

(2008) 07 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) No. 5406 of 2007 and CM No. 10013 of 2007

Sh. S.C. Awasthi

APPELLANT

Vs

National Water Development Agency and Another

RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 106 DRJ 106

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : K.K. Jha, for the Appellant; J.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—By way of present writ petition, petitioner has challenged the order dated 17.05.2007 passed by the Central Administrative Tribunal, Principal Bench, Delhi by which O.A. No. 839/2007 of the petitioner seeking setting aside of transfer order dated 13.04.2007, transferring him from New Delhi to Bhubaneshwar, has been dismissed.

2. Briefly, the facts leading to the filing of the present petition are as under:

Petitioner joined respondent No. 1, National Water Development Agency (NWDA) as an Assistant Engineer and was posted at Nagpur in the year 1985. After completion of one year of service, he was transferred to the office of Chief Engineer (N), Bhubaneshwar in the year 1986. In the year 1989 he was transferred to Gwalior. On 1st December, 1993, he was transferred to Delhi on promotion as Deputy Director. Since then he has been working at Delhi. Petitioner has alleged that for the past few years he has been subjected to hostile discrimination by some senior officers of respondent No. 1. Petitioner has also alleged that his application for the post of Deputy Chief Engineer in WAPCO was not forwarded through proper channel deliberately with malafide intentions. Petitioner has alleged that he made representation for consideration of his

candidature for promotion to the post of Superintendent Engineer on ad-hoc basis but the same was not considered intentionally. His annual increment was also withheld without any reason. His representation for promotion was not considered. Petitioner has alleged that Sh. N.K. Bhandari, Chief Engineer of respondent No. 1 has got him transferred from Headquarters to Bhubaneswar by making false complaints against him and thereafter got issued a show cause notice dated 26.04.2007 to him wherein false and frivolous allegations are made against him. Petitioner gave reply dated 07.05.2007 to the same which was not considered.

Petitioner has further alleged that his son who is 16 years of age is undergoing treatment for cancer at Sir Ganga Ram Hospital. Petitioner is the only eldest male member of his family and has responsibility of taking his son to the hospital for treatment. It is alleged that the senior officers of the respondent No. 1, despite being aware of the difficulties faced by the petitioner have transferred him in order to harass him. Petitioner has alleged that medical bills pertaining to treatment of his son have not been cleared and are still pending.

After receiving the transfer order dated 13.04.2007, petitioner made representation to respondent No. 1 on 16.04.2007 but no reply was received. Left with no option he filed OA in Tribunal for quashing of transfer order dated 13.04.2007. The Tribunal dismissed the same without considering the grievances of the petitioner. Aggrieved with the same, present petition is filed.

3. Respondents have opposed the petition by filing counter affidavit through Sh.A.D. Chawla, Director (Admn.) Respondent No. 1 is a society under Ministry of Water Resources Society's Act 1860. Its headquarters are at Delhi and field offices are located at various places across India. The offices of NWDA are also opened, closed and shifted from one place to another as per requirement of work. It is stated that transfer order is passed strictly due to exigencies of work and after following the guidelines framed for transfer of its officers and staff. It is stated that respondent No. 1, as a general practice and as per its guidelines, obtains options for transfer of employees who have completed 5 years of stay at a particular place. The options are considered on the basis of vacancy position at the desired place and request of staff at different stations. For the year 2007, a letter was circulated on 2nd/3rd Jan, 2007 inviting options for transfer from employees/officers and it was also made clear that in case employees do not submit their choice of place of transfer, they will be transferred to places where vacancies will be available. The petitioner had been continuously posted at Headquarters in New Delhi since 1993 did not submit his option for transfer. The petitioner Along with two other officers, namely, Sh. R.K. Kharbanda and Sh. Afroz Alam, who were also longest stayed ees at Delhi have been transferred as per exigencies of work in the field offices of the respondent No. 1. The other two officers have already joined at the respective place of posting. It is further stated that son of petitioner was under treatment at Sir Ganga Ram Hospital from 2004-05. All the medical bills are cleared as per rules. It is denied that petitioner

is transferred due to mala fide intention of Sh. N.K. Bhandari or senior officers as is alleged. It is stated that respondent No. 1 has been allotted a Project Report work of "Ken-Betwa River" by the Ministry of Water Resources which is to be completed in a time bound manner without any additional staff. In order to complete the above said project, petitioner is transferred to Bhubaneswar.

4. The contention of petitioner is that the transfer order dated 13.04.2007 has been passed due to mala fides on the part of senior officers of respondent No. 1 and in particular Sh. N.K.Bhandari, Chief Engineer. In support of his contention, petitioner has alleged some instances which are stated in Para 2 of the petition and has also relied upon office memorandum dated 26.04.2007 issued by Director (Administration) of respondent No. 1, which is alleged to have been issued at the instance of senior officer Sh. N.K. Bhandari, CE, HQ NWDA.

5. The contention of respondent No. 1 is that transfer order dated 13.04.2007 is passed due to exigencies of work. It is contended that petitioner is continuously posted in Delhi since December 1993 and his transfer was due as per its guidelines for "transfer of officers and staff in NWDA." It is contended that after transfer order dated 13.04.2007 was communicated to petitioner, he made threatening calls to Sh. N.K. Bhandari, Chief Engineer over his mobile/residential phone and also used unparliamentary language and threatened him by saying "you know what I can do and what I am carrying with me". It was reported by Sh. N.K. Bhandari to Director General of respondent No. 1. Thereafter O.M. dated 26.04.2007 was issued to the petitioner. It is contended that there is no mala fide intention on the part of the respondent No. 1 nor the petitioner has been discriminated in any manner as is alleged.

6. We have considered the submissions made and perused the record. It is well settled that transfer is a prerogative of the authorities concerned and the order of transfer cannot be interfered unless it is shown to be vitiated by mala fides, or is in violation of statutory provisions or has been passed by an authority who is not competent to pass such an order. During the course of arguments, learned Counsel for respondent has relied upon the following judgments:

State of U.P. and Others Vs. Gobardhan Lal, , wherein it is held as under:

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

State of U.P. and Others Vs. Siya Ram and Another, , wherein it was observed:

The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.

7. It needs to be noted at the outset that the petitioner has alleged mala fides against some senior officers and one Shri N.K. Bhandari, Chief Engineer, of respondent No. 1. None of these persons have been made party to the present petition. It may also be noted that the transfer order is dated 13.04.2007. The memo on which petitioner is relying to allege mala fides against Sh. N.K. Bhandari, CE is dated 26.04.2007. The said memo was issued to petitioner due to the alleged misbehaviour of the petitioner on receipt of transfer order dated 13.04.2007 and cannot be the reason to strike down the transfer order. Petitioner has made allegations against Sh. N.K. Bhandari, CE and HQ (NWDA) for the first time in reply dated 08.07.2007 in response to another O.M. dated 29.05.2007. In the petition before the Tribunal, no such allegations which are alleged to be of 2005-2006 are made against Sh. N.K. Bhandari. The same are afterthought. Further, petitioner has not placed any material on record to substantiate these allegations. As regards allegation of discrimination is concerned, no such contention was raised before Tribunal. Even in this Court no material is placed to substantiate the same.

8. As regards the contention of petitioner that his son is getting treatment from Sir Ganga Ram Hospital for Hodgekin's Lymphoma (a type of cancer), it may be noted that there are some medical papers on record which shows that son of petitioner had undergone treatment in the year 2004 and 2005. There is nothing on record to show further treatment of his son thereafter. There is nothing on record to show that there are no cancer treatment facilities in Bhubneshwar which is a State Capital.

9. The stand of respondent is that transfer order has been passed in exigencies of work, i.e. Project work of Ken-Betwa River.

10. In the facts of the present case, we are of the opinion that present challenge to the transfer order dated 13.4.2007 must fail and the petition be dismissed.

11. In view of above discussion, no case is made out which calls for interference with the order of Tribunal dated 17.5.2007. Accordingly, present petition stands dismissed.