
(2013) 01 SHI CK 0090
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 9764 of 2012-G

Ramesh Kumar

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 3 LLN 223 : (2013) LLR 709 : (2013) 1 ShimLC 282

Hon'ble Judges : Surinder Singh, J; R.B. Misra, J

Bench : Division Bench

Advocate : Bimal Gupta and Mr. Satish Sharma, for the Appellant; H.K. Bhardwaj and Basant Paul Thakur, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—In the present writ petition, petitioner has prayed to quash his transfer order dated 18.8.2012 (Annexure P-2) from the office of Food Supplies Department (FSD), Nahan under the Food Corporation of India to the office of Manager (Depot), FSD, Gujjar-Ka-Talab, Nurpur, District Kangra with a further prayer 1 Whether the reporters of the local papers may be allowed to see the Judgment? that the petitioner may be allowed to continue at Nahan till the age of his superannuation. The petitioner was initially appointed on 14.4.1978 as Shifter / Watchman and was promoted in the year 2008 as Dusting Operator as a Class-IV employee. According to the petitioner, he is suffering from multiple diseases, including heart disease, diabetes and neurological problem and many of the problems have arisen because of his present transfer in question. Despite his representations dated 21.8.2012 followed by another representation dated 3.9.2012 addressed to General Manager, Food Corporation of India, the impugned transfer order has not been modified. The petitioner has contended that while working as Dusting Operator i.e. being a Class-IV employee, he was not to be transferred to Nurpur, moreso, when petitioner's daughter is studying in B.Sc. (Nursing) at Kala-Amb and the petitioner is due to retire from service in February 2015. In support of his case, the petitioner has submitted medical

prescription slips as well as Medical Certificate (Annexure P-1).

2. On the other hand, through reply, filed on behalf of General Manager of Food Corporation of India, it has been contended that while seeking employment, the petitioner has accepted the terms and conditions, where the petitioner had agreed to serve in any part of India or outside. In Clause (IV) of the terms and conditions, in the offer of appointment to the post of Watchman/Messengers in Food Corporation of India dated 14.4.1978, read as below:--

iv. He/she will be liable to serve in any part of India or outside. Initially he is being posted in Food Corporation of India, Himachal Pradesh Region.

As such, employee of Food Corporation of India could be transferred to any place of need as per the requirement of the organization. Though the petitioner initially appointed at FCI, Parwanoo Depot at his own request was transferred to his home place on 13.7.1982, thereafter, on 19.7.1985 was transferred to FCI Jasur, but was brought back to his home place again i.e. to Nahan just in one year on 29.7.1986 but thereafter for about 26 years the petitioner has continuously been working at FCI, Nahan only. As indicated in the reply, an employee was needed to be transferred at Gujjar-Ka-Talab, as such, the impugned transfer order dated 18.8.2012 was passed in dire need, whereas, the petitioner has refused to join at Gujjar-Ka-Talab and has proceeded on medical leave. As indicated in reply, generally the officials/employees of FCI are transferred to the nearest procurement centres temporarily for the period of two to four weeks only and thereafter they are called back to the place of their postings, whereas, the daily and transport allowances are paid to such employees besides their salary, more specifically, during the procurement session of Rabi and Kharif crops. The respondent can transfer the employee of FCI, where, it is necessarily required. During 34 years of service, the petitioner has remained near his native place for more than 26 years. The diseases of the petitioner have only been disclosed only after he was transferred on 18.8.2012. The respondent has still every doubt that the petitioner is not really suffering from multiple diseases for which he has claimed for. It has also been asserted by the respondent that the petitioner had refused to accept the promotion order after enjoying all the benefits of promotion after more than three years and despite having been relieved, the non-joining of the petitioner at the present place of posting is a clear cut indiscipline and disobedience, whereas, it was verbally indicated to him that after joining to the place of transfer, his request for adjustment to another place may be considered. The learned counsel for the respondent has submitted that by transfer is an exigency of service and under the terms and conditions of the service the petitioner could have been posted anywhere in India or outside under Food Corporation of India, moreso, by the order in question, the petitioner has been transferred from Nahan to Gujjar-ka-Talab Nurpur, District Kangra in public interest, in betterment of administration and in administrative exigency. The transfer in question has not been made by way of punishment or by way of political vendetta, as such, the petitioner is obliged to obey the transfer order

and in view of the settled position of law by Hon''ble Supreme Court, as such, this Court has not to give generous indulgence to interfere in the present transfer order.

3. The sole point for consideration, in the facts and circumstances, is whether the impugned transfer of the petitioner could be interfered when the petitioner has joined Class-IV service under Food Corporation of India accepting the terms and conditions of offer of appointment, wherein, he could have been transferred to any part of India or outside.

4. In order to test the justification of the prayer of the petitioner in the present writ petition, it is necessary to go through the judgments on the subject.

5. The issue of transfer and posting has been considered time and again by Hon''ble Supreme Court and law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. The employee does not have any vested right to be posted at a particular place (vide B. Varadha Rao Vs. State of Karnataka and Others, ; Mrs. Shilpi Bose and others Vs. State of Bihar and others, Union of India and another Vs. N.P. Thomas, Union of India and Others Vs. S.L. Abbas, Rajendra Roy Vs. Union of India (UOI) and Another, ; Ramadhar Pandey Vs. State of U.P. and Others, ; N.K. Singh Vs. Union of India and others, ; Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, State of Uttar Pradesh v. Dr. R.N. Prasad, 1995 (Supp) 2 SCC 151 Union of India and Ors. v. Ganesh Dass Singh . Abani Kanta Ray Vs. State of Orissa and Others, ; Laxmi Narain Mehar Vs. Union of India and others, State of U.P. and Others Vs. Ashok Kumar Saxena and Another Etc., National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, ; Public Services Tribunal Bar Association Vs. State of U.P. and Another, Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, ; State of U.P. and Others Vs. Siya Ram and Another, Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, S.C. Saxena v. Union of India & Ors., (2006) 9 SCC 583; Mohd. Masood Ahmad Vs. State of U.P. and Others, Tejshree Ghag Vs. Prakash Parashuram Patil and Others etc. etc., and Somesh Tiwari Vs. Union of India (UOI) and Others,

6. An employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer/ posting which is made in public interest or on administrative exigency. In Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , the Supreme Court has observed as under:--

Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of

service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration.

In *Union of India and Others Vs. H.N. Kirtania*, , the Hon''ble Supreme Court has observed as under:--

Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fide.

In *Union of India v. S.I. Abbas*, (supra), the Hon''ble Supreme Court has observed that the Government instructions on transfer are mere guidelines without any statutory force and the Court or Tribunal cannot interfere with the order of transfer unless the said order is alleged to have been passed by malice or where'' it is made in violation of the statutory provisions.

Similar view has been reiterated by the Supreme Court, in *Bank of India Vs. Jagjit Singh Mehta*, observing that the terms incorporated in the transfer policy for posting of both the spouses; if in service, at the same place, require to be considered by the authorities "along with exigencies of administration" and "without any detriment to the administrative need and claim of other employees.

In *State Bank of India Vs. Anjan Sanyal and Others*, , Hon''ble Supreme Court held as under:

4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala-fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

(Emphasis supplied)

In *S.C. Saxena v. Union of India & Ors.*, (supra) the Hon''ble Supreme Court deprecated the practice of approaching the Court by the Government employees against transfer order rather joining at the transferred place.

In *The Government of A.P. Vs. G. Venkata Ratnam*, the Supreme Court deprecated the view taken by the High Court interfering in transfer matter merely on the basis of some extraordinary achievements highlighted by the respondent-employee. It is not for the Court to consider where respondent would be more suited. Such an approach is rather unusual and strange as no employee can be permitted to choose his own place of posting.

7. Thus, it is clear that the transfer policy does not create any legal right in favour of the employee,. It is settled law that a Court/Tribunal can entertain a case only for enforcing the statutory or legal right or when there is a complaint by an employee that there is a breach of a statutory duty on the part of the employer. Therefore, there must be a judicially enforceable legal right for the

enforcement of which legal proceedings can be resorted to. The Court/ Tribunal can enforce the performance of a statutory duty by public bodies through its jurisdiction at the behest of a person, provided such, person satisfies the Court that he/she has a legal right to insist on such performance. The existence of the said right is a condition precedent for invoking the Court's jurisdiction. (vide *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, *Mani Subrat Jain and Others Vs. State of Haryana and Others*, *State of Kerala Vs. Smt. A. Lakshmikutty and others*, 1; *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, ; *Krishan Lal Vs. State of Jammu & Kashmir*, ; *State Bank of Patiala and others Vs. S.K. Sharma*, ; *Rajendra Singh Vs. State of Madhya Pradesh and others*, ; *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, ; *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, *State of Punjab Vs. Ragbir Chand Sharma and Another*, ; and *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*,

8. In *State of U.P. and Others Vs. Gobardhan Lal*, the Supreme 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 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. This Court has often 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)

Similar view has been reiterated by the Hon'ble Supreme Court in *State of U.P. and Others Vs. Siya Ram and Another*, and *Major General J.K. Bansal Vs. Union of India (UOI) and Others*,

9. The transfer order may cause great hardship as an employee would be forced

to have a second establishment at a far distant place, education of his children may be adversely affected, may not be able to manage his affairs and to look after his family. This aspect was also considered by the Hon''ble Supreme Court in State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, wherein, it has been held that it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration.

The Supreme Court in Sarvesh Kumar Awasthi v. U.P. Jal Nigam, (2003) 11 SCC 740, held as under:--

In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

Transfer effected as a punitive measure is also not permissible. Whether a transfer is punitive or not is a question of fact, as held by the Supreme Court in Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, . It was permissible for the Court to go behind the order and find out it was punitive in nature.

10. The issue of "malus animus" was considered in Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, , wherein the Supreme Court has held that the High Court would be justified in refusing to carry on investigation into the allegation of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition and burden of establishing mala fide lies very heavily on the person who alleges it and there must be sufficient material to establish malus animus.

Similarly, in E.P. Royappa Vs. State of Tamil Nadu and Another, , the Hon''ble Supreme Court held that a transfer is mala fide when it is made not for professed purpose-, such as normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. The Court further observed as under:--

Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status but because otherwise, functioning effectively would become difficult in a democracy.

The Hon''ble Supreme Court in Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, 5; and Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, has made similar observations.

In M. Sankaranarayanan, IAS Vs. State of Karnataka and others, the Hon''ble Supreme Court observed that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise or conjecture.

In N.K. Singh v. Union of India and Others (supra), the Hon''ble Supreme Court has held that "the inference of mala fides should be drawn by reading in between the lines and taking into account the attendant circumstances.

A similar view has been reiterated in Major General J.K. Bansal v. Union of India & Others, (supra)

In Arvind Dattatraya Dhande Vs. State of Maharashtra and others, , the Supreme Court held as under:--

In view of the unimpeachable and eloquent testimony of the performance of the duties, it will be obvious that the transfer is not in public interest but is a case of victimization of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances, as stated earlier, the transfer of the appellant is nothing but mala fide exercise of the power to demoralize honest officers who would efficiently discharge the duties of a public office.

There has to be very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material. (Vide Kiran Gupta and Others Vs. State of U.P. and Others Etc., and Netai Bag and Others Vs. The State of West Bengal and Others,

In State of Punjab Vs. V.K. Khanna and Others, the Hon''ble Supreme Court examined the issue of bias and mala fide, observing as under:--

Whereas fairness is synonymous with reasonableness-bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence -available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice. In almost all legal enquiries, "intention as distinguished from motive is the all important factor" and in common parlance a malicious act stands equated with an intentional act without just cause or excuse.

Similar view has been reiterated in M/s. Samant and Another Vs. Bombay Stock Exchange and Others,

In First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, and Jasvinder Singh and Others Vs. State of Jammu & Kashmir and Others, , Hon"ble Supreme Court held that burden of proving mala fides is very heavy on the person who alleges it. Mere allegation is not enough. Party making such allegations is under a legal obligation to place the specific materials before the Court to substantiate the said allegations.

It is settled legal proposition that in case allegations of mala fide are made against any person he is to be impleaded by name, otherwise the allegations cannot be considered. (Vide State of Bihar and Another Vs. P.P. Sharma, IAS and Another, Dr. J.N. Banavalikar Vs. Municipal Corporation of Delhi and another, ; All India State Bank Officers" Federation and Others Vs. Union of India (UOI) and Others, and I.K. Mishra Vs. Union of India and Others,

In Federation of Railway Officers Association and Others Vs. Union of India (UOI), the Hon"ble Supreme Court has held that the allegation of mala fide has to be specifically made and the person against whom such allegations are made has to be impleaded and in his absence such allegations cannot be taken into consideration.

In view of the above, the legal position on the issue of transfer can be summarized 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 can choose to serve at a particular place for a particular tenure.
- (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 the Court/Tribunal 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 mala fides is established.
- (7) In case of mala fides, the employee has to make specific averments and should prove the same by adducing implacable evidence.
- (8) The person against whom allegation of male fide is alleged is to 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 Departmental personnel.

(10) The Court does not have a 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 this issues 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.

11. The issue of transfer of a low paid employee was considered by the Hon''ble Supreme Court in State of Madhya Pradesh Vs. Shankar Lal and Ors, and after considering the provisions of the Madhya Pradesh Municipalities Act, 1961 the Court came to the conclusion that unless the statutory rules itself puts an embargo for transfer by a Class IV or low paid employee, there can be no bar to transfer the said employee. However, such a power should be exercised sparingly. The Court observed as under:--

...Theoretically, therefore, the power does exist in the State Government to transfer them. We must however, hasten to add that in case of employees getting small emoluments the power seems to be meant to be sparingly exercised under some compelling exigencies of a particular situation and not as a matter of routine. If it were to be liberally exercised, it will create tremendous problems and difficulties in the way of Mpl. employees getting small salaries....

In B. Varadha Rao v. State of Kamataka & Others., (Supra), while dealing with the issue of transfer, Hon''ble Supreme Court considered various aspects and observed as under:--

One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralization. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer.

12. Therefore, in view of the above, the law stands summarized that in a case of

Class IV or low paid employees, the power of transfer should be used sparingly when required in administrative exigency, and not in a routine manner. Moreso, the power is to be exercised in good faith, not arbitrarily, and the employer should try to accommodate at a nearby place as his transfer at a far distance may cause him great financial hardship and may make his survival difficult.

13. The Hon''ble Supreme Court in *State of Haryana and Others Vs. Kashmir Singh and Another etc. etc.,* , has observed that the Court should not interfere with purely administrative matters except where absolutely it is necessary on account of violation of any fundamental or other legal right. The Hon''ble Supreme Court has also reiterated the law in *The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others,* , by observing that transfer is an incident of service and if transfer is made on administrative grounds and judicial review is limited and the High Court has not to interfere with the transfer lightly. In view of the aforesaid analysis and observations and in light of the settled position of law, we do not find any scope for interference in the transfer order, as such, the writ petition is dismissed. However, the dismissal of the present writ petition shall not debar the respondent-employer of the petitioner to consider his representation to be submitted in future.