

(2005) 11 AHC CK 0041
In the Allahabad High Court
Case No : Special Appeal No. 769 of 2005

Ram Niwas Pandey (Constable No. 5796), Mohd. Shakeel Khan (Constable No. 7282) and Shamsheer Bahadur Singh (Constable No. 9864) APPELLANT

Vs

Union of India (UOI) and Divisional Security Commissioner RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Protection Force Rules, 1987 — Rule 90, 93.10

Citation : (2006) 5 AWC 4504

Hon'ble Judges : Sudhir Agarwal, J; S. Rafat Alam, J

Bench : Division Bench

Advocate : Shashi Nandan and A.A. Khan, for the Appellant; Govind Saran, for the Respondent

Final Decision : Dismissed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—This special appeal is preferred against the order of the Hon'ble Single Judge dated 1.6.2005 dismissing writ petition No. 44362 of 2005 of the appellant filed against the order of transfer dated 27.5.2005.

2. Heard Shri Shashi Nandan, learned Senior Counsel appearing for the appellant and perused the aforesaid order of the Hon'ble Single Judge.

3. Learned counsel for the appellant submitted that the impugned order of transfer has been passed by way of punishment inasmuch as it has been passed on administrative grounds posting the appellant on non-sensitive post. He further relied upon Rule 93.5 of the Railway Protection Force Rules, 1987, which reads as under: -

93.5 Members of the Force who have got adverse entries or enjoy poor reputation shall not be posted to sensitive posts till they get good entries for

three consecutive years.

4. The appellant submits that since the aforesaid provisions bars such members of force, who have got adverse entry or enjoy poor reputation, from being posted on sensitive post, therefore, the appellant, being equated with such tainted officers, by means of the impugned order and as a measure of punishment, has also been posted on non-sensitive post.

5. We do not find the aforesaid contention of the appellant tenable. Under 1987 Rules subject of transfer has been dealt with from Rule 90 to 93.10 under Chapter 7. Rule 90 empowers transfer of any members of force. For ready reference Rule 90, which is relevant for the purposes of present case, is quoted as under: -

90. General: Transfer of members of the Force may be ordered from one place to any other place in India in the exigencies of service or for administrative reasons or to avoid local entanglements of such members or for any other consideration.

8. A perusal of the aforesaid provision shows that a member of force may be transferred from one place to another throughout India in the exigencies of service or for administrative reasons or to avoid local entanglements or for any other consideration. Obviously, the impugned order of transfer, in the present appeal, has been passed on administrative reasons and is referable to Rule 90 of the aforesaid rules.

9. In our view, the manner in which the appellant is trying to read Rule 93.5 and is applying the same, in the present case, is also incorrect inasmuch a simple reading of Rule 93.5 would show that it only prohibits tainted members of service from being posted on sensitive post but converse is not true. It does not say that even if a person has no such adverse entry or poor reputation, yet he also cannot be posted on non-sensitive post. There may be several occasions when the number of persons having bad service record or reputation may be less than the number of non-sensitive posts. If the contention of the appellant is accepted, it may result in a large number of sensitive post remained vacant since they are to be filled in only by tainted officers and none else. Neither rule say so nor there is any other reason to warrant such interpretation. Therefore, the aforesaid submission of the appellant is clearly incorrect in so far as it submits that the impugned order of transfer is by way of punishment taking support of Rule 93.5. The said rule has no application in the present case at all.

10. Besides that the employee cannot claim, as a matter of right, that he should be given a particular posting against a sensitive post or non-sensitive post. It is the prerogative of the employer to choose as to which employee is posted where, according to the exigency of service and in administrative exigency.

11. In the case of E.P. Royappa Vs. State of Tamil Nadu and Another, the Hon''ble Apex Court held as under: -

It is an accepted principle that in public service transfer is an incident of service.

It is also an implied condition of service and appointing authority has a wide discretion in the matter. The government is the best judge to decide how to distribute and utilize the services of its employees. However, this power must be exercised honestly, bona fide and reasonably.

12. In *B. Varadha Rao Vs. State of Karnataka and Others*, the Hon''ble Apex Court in the case of *B. Varadha Rao V. State of Karnataka and Ors.* held as under: -

It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. (Para-5).

13. In *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, the Hon''ble Apex Court held as under: -

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 over looked these aspects in interfering with the transfer orders. (Para-5)

14. Reiterating the aforesaid view, in the case of *Union of India and Others Vs. S.L. Abbas*, the Hon''ble Apex Court held that the transfer is an incident of service and in para-7 their Lordships held as under: -

Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.

15. In *National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others*, the Hon''ble Apex Court held as under: -

It is by now well settled and often reiterated by this Court that no Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown

to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

16. In the case of State of U.P. and Others Vs. Gobardhan Lal, the Hon''ble Apex Court held as under: -

It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even 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 redress 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 is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infringement of any career prospects such as seniority, scale of pay and secured emoluments. This court has reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

(Emphasis added).

17. Instead of burdening this judgment referring catena of decisions on this aspect, it would be fruitful to refer a very recent three Judges judgments of the Hon''ble Apex Court in the case of Major General J.K. Bansal Vs. Union of India (UOI) and Others, wherein in order to appreciate the scope of interference in a writ jurisdiction under Article 226 of the Constitution of India assailing the order of transfer the Hon''ble Apex Court referred to the earlier law laid down in the case of Mrs. Shilpi Bose and Ors. v. State of Bihar and Ors. (Supra) and National Hydro-Electric Power Corporation Ltd. v. Shri Bhagwan and Anr. (Supra), and held in para-12 as follows: -

It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by Courts in regard to members of armed forces is far more limited

and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.

18. This Court has also reiterated the same view in Special Appeal No. 1293 of 2005, Gulzar Singh v. State of U.P. and Ors. decided on 7.11.2005.

19. In the aforesaid circumstances, we do not find any reason to interfere with the order of the Hon"ble Single Judge. Therefore, the special appeal, being without merit is dismissed. No order as to costs.