
(2000) 06 CAL CK 0041
In the Calcutta High Court
Case No : W.P.C.T. No. 210 of 2000

Samiran Kumar Mondal (Dr.)

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-06-2000

Acts Referred:

Citation : 104 CWN 814 : (2000) 2 ILR (Cal) 12

Hon'ble Judges : Satyabrata Sinha, J;Hrishikesh Banerji, J

Bench : Division Bench

Advocate : Ashok De and Akmam Khan, for the Appellant;Subrata Dutta, for the Respondent

Judgement

Satyabrata Sinha, J.—This application is directed against order dated April 13, 2000, passed by the Central Administrative Tribunal in O.A. No. 59 of 2000 whereby and whereunder the Petitioner's application questioning the order of transfer dated January 4, 2000, (Annex. "R" to the original application) has been dismissed, inter alia, on the grounds:

- (1) Adverse remarks have been given as against the Petitioner;
- (2) He has concealed or suppressed his own representation dated December 14, 1999;
- (3) He has indulged in in disciplined activities by way of submitting a joint representation to the superior while serving in an organisation which is basely on discipline and work was taken note of and incidentally that may also be the motive on the part of the Respondent authority to transfer him to Arunachal Pradesh;

The learned Tribunal, however, had arrived at a conclusion that the same cannot be treated as a foundation of the impugned order of transfer.

2. The basic fact of the matter is not in dispute. The Petitioner was posted at Aizal in the State of Mizoram as a Civil Assistant Surgeon Grade I (veterinary)

under the Director General of Security Special Service Branch, Government of India. He was transferred to Shi-llong, Uttar Pradesh on September 16, 1996. On his own request he was transferred to Barasat in which post he joined on January 23, 1990. Although he had not completed his normal tenures of posting which is four years, on or about September 16, 1999, he was asked to give his option for posting him at three places out of the following seven places:

1. Khonsa(A.P.)
2. Rajouri
3. Sunderbani
4. Poonch
5. Leh (Jammu)
6. Utterkashi (Uttar Pradesh) and Kashmir)
7. Kinnour area (Himachal Pradesh)

The Petitioner filed a representation stating that he may be transferred to the Training Centre, Jammu and Kashmir.

3. By an order dated October 7, 1999, he was transferred to the Training Centre, Jammu and Kashmir. He filed a representation to stay the said order till April, 2000, on October 14, 1999, on the ground that his daughter's academic session was continuing. The representation of the Petitioner was allowed by an order dated November 25, 1999, and his transfer was deferred till March, 2000. However, on January 4, 2000, the Petitioner filed a fresh representation praying for cancellation of the order of transfer and acting on the said representation by the order dated January 4, 2000, the Petitioner was transferred to Khonsa, Arunachal Pradesh. The said order of transfer was in question.

4. The Respondents herein in their joint rejoinder to the Petitioner's application questioning the said order of transfer, inter alia, stated:

Statements made in paragraph 4(u) and 4(v) of the said application are incorrect and misleading and those are denied. Applicant along with some other officers indulged in acts of indiscipline by resorting to joint petition and not keeping cordial relation with both the Commandant of the Group Centre as well as the Divisional Organiser, South Bengal, Calcutta as a result work of the Group Centre was getting affected badly. Due to bad atmosphere created by them it was decided to transfer of those officers out of Group Centre. Barasat so that discipline of the Unit could be maintained. Before transferring the option was called for about the choice station from the said officers. Allegations of malafide attitude, biased and motivated action as made in paragraphs under reference are absolutely baseless and those are denied.

5. Before the learned Tribunal not only the adverse remarks received by the Petitioner had been produced but it appears from the Memorandum dated

November 23, 1988, that in relation to his alleged act of indiscipline a departmental proceeding had also been initiated against him.

6. There cannot be any doubt whatsoever that the transfer is an incidence of service. An employee is liable to be transferred from one place to another in the public interest. But it is equally well-settled that an order of transfer cannot be passed by way of or in lieu of punishment. If a person is to be transferred by way of or in lieu of punishment, such an order can be passed only after giving him an opportunity of hearing. In the instant case the statements made in para 11 of the rejoinder, filed by the Respondent herein clearly go to show that his alleged act of indiscipline was the foundation of issuing the order of transfer which is impermissible under the law.

7. The learned Tribunal, in own considered opinion has committed illegality in referring to the adverse confidential reports for the purpose of arriving at a decision that the same is also a ground for his transfer. If such factors which were irrelevant for passing the order of transfer had been taken into consideration, the same, by itself, was sufficient to annul the order of transfer, in view of the fact that the same amounts to malice in law.

8. It is now a well-settled principle of law that keeping in view the decision of the Apex Court in the case of Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, that mala fide order cannot be sustained although the same may be otherwise justified. An order passed for an unauthorised purpose amounts to malice in law. The case at hand clearly demonstrates the attitude on the part of the Respondents in taking recourse to passing an order which was for an unauthorised purpose.

9. This aspect of the matter has been considered by a learned Judge of this Court in great detail in S.V. Singh v. Union of India and Ors. 92 C.W.N. 279. As the point at issue is covered by the aforesaid decision, we do not intend to reiterate the same beyond what has already been noticed hereinbefore.

10. The learned Tribunal, in our opinion, has also failed to apply its mind that by not mentioning the purported representation dated December 14, 1999, in his application, the Petitioner cannot be said to have committed such an act which would debar him of an equitable remedy. It is true that while approaching the Court or the Tribunal for an equitable relief, the Petitioner must come with a pair of clean hands but it is also necessary for the Court to pose the question as to whether the Suppression was so vital so as to disentitled him from obtaining an equitable relief. Such a question has neither been posed nor answered by the learned Tribunal.

11. As noticed hereinbefore, the case of the Petitioners could be disposed of on the basis of the statements made by the rejoinder filed by the Respondents themselves. The facts stated before the Tribunal by the parties more or less stand admitted.

12. The impugned order passed by the learned Tribunal in our considered opinion, suffers from an error apparent on the face of the records inasmuch as it has taken into consideration irrelevant factors which were not germane for passing the impugned order and while doing so it has also failed to take into consideration the relevant factors.

13. For the reasons aforementioned, the impugned order cannot be sustained which is set aside accordingly.

14. Secondly, the impugned order of transfer dated January 14, 2000, must also be set aside. The question, however, remains as to, in the facts and circumstances of this case, what relief should be granted to the Petitioner? Having regard to the fact that the Petitioner himself had opted for transfer to the Training Centre, Jammu and Kashmir, and the said prayer of his having been allowed and he having filed representation for deferring the same till April, 2000, in our opinion, the Petitioner should not be permitted now to contend that he should not be compelled to join at the Training Centre, Jammu and Kashmir in terms of the order of transfer dated October 17, 1999. Petitioner, however, may, therefore, join his post at Jammu and Kashmir within fifteen days from date. Mr. De, the Learned Counsel for the Petitioner stated that his client has not been paid his salary since May, 2000, on the ground that he has already been relieved.

15. However, it appears that a typographical error has crept in the order dated May 10, 2000, in so far as instead of place of "the stay of operation of the impugned order of transfer" it was mentioned that "there will be a stay of operation of the impugned order for two weeks from date".

16. Having regard to the peculiar facts and circumstances and particularly in view of the fact that this Court had passed an order of stay, we direct that the period of absence of the Petitioner from duties, may be considered to be the period on duty subject to the availability of period of leave.

17. The learned Counsel for the Respondents has agreed that construing the interim order passed in the writ application, as the order of the Tribunal, his client has already passed an order relieving the Petitioner.

18. However, keeping in view the peculiar facts and circumstances and as also the mistake in this Court's order dated May 10, 2000, for which no party should suffer, we are of the opinion that interest of justice shall be sub served if upon grant of adjustment of the period after the Petitioner was relieved and the date of his joining subject to his entitlement to the time required for joining his post, the rest of the period of absence of the Petitioner may be treated as a period of leave as may be admissible to him in terms of Leave Rules. On his joining the post, there cannot be any doubt that he shall be paid off his due salary and other legitimate dues, if any.

19. This writ application is disposed of with the aforementioned observations without any order as to costs.

20. Urgent xerox certified copy, if applied for, office is directed to deliver the same on priority basis.

Hrishikesh Banerji, J.

21. I agree.

22. Application disposed of.