

of malafides or violations of the transfer policy, the Courts must stay their hands in interfering in the transfers.

14. Insofar as the ground of last leg posting is concerned, I find force in the contention of Mr. Banerjee that the Petitioner has a long tenure of 4 years

before he superannuates and the posting to Shimla cannot be categorized as a last leg posting. Respondents are also right that they want to capitalize on the knowledge and experience of the Petitioner in the technical field and therefore the Petitioner cannot be retained at Delhi. No doubt the children of the Petitioner are in the midst of their competitive examinations/admission in college, but in my view this cannot be a ground to stall the transfer of the Petitioner, particularly keeping in background the fact that his services are urgently required by the Respondents for the upkeep and maintenance of the Helicopters operated by them in Shimla.

15. There is no merit in the petition. Petition along with the accompanying application is accordingly dismissed.