
(2002) 02 PAT CK 0131
In the Patna High Court
Case No : C.W.J.C. No. 7721 of 2000

Ram Naresh Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Bihar State Agriculture Marketing Board Employees Service Rules — Rule 58

Citation : (2002) 2 PLJR 551

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Heard Mr. Shailendra Kumar Sinha, counsel appearing in support of this writ petition and the JC to Mr. K.R Yadav appearing for the Marketing Board.

2. The Petitioner is employed as an Accountant in the Bihar State Agriculture Marketing Board and from 1995 he is posted at the Board's Headquarters in Patna. In this writ petition he seeks to challenge his transfer in the office of the Market Committee, Begusarai.

3. The Managing Director of the Board issued office order No. 42/Confidential, dated 19.6.2001 for giving effect to the decision of the Establishment Committee taken in its meeting dated 18.6.2001 by which ten Accountants were shifted from one place to another. The name of the Petitioner figured at serial No. 7 in this order and as noted above he was transferred from the Board's Headquarters at Patna to the Market Committee, Begusarai. The Petitioner filed this writ petition on 21.8.2000 and was successful in obtaining an interim order of stay by this Court on 22.8.2000. He has thus been able to remain at his present place of posting for more than six years.

4. Mr. Sinha assailed the impugned order of transfer on three grounds which are as follows:

- (i) the transfer was made on the basis of the decision of a Establishment Committee which was not properly constituted,
- (ii) the order of transfer suffered from the vice of discrimination and
- (iii) the Petitioner being a handicapped person, suffering from 55% disability he should not have been transferred out of Patna.

5. In the Board's counter affidavit it is stated that the Establishment Committee that took the decision of transfer was constituted in terms of Rule 58(ii) of the Bihar State Agriculture Marketing Board Employees' Service Condition Regulation.

6. Mr. Sinha, however, submitted that the Establishment Committee constituted under Rule 58(ii) was meant to deal with recruitments and not for transfer of employees. According to him, the Establishment Committee competent to take decision for transfer, position etc. was required to be constituted under Office Order no/675 dated 16.11.1984 which, amongst others, included a representative of the Scheduled Castes/Scheduled Tribes.

7. From a perusal of the office order dated 16.11.1984 (Annexure-7) it appears that it envisages a high powered committee primarily meant for appointment, transfer, posting etc. of officers of the rank of Market Secretary and above. Though the expression "all cadres" has been used in that office order it appears to be surplusage and in my view the matter of transfer of ministerial staff of the Board need not go before such high level committee.

8. Apart from this, the Managing Director himself was quite competent to issue the order of transfer and any transfer of the Accountant made by the Managing Director normally cannot be assailed for want of authority or jurisdiction.

9. Coming now to the question of discrimination it is stated that another Accountant namely Ramesh Kumar Yadav who by the impugned order was transferred in the office of the Executive Engineer, Chapra was later sent to the office of the Executive Engineer, Patna on the basis of a representation made by him. This Court is not aware of the circumstances in which the transfer order of Ramesh Kumar Yadav was modified and on that basis alone it cannot be held that the transfer of the Petitioner and other 8 Accountants was made in a discriminatory manner.

10. Coming next to the question of the Petitioner suffering from physical disability, this Court would not like to make any observation. If the Petitioner really suffers from any handicap and finds it difficult to work at any place other than Patna, he may make such a representation before the Managing Director who will undoubtedly consider the case of the Petitioner having regard to his handicap.

11. In the result, this writ petition is dismissed. The order of interim stay passed earlier stands vacated.