

(2002) 10 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 2501 of 2002

Ranjit Chaudhury

APPELLANT

Vs

India Tourism Development Corporation Limited and Others

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2003) 96 FLR 517 : (2004) ILR (Kar) 1923 : (2003) 3 KarLJ 603 : (2003) 1 KCCR 10 SN : (2003) 1 LLJ 40

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : L. Govindraj and D. Leelakrishnan, for the Appellant; Prabhakar Rao, for Respondents-1 and 2 and Jayaram and Jayaram, for Caveator-Respondent-3, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—Ranjit Chaudhury is before me seeking for various prayers. The petitioner joined the services of India Tourism Development Corporation Limited (for short, the "Corporation") at Hotel Samrat on 3-10-1982 as Chef-de-rang in terms of an appointment letter dated 23-8-1982, Annexure-C. He was given Kitchen Executive training under the Corporation's Career Development Scheme. He was promoted to the Executive cadre of Chef with effect from 3-4-1989 in terms of Annexure-D. He was posted to work in the promoted cadre at Hotel Airport Ashok. On 6-9-2001, the first respondent-Corporation transferred the petitioner to Hotel Ashok, Bangalore as Sous Chef in his own grade and pay. The allegation of the petitioner is that this transfer is to accommodate one Sri Amitava Roy who was working in Bangalore.

2. The petitioner refers to the details in the matter of lease-cum-management agreement between Kumarakrupa Frontier Hotels Private Limited and Bharat Hotels Limited. The petitioner also refers to the policy of the Government in the matter of disinvestment in the hotel business. The petitioner has also filed a

document evidencing his wife's health condition. He has also filed the correspondence between the Grand Ashok and I.T.D.C.

3. The third respondent has filed a memo stating therein that they have no objection for the petitioner being transferred back to Calcutta as desired by him. I.T.D.C. has filed a detailed counter denying everyone of the allegation made by the petitioner. They state that the petitioner is no longer the employee of the first respondent-Corporation. They further say that the petitioner was transferred to Hotel Ashok, Bangalore as Sous Chef on his own verbal request. They also refer to various facts. They also say that there is no mala fide involved in the case on hand.

4. Heard the learned Counsel, Sri Govindraj. He took me through the pleadings to contend that injustice has been meted out to his client. Elaborating his contention, learned Counsel says that the material facts would show a favouritism in favour of Amitava Roy. He says that the service condition do not provide for any such transfer. He finds fault with the action of the respondent.

5. Per contra, learned Counsel for I.T.D.C. vehemently contends before me that the material facts would reveal of cessation of relationship between the parties. His further contention is that as on today, there are no hotels available for transfer of parties. He relies on a judgment of the Supreme Court in Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani,

6. After hearing the Counsel, what is required to be considered by this Court is as to whether Annexure-E, an order dated 6-9-2001 ordering the petitioner's transfer and posting in Bangalore has legal sanction. In this connection, let me see the pleadings in the case on hand. The petitioner in para 6 has stated that "the first respondent-Corporation transferred the petitioner to Hotel Ashok, Bangalore, as Sous Chef in his own grade and pay to accommodate Sri Amitava Roy, Chef, Grade II, who was working in Hotel Ashok, Bangalore. The petitioner also stated in the subsequent paragraphs that transfer has been done to accommodate Mr. Roy". The same is of course denied by the I.T.D.C. Let me verbatim quote as to the stand of I.T.D.C. While answering the averments in para 6, the I.T.D.C. in their objection statement in para 11 says that "Office order dated 6-9-2001, the petitioner was transferred to Hotel Ashok, Bangalore as Sous Chef in his own grade and pay at his own verbal request". This factum of oral request is supported by the affidavit of the General Manager, Legal, I.T.D.C. This Court has directed the respondent to secure the proceedings initiated to shift the petitioner from Hotel in Calcutta to a Hotel in Bangalore. Pursuant to the directions, learned Counsel for the respondent has placed before me the proceedings. From the proceedings dated 23-8-2001, it is seen that one Sri Amitava Roy, in terms of a letter dated 20-8-2001 has sought for transfer to Calcutta on human grounds. When the said note was put up before the D.G.M., G.M. and thereafter VP, C and M.D. have stated "in his place, we may transfer Sri Ranjit Chaudhury, Sous Chef, from Calcutta to Bangalore". C MD has approved but he has added that "however Sri Amitava Roy is seeking transfer on his

request, let us like to see the rules in this regard".

7. The proceedings placed before me did not reflect any consideration of rules in the matter of transfer. Thereafter, on 6-9-2001, the petitioner has been transferred to Bangalore. Admittedly, this transfer is in the place of Sri Amitava Roy. Whether the Corporation can at the instance of one employee and in the absence of any consent can transfer another employee is a matter that requires consideration by me. Normally in Government circles mutual transfer is permissible. Mutual transfer is understood to mean consent of both the employees. In the case on hand, to accommodate one Mr. Roy, the petitioner is transferred without his consent. It may not be out of place to mention here that Mr. Roy has been transferred on account of the ill-health of his parents. In the case on hand, the petitioner's wife has equally suffered an heart attack and she is undergoing treatment in Calcutta as evidenced by various documents filed by the petitioner including the medical reports and the operation note. Therefore, the human problem did arise in the case of the petitioner as well. There is no proper application of mind with regard to mutual transfer or with regard to human suffering by the respondent. There is also no reference to the rules with regard to transfer in the case on hand. It is also seen that on the day when Sri Ranjit Chaudhury was transferred to Bangalore, the disinvestment proceedings were under active consideration. At that stage, whether a transfer is permissible or not is also a matter that ought to have been considered by the Corporation. The Corporation being a State under Article 12 has neither considered the relevant rules as applicable to transfer. In fact, at the time of arguments, the Counsel for the Corporation has referred to its power of transfer by referring to Annexure-D. He refers to Clause III which provides for a transfer and posting in any Tourism of India Unit Development Corporation or abroad. On the day of the transfer of the petitioner, disinvestment proceedings were under actual consideration. It is a well-settled principle in law that transfer from one place to another is generally a condition of service. Transfer from one place to another is necessary in the public interest and necessary in the public administration. That is not the case in the case on hand. In the case on hand, to accommodate one Sri Roy, the petitioner is transferred without his consent and without even referring to the rules by the respondent. Therefore, in my view, an arbitrary decision of transfer has been taken by the respondent to accommodate Sri Roy. The said action of transfer is not acceptable to me. The Corporation tries to justify the transfer by saying that the transfer was at the petitioner's verbal request. I am at a loss to understand this argument. This argument cannot be accepted in the light of the proceedings. There is no whisper about the petitioner's verbal request in the proceedings. No details are forthcoming in the affidavit in this regard. This Court would not accept the verbal request and action on verbal request without there being anything in writing by a public body. Therefore, the theory of justification on verbal request of transfer is not acceptable to me.

8. Having come to this conclusion, let me see as to whether the petitioner could

be granted any relief or not in this petition. The respondent, vehemently contends that the petitioner ceased to be an employee of the Corporation. No written document is placed in this regard. Parties want an inference to be drawn on the basis of the material on record. It is to be seen at this stage, the arrangement of demerger between I.T.D.C. and Kumarakrupa Frontier Hotel Private Limited. It is also necessary to see the lease-cum-management agreement between Kumarakrupa Frontier Hotel Private Limited and Bharat Hotel Limited. Kumarakrupa Frontier Hotel Private Limited was incorporated with the main object of establishing and carrying on in India and elsewhere the business to acquire, undertake, promote to run hotels, restaurants, cafes etc. I.T.D.C. Board transferred Hotel Ashok in favour of Kumarakrupa Frontier Hotel Private Limited in terms of an agreement. The Frontier Company has entered into an agreement with Bharat Hotels Limited. A clause is found with regard to employees. Clause "H" at page 71 reads as under:

"The list of employees described in Annexure-B Employees is exhaustive and complete as of the date hereof."

It further states that "the lesser/licensor has fulfilled all its obligations in respect of the employees including in relation to provident fund, gratuity etc.". Therefore, only those names found in Annexure-B would be the employees of Bharat Hotels. Admittedly, in the list of executives in terms of the agreement, the petitioner's name is not found. Therefore, he could not be considered to be an employee of the Bharat Hotels in the absence of his name in Annexure-B in terms of the agreement between the parties. When the same was confronted to the I.T.D.C., the I.T.D.C. has come up with a plea that the existing manpower in the Hotel including the executives presence on 29-11-2001 may be taken as final. They say that there is discrepancy in the list. The agreement does not provide for any subsequent action in the matter of discrepancy. Agreement is silent. Therefore, from the material placed on record, it cannot be said that the petitioner has ceased to be an employee of I.T.D.C. in the absence of his name in Annexure-B in terms of the agreement. No other material is placed before this Court by the Corporation. It is also of interest to note that Grand Ashok, has forwarded the petitioner's request for retransfer to Calcutta by way of smooth consideration in terms of Annexure-M and also in terms of Annexure-N. A public Corporation namely, I.T.D.C. has not chosen to say anywhere in reply to this letter that the petitioner ceased to be an employee at any point of time. This also goes against the contention of no employer-employee relationship as urged in this Court. In this Court also the respondent 3 has filed a memo that they have no objection for the petitioner being transferred. Therefore, from a reading of all these material would categorically point out the relationship of an employee between the petitioner and I.T.D.C. exists as on today. Therefore, the argument of no employee is rejected.

9. I must notice the affidavit filed by the General Manager (Legal) in this Court to the effect that the petitioner for all practical purposes is not an employee and the

omission of his name is merely a discrepancy. Discrepancy in the case on hand has significance in the light of an agreement between two separate units. There is no question of practical employee or legal employee for the purpose of service conditions.

10. The last argument of the Counsel is that they cannot accommodate the petitioner in Calcutta since no hotel as such is available in Calcutta. They have not stated so in several words in the statement of objection. However, at the time of arguments, the Counsel places before me a circular and in the circular V.R.S. is notified for information of all the employees. In Calcutta, there are Regional Sales and Marketing Offices, Ashok Tours and Travels, Duty-free Shop. The petitioner is fairly well-qualified. Assuming that there is no hotel in Calcutta, it is open to the Corporation to take such steps as are necessary in the event of no office either by way of transfer to a nearest place or to post at Calcutta itself.

11. Lastly, the Counsel for the respondent would rely on a judgment of the Supreme Court with regard to transfer in the case of Gujarat Electricity Board, *supra*. That case is one of discharge from service. That was a case with regard to unauthorised absence by the petitioner. It is also a case of disobeying the order of transfer. Disobeying transfer order is different from validity of the transfer order. In fact, in the very same judgment, the Supreme Court has categorically stated that transfer from one place to another is a condition of service and transfer from one place to another is for public administration. A transfer to accommodate another person without relevance to rule and without relevance to human aspect stands on a different footing. Looking from any angle, a case is made out by the petitioner before me.

12. Petition stands allowed. The impugned endorsement at Annexure-E and Q are set aside as illegal. A direction is issued to the I.T.D.C. to post the petitioner in any one of the offices of I.T.D.C. at Calcutta in the same cadre with the same pay or in any one of the hotels nearest to the place of Calcutta. The petitioner's undertaking with regard to his not claiming TA/DA is recorded. No costs.