
(1975) 08 CAL CK 0017
In the Calcutta High Court

Shyam Sunder Charkraborty

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-08-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 79 CWN 942 : (1977) 1 LLJ 305

Hon'ble Judges : A.K. Mookerji, J

Bench : Single Bench

Judgement

Amiya Kumar Mookerji, J.—This Rule is directed against an order of transfer dated 9-12-74 passed by the Post Master General, West Bengal Circle by which the petitioner was transferred from Lake Gardens Post Office in South Calcutta Division to Janka S.O. in Contai Sub-Division The said order of the Post Master General was conveyed to the petitioner by the super-intendent of Post Office, South Division by his memorandum dated 10-12-74.

2. The petitioner is a postman posted at Like Gardens Post Office for the last 3 years, I is alleged that petitioner is an active and important number of the All India Postal Employees Union. On or about 17th December, 1974 the petitioner received by a registered post the impugned order of transfer stating inter alia that he would be struck off forthwith from the Establishment of the South Calcutta Division and 10 be borne in the establishment of the Contai Sub-Division, where he was transferred and posted to work as a postman at Janka Sub-Post Office The petitioner made a representation to the respondent Nos. 2 and 3 protesting against the order of transfer and pointing out that a postman could not be transferred outside the division according to the rules.

3. It is alleged in the petition that the Order of transfer is illegal and arbitrary and the respondents have acted mala fide to remove the petitioner from Calcutta for collateral purposes. It is stated that under Rule 37 of P. & T Manual. Volume IV the power to transfer a postman from one division to another cannot be made without "very special reasons". The petitioner being aggrieved by the said order

of transfer moved this Court in an application under Article 226 of the Constitution and obtained the present Rule.

4. It is contended by Mr. Chatterji appearing on behalf of the petitioner that the order of transfer was not made in accordance with the Rule 37 of Post & Telegraphs Manual, Volume IV. The power to transfer a postman from one division to another or one district to another could not be made without very special reasons Unless and until the facts and circumstances constituting such very special reasons are genuine and consonant with the interest of public service, the authorities could not exercise special power. It is further contended that as the petitioner is an important officer bearer of the trade union, the impugned order was passed in colourable exercise of power and mala fide for the purposes of penalising the petitioner and interfering with his trade union activities. Reliance was placed on the decision of Dr. Smt. Pushpika Chatterji V. State of West Bengal 76 CWN 609; N.N. Singh and Others Vs. General Manager, Chittaranjan Locomotive Works and Others, and an unreported decision of a single Bench of this Court Bijoy Kishore Goswami v. Deputy General Manager, Administration, Calcutta Telephones, decided on December 10, 1973.

5. In Dr. (Sm.) Pushpika Chatterjee Vs. State of West Bengal and others, , Salil Kumar Datta, J., held that the order of transfer could not be sustained when it appeared on the records that the order was not passed in the interest of public service or for administrative purposes,

6. In N.N. Singh and Others Vs. General Manager, Chittaranjan Locomotive Works and Others, , the same learned Judge held that if the authorities passed an order of transfer under colourable exercise of powers or if such orders are mala fide in that case, the Court is competent to set aside that order.

7. In that unreported decision referred to hereinbefore, Ghosh, J., struck down the order of transfer on the ground that the impugned order of transfer was not made in public interest but for an oblique purpose, in that case violation of Rule 37 of P & T. Manual was urged. No special circumstances were disclosed before the Court. It was also alleged by the petitioner that the transfer was made main fide with the oblique motive of putting obstacles in the way of functioning of the trade union in which the petitioner was an office bearer. The learned judge found that according to the terms and conditions of the petitioner's appointment, he could not be transferred from Calcutta arid there was no interest of service or public interest in the order of transfer inasmuch as the order was passed on 1st August, 1972 but it was not communicated to the petitioner before 26th of February, 1973 and accordingly, the impugned order was not set aside. That decision has got no application to the facts and circumstances of the present case.

8. Rule I Part III Appendix 12, P. & T. Manual. Volume IV, lays down that postman and village postman are ordinarily liable to transfer within the unit to which they are recruited. But in the interest of service they may be transferred at any time

elsewhere also. So, it appears that under the terms and conditions of the petitioner's service, in the interest of service he may be transferred at any time elsewhere but ordinarily his transfer is limited within the unit to which he is recruited. Rule 37 of the P. & T. Manual, Volume IV lays down that postman, village postman and Class IV servants should not except for very special reasons be transferred from one district to another.

9. In the instant case the records were produced before me. I found that the Post Master General passed the order of transfer, writing the order in his own hand. It is true that the special circumstances have not been stated anywhere in the records but the order was passed "in the interest of service and that has been recorded. The order of transfer was passed on the 9th of December, 1974. On the following day the order was served upon the petitioner and his name was struck off from the establishment of South Calcutta Division. So it cannot be said that transfer was made not in the interest of service or public interest. Moreover, there is no terms and conditions in the appointment of the petitioner that he shall not be transferred to any other places as it was found in Bijoy Kishore Goswami's case. Except the word mala fide as stated in para, graph 11 of the petition nowhere in the petition that particulars of the mala fide were given.

10. In *Radhyasam Nag v. Sub-Post Master, Kharagpur* (Civil Rule No. 136(W) of 1969) decided by Borooah, J., on 26th August, 1971, a similar point was raised. The learned Judge observed that none of aforesaid rules require that in the case of transfer of postman to another district, the reasons for their transfer should be recorded. In this particular case the order of the Post Master General had made it clear that the petitioners are being transferred in the interest of service, and if in each case of transfer of postman the department concerned had to give detail reasons in writing the working of the department concerned would become difficult.

11. In *Nipendra Chandra Sarkar V State of West Bengal and Ors.*, reported in 1975 CWN 9s>. A N, Sen, J., held that whether the petitioner is entitled to carry on trade union activities and to what extent, is a question which does not concern the Court, particularly in a proceeding under Article 226 of the Constitution. A Government servant is employed and paid for discharging the duties for which he has been appointed. The fact that the petitioner on transfer will not be in a position to carry on his trade union activities at the place where he has been transferred is no ground or consideration for deciding the validity of the order of transfer. The learned Judge observed! "It is primary for the Government to consider whether administrative ground exists or not and the Government is the best judge or administrative expediency in the matter of transfer. the decision of the Government to transfer any employee on such administrative ground should not normally be interfered with by the Court unless the Court is satisfied that the order is mala fide and the administrative ground is sought to be used only as a kind of cover and camouflage for the purpose of the order.

12. In *Jatindra Chakraborty v. P.M. G, West Bengal Crete*, (C.R. 5033-36 (W) of U74) a similar question was raised, in that case I held that in the order of transfer no further particular is necessary when it has been stated that the order was passed in the interest of service.

13. It is urged that as the impugned order of transfer affects prejudicially the interest of the petitioner, he should be given an opportunity of being heard before the order was passed and the special reasons should be recorded in the order in terms of Rule 37 of the P. & L. Manual, otherwise the order is illegal and without jurisdiction.

14. My attention was drawn to the case of *Union of India (UOI) Vs. K.P. Joseph and Others*, , and *The Government of Mysore and Others Vs. J.V. Bhat and Others*, .

15. In *Joseph's* case the Supreme Court said that there are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that Courts have imported the principle of natural justice and *audi aliam partem* into this area.

16. In *J. N. Bhat's* case, the Supreme Court observed that an administrative action had, however, to be given free scope within its legitimate spheres without jeopardising rights of individual affected. Policies and schemes, framed under statutory provisions, which affect rights of individual could impose the obligation upon the authorities taking what were essentially the administrative decisions at points at which they begin to impinge on specific individual rights. The nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "*audi aliam partem*" rule could be imported.

17. It is well-settled that an administrative order or decision if it affects the rights of an individual, the reasons must be stated and before passing that order the person against whom the order is made should be given an opportunity of hearing. But that principle is restricted in cases where an Administrative Authority exercises quasi-judicial function. In that case he is bound to give reasons in support of the order. But the principle of natural justice cannot be extended to an order of transfer, because it does not abridge the rights of an individual. A Government servant has got no right to be posted permanently at a particular place, as the post is transferable. The postmen are low paid staff. Obviously, transfer to distant places would cause financial hardship to them. Where a public authority is invested with the power to transfer upon very special reasons and interest of service and when such order has been passed by the Post Master General, the head of the circle in his own hand, in such circumstances unless mala fide, bad faith, ill motive or intention of wrecking the vengeance of superior officers are manifestly shown, this Court would be reluctant to interfere with such an order of transfer.

18. In the instant case it is stated in the order that the petitioner has been transferred in the interest of service. The transfer from one division to another

division in the interest of service is permissible under Rule 37. In the case of a postman, however, there should be very special reasons. In my view, failure of recording special reasons in the departmental file does not invalidate the order. There is no statutory obligation to record in writing the very special reasons. If the reasons are recorded obviously it would be disputed in every case. If those reasons are sought to be justiciable in Court, in that case, it would be impossible for the administration to pass any order of transfer. Powers conferred by Rule 3/ are to be exercised for the interest of the service and the authority who exercises such power is the best judge to consider administrative convenience and also the convenience of the transferred persons. Unless the Court is satisfied that the order is made for collateral purposes or it is passed mala fide a Writ Court should not ordinarily interfere with such administrative order passed in the interest of service.

19. Particulars of mala fide have not been stated in the petition. So, it cannot be said that the order was passed mala fide or for any collateral purposes,

20. Accordingly, I find no reasons to interfere with the impugned order of transfer passed in this case.

21. In the result, this Rule is discharged. There will be no order as to cost.

22. All interim orders are vacated.

23. Let the operation of the order remain stayed for the period of one week from the date as prayed for. Salary already paid to the petitioner would be adjusted against future payments.