
(2020) 09 SHI CK 0294
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2907 Of 2017

Rajwanti Devi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
General Reserve Engineering Force, Record Office Instructions, 1998 — Rule 47, 47(a), 47(c)

Citation : (2020) 09 SHI CK 0294

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Navlesh Verma, Shashi Shirshoo

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the order of transfer, the petitioner has filed the instant petition for grant of the following reliefs:

"i) Issue a writ in the nature of Certiorari quashing the Transfer Order dated 01.12.2017 Annexure P-1 issued by Respondent No. 6, whereby Respondents have taken a decision to transfer the petitioner from HQ DPK (Shimla) to 1574 PNR COY. HQ 14 BRTF VARTAK (Arunachal Pradesh), being totally illegal, arbitrary and against the provisions of Rule 47(a) and (c) of the General Reserve Engineering Force, Record Office Instructions, 1998.

ii) Issue a writ in the nature of Certiorari quashing the letter dated 17.11.2017 Annexure P-2 whereby Respondent No.4 has returned the letter of request dated 14.11.2017 Annexure P-3 asking for the 3 choices of posting station in view of Rule 47(a) and (c) of the General Reserve Engineering Force, Record Office Instructions, 1998 on the frivolous ground, without any basis that she need to give 5 places of choice out of which 3 stations should be from Western Area and

2 stations should be from Eastern Area whereas Rule 47(a) only speaks about 3 choices which was duly complied with by the petitioner.

iii) Issue a writ in the nature of mandamus directing the respondents to transfer the petitioner at any place out of the 3 stations given vide letter dated 14.11.2017 to Respondent No.4, with all consequential benefits.

iv) Direct the Respondent No.4 to accept the request letter dated 14.11.2017, Annexure P-3, of the petitioner and forward the same to the concerned office/officer/respondent and to take a conscious step/decision on the same keeping in view the circumstances of the petitioner (widow lady) in view of Rule 47(a) and (c) of GREF-ROI, 1998."

The facts are not in dispute and are stated thus:

2. The husband of the petitioner was working as a driver with the respondents and unfortunately died in harness on 06.05.1996. Thereafter, the petitioner was given appointment on compassionate grounds on the post of Pioneer on 18.01.2003 and the details of the posting of the petitioner are as under:

Sr. No

Unit

Location

Duration

Classification

Remarks

From

To

(a)

507 SS&TC (P) Deepak

Chandigarh

18.03.03

05.08.08

MAA (Most Attractive Area)

b)

1638 PNR Coy (P) Chetak

Barmer

06.08.08

09.08.11

MAA (Most Attractive Area)

c)

1645 PNR Coy (P) Deepak

Istingri

10.8.11

06.12.15 H

HAA (High Altitude Area) (but individual not served in this area)

Individual was deployed on attachment at 507 SS &TC Chandigarh (Most Attractive Area)

(d)

HQ CE (P) Deepak

Shimla

07.12.15

Till date

MAA (Most Attractive Area)

3. The petitioner was ordered to be transferred vide order dated 01.12.2017 from HQ DPK, Shimla to 1574 PNR COY. HQ 14 BRTF VARTAK, Arunachal Pradesh, which according to her, was in violation of provisions of Rule 47(a) and (c) which read as under:

"Posting Female GREF Employees

47. (a) Female employees will be asked three choice stations in three different projects and efforts will be made to post them to one of the choice station. Present system of staying in one station for a very long duration will be discouraged.

(c) As far as possible, female employees on turn over shall be posted to places where family accommodation is available, which may be in any area classification keeping in view the increasing strength of lady employees."

4. The respondents have contested the petition by filing reply wherein it is stated that prior to the posting of the petitioner, she was asked to give five choices for posting i.e. three choice stations in Western Sector and two choice stations in Eastern Sector and it is only thereafter that the petitioner was ordered to be transferred.

5. On 04.03.2020, the Court after hearing the matter for some time, passed the

following orders:

"As per Rule 47 of the General Reserve Engineering Force, Record Office Instructions 1998, a female employee can only be asked to submit three choice stations in three different projects before transfer. However, the respondents would insist that the petitioner should submit five choice stations for posting out of which three choice stations should be in the Western Sector and two choice stations in the Eastern Sector. This is contrary to the aforesaid regulations. Therefore, let a supplementary affidavit be filed by the respondents explaining this position.

List on 18th March, 2020. "

6. In compliance to the aforesaid orders, the respondents filed a supplementary affidavit, the relevant portion whereof reads as under:

"3. That as per revised instructions Para 24 of Chapter 24 of Records Office Instructions 1/2019 revised by competent authority i.e. Records Office Pune are as under:-

Presently the organization is holding more than 400 employees. The percentage of lady employees from Western Sector is more compared to Easter Sector. As such maximum ladies prefer to be posted to Western Sector and are hesitate to move in Easter Sector, even if posting is issued. Especially the problem is more in the category of MSW Safaiwala, LDC, MSW Cook and MSW PNRs out of the stations where we can post the ladies, they prefer to be posted to only few station keeping in view of the facility like education, medical facilities and connectivity etc. In order to manage and accommodate the female employee being recruited on Compassionate Ground, following instructions should be followed strictly:-

(a) Female employees will be asked five choice stations in three different Projects and efforts will be made to post them to one of the choice stations. Present system of staying in one station for a very long duration will be discouraged.

(b) Cases for widows having school going children (below 15 years of age) will be considered on merit and efforts will be made to post them to the unit where schooling facilities are available, to the extent possible.

(c) As far as possible, female employees in turn over shall be posted to places where family accommodation is available, which may be in any area classification keeping in view the increasing strength of lady employees.

(d) Female employees who have completed their prescribed tenure in a unit and due to posting out will not be disturbed, if they are left with less than 02 years service for proceeding in superannuation.

(e) Turnover posting of female GREF employees will also be done in the same manner as is being done for others.

However, efforts will be made to the extent possible to post husband and wife in the same station/unit/formation, if both of them are GRED employees."

7. It is in view of the aforesaid instructions that the petitioner is required to give five choice stations in three different projects i.e. three choice in Western Sector and two choice in Eastern Sector, but she has given four choice of stations that too in and around Chandigarh which comes under the Western Sector.

8. We have heard the learned counsel for the parties and gone through the material placed on record.

9. It is trite that transfer is an incidence of service and as long as the authority acts keeping in view the administrative exigency and taking into consideration the public interest as the paramount consideration, it has unfettered powers to effect transfer subject of course to certain disciplines. Once it is admitted that the petitioner is State government employee and holds a transferable post then he is liable to be transferred from one place to the other within the District in case it is a District cadre post and throughout the State in case he holds a State cadre post. A government servant holding a transferable post has no vested right to remain posted at one place or the other and courts should not ordinarily interfere with the orders of transfer instead affected party should approach the higher authorities in the department. Who should be transferred where and in what manner is for the appropriate authority to decide. The courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to "proper place". It is for the administration to take appropriate decision.

10. Even the administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redressal but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. Even if, the order of transfer is made in transgression of administrative guidelines, the same cannot be interfered with as it does not confer any legally enforceable rights unless the same is shown to have been vitiated by mala fides or made in violation of any statutory provision. The government is the best judge to decide how to distribute and utilize the services of its employees.

11. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations without any factual background foundation or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative

interest or in the exigencies of service but for other purpose, such as on the basis of complaints. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. An order of transfer is to satisfy the test of Articles 14 and 16 of the Constitution otherwise the same will be treated as arbitrary.

12. Judicial review of the order of transfer is permissible when the order is made on irrelevant consideration. Even when the order of transfer which otherwise appears to be innocuous on its face is passed on extraneous consideration then the Court is competent to go into the matter to find out the real foundation of transfer. The Court is competent to ascertain whether the order of transfer passed is bonafide or as a measure of punishment.

13. The law regarding interference by Court in transfer/posting of an employee, as observed above, is well settled and came up before the Hon'ble Supreme Court in E.P. Royappa vs. State of Tamil Nadu, (1974) 4 SCC 3; B. Varadha Rao vs. State of Karnataka, (1986) 4 SCC 131; Union of India and others vs. H.N. Kirtania, (1989) 3 SCC 445; Shilpi Bose (Mrs.) and others vs. State of Bihar and others, 1991 Supp (2) SCC 659; Union of India and others vs. S.L. Abbas, (1993) 4 SCC 357; Chief General Manager (Telecom) N.E. Telecom Circle and another vs. Rajendra CH. Bhattacharjee and others, (1995) 2 SCC 532; State of M.P. and another vs. S.S. Kourav and others, (1995) 3 SCC 270; Union of India and others vs. Ganesh Dass Singh, 1995 Supp. (3) SCC 214; Abani Kanta Ray vs. State of Orissa and others, 1995 Supp. (4) SCC 169; National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Shiv Prakash, (2001) 8 SCC 574; Public Services Tribunal Bar Association vs. State of U.P. and another, (2003) 4 SCC 104; Union of India and others Vs. Janardhan Debanath and another, (2004) 4 SCC 245; State of U.P. vs. Siya Ram, (2004) 7 SCC 405; State of U.P. and others vs. Gobardhan Lal, (2004) 11 SCC 402; Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others, (2004) 12 SCC 299; Somesh Tiwari vs. Union of India and others, (2009) 2 SCC 592; Union of India and others vs. Muralidhara Menon and another, (2009) 9 SCC 304; Rajendra Singh and others vs. State of Uttar Pradesh and others, (2009) 15 SCC 178; and State of Haryana and others vs. Kashmir Singh and another, (2010) 13 SCC 306 and the conclusion may be summarised as under:-

1. Transfer is a condition of service.
2. It does not adversely affect the status or emoluments or seniority of the employee.
3. The employee has no vested right to get a posting at a particular place or choose to serve at a particular place for a particular time.
4. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.
5. Transfer order should be passed in public interest or administrative exigency,

and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

6. There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.

7. In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.

8. The person against whom allegations of malafide is made should be impleaded as a party by name.

9. Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Department personnel.

10. The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.

11. If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.

14. In view of the aforesaid exposition of law, it would be clear that the order of transfer can only be assailed on limited grounds and in the present case no such grounds have been made out.

15. The petitioner was required to give five choice stations in three different projects (Para-7 supra). Having failed to do so, the petitioner has no one to blame except herself.

16. The only apprehension of the petitioner is that there is no accommodation available at the transferred station, which is totally ill-founded, as is evident from para-5 of the supplementary affidavit which reads as under:

"5. That as per Annexure P-1 dated 01.01.2017, the petitioner has been transferred to HQ-14 BRTF Vartak, which is near to the railway station Guwahati and also the accommodation is available for female employees, which can be provided to her after her joining at HQ-14 BRTF Vertak, Guwahati as per Clause-C of the revised instructions (Annexure S-1)."

17. No case for interference is made out. Consequently, we find no merit in this writ petition and the same is dismissed, so also the pending application(s), if any.