
(2013) 08 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (C) No. 4867 of 1998

Sh. O.P. Sharma

APPELLANT

Vs

Airport Authority of India and Another

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0097

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : M.M. Sudan, for the Appellant; Vaibhav Kalra and Ms. Sumedha Dang, Advocates for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by one Sh. O.P. Sharma against his employer-Airport Authority of India impugning the orders dated 16.7.1998 and 7.8.1998 whereby the promotion of the petitioner to the post of Assistant Manager was cancelled as per his request, inasmuch as petitioner on being promoted was transferred to Jaipur, but since petitioner did not want to go to Jaipur and wanted to remain in Delhi, he agreed not to take the promotion to the post of Assistant Manager if he is retained in Delhi. The only issue which is required for determination by this Court is that whether the petitioner was illegally transferred when he was given his promotion to the post of Assistant Manager in terms of the order of the respondent no. 1 dated 29.5.1998. What is argued before me is that petitioner as per his appointment was appointed to the headquarters quota, and by posting the petitioner to Jaipur, he was being asked to perform duties of the field stations, and therefore, petitioner could not have been validly transferred to field stations. It is accordingly argued that if the transfer to the field station at Jaipur is bad, therefore, withdrawal of his promotion as requested by him should also fall.

2. Respondent no. 1 in its counter-affidavit has stated that petitioner was transferred to Jaipur field office because it is necessary for the headquarters

quota employees of the respondent no. 1 also to have experience even of field stations and which experience helps them to better perform their duties in the headquarters. In the counter-affidavit, it is not disputed that the petitioner is in the headquarters quota, however, petitioner like various other persons was transferred to a field station in order to enable petitioner to get experience for working at the headquarters. The posting of the petitioner at Jaipur is not permanently to a field station service.

3. Ordinarily, transfer is an incidence of service. An employer knows best how to use the services of an employee. Employer can very well transfer and post an employee to a particular post so that the employee gets a particular type of experience and is better equipped to perform the duties in his main post. In the present case, actions of the respondent no. 1 to transfer the petitioner to Jaipur would have been illegal if the petitioner was transferred from the headquarters quota service position to the field unit quota service position, but, this is not so. It is not the case of the petitioner that petitioner's status was being changed from an employee in the headquarters quota to an employee in the field unit quota. Once that is so, I fail to understand any irrationality or illegality in the action of an employer requiring an employee such as the petitioner to take experience at a field unit by his transfer to the field unit and which was also done to various other officers, thirteen in number, as stated in internal page 5 of the counter-affidavit. A person such as the petitioner can prevent his transfer only if the rules or policy of the respondent prevent the impugned transfer. No rules of the respondent no. 1 or any policy of the respondent no. 1 has been filed before me by the petitioner that persons in the headquarters quota cannot be transferred to field units so that such persons can also get experience of field units. I do not think it is in any manner unreasonable for an employer to state that an employee must have all round experience so that he can perform his job better.

4. Admittedly, the petitioner, by means of his representations dated 9.6.1998 and 19.6.1998 specifically represented that only if his request to retain the petitioner at Delhi is agreed, then, petitioner will accept promotion, and, petitioner himself in the alternative requested that in case his out of Delhi transfer is to take place, then, petitioner would not like to get transferred, but, he would refuse promotion and stay at Delhi. The relevant portion of the representation of the petitioner dated 9.6.1998 reads as under:-

In view of above submissions I request that I may be allowed to join duties on promotion as Asstt. Manager in Corporate hqrs against the existing vacancy & to that extent the office order under reference may please be modified failing which this representation may be treated as refusal of promotion under protest without subjudicating my legal right.

5. The letter of the petitioner dated 19.6.1998 reads as under:-

The General Manager (Pers)

Airports Authority of India

Rajiv Gandhi Bhavan

New Delhi.

Sir,

Reference is made to your office order No. A 20011/94/86-EH dated 16th, June 1998. I beg to say that in my representation dated 09/06/98, I have already refused (copy enclosed) my promotion for Assist. Manager in case my request to retain me at Delhi is not agreed to. It is therefore, requested that the letter of release my please be cancelled & obliged.

Thanking you,

Yours faithfully,

Sd/-

6. A resume of the aforesaid facts show as under:-

(i) Petitioner was given promotion to the post of Assistant Manager from the post of Office Superintendant.

(ii) Petitioner, by the same order was asked to report to Jaipur on transfer.

(iii) There is no illegality in asking an employee to take transfer to a field station so that the employee gets different experiences including a particular type of experience by working at a field unit, and which would help the employee to do his job better at the headquarters.

(iv) No rules of respondent no. 1 or any policy of respondent is filed to show that a headquarters quota person cannot be transferred for getting experience to a field unit.

(v) It is not as if petitioner's appointment from the headquarters quota service was being changed to the field unit service quota.

(vi) Petitioner himself by his representations dated 9.6.1998 and 19.6.1998 agreed that if the management agrees not to transfer him, he agrees to forgo the promotion.

7. In view of the above, petitioner is estopped from challenging the withdrawal of the promotion in view of his own representations dated 9.6.1998 and 19.6.1998 inasmuch as once a person takes a benefit of his stand, then, he cannot thereafter turn around to claim the benefits which he has given up because he has got other benefits. As the saying goes you cannot have your cake and eat it too.

8. Counsel for the petitioner sought to argue that transfer of the petitioner was malafide because petitioner was a President of a Union I however do not find that

this aspect in any manner in itself can invalidate a transfer order of an employee such as in the present case, when the employer wants that petitioner must get experience in a field unit. Surely, employees can be required to have experiences of different branches of an organization, not only to better understand the organization but also because such employees can thereafter better serve the organization. Also, it is not the case of the petitioner that the petitioner was being permanently posted at the field unit on being transferred from the headquarters. Therefore, there is no basis to allege any valid bias much less any bias to be used as a basis for withdrawing from the admissions made by the petitioner in his own representations dated 9.6.1998 and 19.6.1998. If I accept the argument of the petitioner, then, no office-bearers of a Union can even be transferred. In view of the above, there is no merit in the petition which is dismissed, leaving the parties to bear their own costs.