

(2002) 02 DEL CK 0054

In the Delhi High Court

Case No : C.W. No. 6626 of 2001 and C.M. No. 11379 of 2001

S. Rama Rao

APPELLANT

Vs

The Managing Director, FCI and Others

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Citation : (2002) 8 AD 343 : (2002) 97 DLT 141 : (2002) 62 DRJ 176 : (2003) 1 SLJ 143

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Vidya K. Sagar and S.N. Tiwari, for the Appellant; Jagat Singh, for the Respondent

Judgement

Vijender Jain, J.—Rule.

2. The writ petition has been filed by the petitioner alleging victimisation and mala fide for approaching the Court.

3. It is the case of the petitioner that Supreme Court of India in the case of Union of India and others etc. Vs. Virpal Singh Chauhan etc., held as under:-

"Even if a Schedules Caste/Schedules Tribe candidate is promoted earlier by virtue of rule of reservation roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Schedules Caste/Schedules Tribe promoted Schedules Caste/Schedules Tribe candidate. The earlier promotion of the schedule caste/schedule tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category."

4. The judgment was delivered by Supreme Court of India on 10th October, 1995. However, the respondent issued a circular to implement the ratio of said judgment from 30.1.97.

5. The petitioner challenged the said cut-off date by filing writ petition No. 2118/98 before this Court. This Court quashed the said cut-off date and directed the respondents to implement the said circular from 30.1.96 and awarded costs of Rs. 5,000/- against the respondents.

6. It seems that when the direction passed by this Court to treat the said cut-off date from 30.1.96 in stead of 30.1.97 and implement the order of Supreme Court of India was not followed by the respondents then the petitioner filed another Contempt Petition No. 479/2001 against the respondents in this Court.

7. It is at this stage when the notice of the contempt petition was issued to the respondents and the Court granted four weeks time to file reply to the respondents, before filing reply to the contempt petition, the petitioner was transferred on 8.10.2001.

8. The case of the petitioner is that several seniors and juniors in the list who are continuously working in Andhra Region as the petitioner nobody was transferred out of Andhra Region except the petitioner.

9. It is contended before me by the counsel for the petitioner that the transfer is not a normal transfer but it is simply to victimise the petitioner as he has approached this Court by filing writ petition and contempt petition etc. and the transfer tantamount to put pressure on the petitioner for his act of approaching the Court which amounts to interference in the due course of administration of justice.

10. On the other hand counsel for respondent has contended that it was a routine transfer and the petitioner has been transferred in his own region which is permissible under the policy of transfer.

11. As a matter of fact when the first counter affidavit in the present writ petition was filed by respondents 1 & 2 on 24.11.2001, the respondents did not specifically reply to the ground of discrimination as set out in the petition in paragraph B & C. A specific order was passed by this Court that the respondent must reply to paragraph B & C of the petition, the respondents filed an additional affidavit on 11.1.2002. That makes the case of the respondents worse. In the additional affidavit the respondents admitted that there are 25 persons who are seniors to the petitioner and are working for more than 27 years in Andhra Pradesh Region and have not been transferred (at page No. 38 of the paper book). In the same statement the respondent have also admitted that there are 34 juniors to the petitioner who are working for more than 27 years in Andhra Pradesh Region and have not been transferred. Along with the additional affidavit another list was appended by the respondents to demonstrate that seniors to the petitioner were transferred.

12. However counsel for the petitioner has contended that the officers whose names appear at Serial No. 1 & 2 in the said list are very high in the seniority list that is at number 4 & 5 and none else have been transferred.

13. The issue before this Court is not whether the respondents can transfer its officers or not. It has been held by various decision of Supreme Court of India as well as this Court that transfer is not a punishment if it is made under a policy. Therefore this Court would have been reluctant in interfering in normal circumstances when an officer is transferred by the respondent but in the case before hand the transfer does not seem to be a transfer in normal course. The transfer is mere to remove an irritant officer who has time and again taken the respondents to the Court for getting the order of Supreme Court of India implemented from January 1996 as he has contended that it was on account of inertia of the respondents. That respondent did not implement the order of Supreme Court of India at the earliest opportunity. The decision of the Supreme Court in the case of Union of India (supra) was not implemented in 1996 or after the judgment was pronounced in 1995 the prayer of the petitioner was accepted by this Court and the respondents were directed to implement the judgment of Supreme Court of India from 1.1.96. In spite of the directions to the respondents to implement the said judgment from 1.1.96 the respondents did not implement the judgment. A contempt petition was filed by the petitioner and notice thereof was issued. Supreme Court judgment till date has not been implemented by the respondents. The petitioner was transferred out of the Andhra Pradesh Region to Kerala Region although in the same Zone. This is a clear of victimising a citizen who has approached this Court for redressal of his grievances. The Order dated 8.10.2001 suffers from mala fide and amounts to putting extraneous pressure on the citizen not to approach the Court this practice and attitude of the authorities requires severe reprimand. The message by transferring the petitioner was loud and clear that as he has approached this Court he has to face the consequences. This approach of the respondents is highly deplorable. Therefore, I issue a writ of certiorari quashing the transfer order dated 8.10.2001. Petitioner by brought back within one week.

14. Rule is made absolute.

15. Copy be given dusty to the counsel for the respondents for compliance.