
(1994) 08 CAL CK 0007
In the Calcutta High Court
Case No : C.O. No. 14064 (W) of 1993

Sri Suresh Chandra Sarkar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Police Regulations of Bengal, 1943 — Regulation 835, 836, 838

Citation : (1997) 1 CALLT 81

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : B.R. Ghosal and Sukumar Ghosh, for the Appellant; Debashis Kundu, for Respondent No. 5, Subodh Ukil, Government Pleader and Prafulla Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—The petitioner is an Inspector of Police and as on 30th September 1993, he was working as Circle Inspector of Police Bagdogra and was under the Administrative Control of the Superintendent of Police, Darjeeling.

2. It appears that during his career as Inspector of Police, the petitioner worked as Circle Inspector, Raghunathpur, Purulia from 9th November 1978 till December 1982, and was thereafter transferred to the post of Inspector, Highway Patrol Nadia, from 1st January 1983, till 20th February 1984, when he was passed as Inspector-in-Charge, Krishnanagar Police Station from 20th February 1984. Thereafter, the petitioner was again posted as Circle Inspector at Bolpur from 28th January, 1987 till 11th September 1990 and as Inspector-in-Charge, Siliguri Police Station from 15th September 1990 to 26th March 1991.

3. Subsequently the petitioner was posted as Circle Inspector, Bagdogra, from 26th March 1991, and as mentioned hereinbefore, on 30th September 1993, he was holding the said post.

4. According to the petitioner, on 7th October 1993 he received a signal from one Inspector Shri E.K. Mani of the District Intelligence Branch, Cooch Behar, the respondent No.5 herein, informing the petitioner that he intended to take over charge as Circle Inspector, Bagdogra, on 11th October 1993, though, the petitioner had not been served with and/ or informed of any order of transfer issued by the appropriate authority. According to the petitioner on the basis of the signal sent by the respondent No.5, the petitioner made a representation to the Director General and Inspector General of Police on 7th October 1993, itself, it is the petitioner's case that although the petitioner's representation was sent through the wireless network on 8th October 1993, he received a radiogram message from the Superintendent of Police, Darjeeling, on the same day at 10-30 A.M. informing him that he was required to move to Cooch Behar as D.I.B. Inspector immediately.

5. The purported order of transfer, which according to the petitioner has still not been served on him by the appropriate authority and of which he has no direct knowledge, has been challenged by the petitioner on various grounds.

6. Appearing in support of the writ petition, Mr. Biswaranjan Ghoshal submitted that while it is no doubt true that the courts do not ordinarily interfere with orders of transfer passed purportedly in the public interest, there are exceptions in which it had been held by the Courts that such Interference was not Justified.

7. Mr. Ghoshal urged that the courts had held that an order of transfer could be questioned on the ground of violation of statutory rules or on grounds of malafide, of which one of the ingredients was frequent transfer made in a manner so as to cause severe disruption in the personal and home life of the public servant in question. Mr. Ghoshal also urged that an order of transfer made with the object of accommodating another employee, must also be held to be malafide and capable being interfered with.

8. Mr. Ghoshal lastly submitted that transfer to a post which was lower in status than the one held by an employee at the time of transfer, would also be a good ground for questioning an order of transfer, unless such transfer to a post which was lower in status was by way of punishment and not on a regular basis.

9. Reverting to a fact of the case, Mr. Ghoshal submitted that as Circle Inspector of Police, Bagdogra, the petitioner had several police stations under his Jurisdiction. On the other hand on being posted as Inspector D.I.B., Cooch Behar such transfer would be equivalent to posting at one particular police station. Mr. Ghoshal urged that transfer from the post of Circle Inspector, Bagdogra, to Inspector DIB., Cooch Behar, amounted to reduction of the petitioner's status and was, therefore, illegal and liable to be set aside.

10. Mr. Ghoshal then referred to Regulations 835 and 836 of the Police Regulations of Bengal 1943, and pointed out that under Regulation 835(b) it had been stipulated that the number of transfers should be reduced to a minimum and except for the circumstances mentioned therein the authorities concerned

should abstain from making transfer particularly transfer of Officer-in-Charge of investigating centres, whenever such transfer could be avoided.

11. Mr. Ghoshal also pointed out that Regulation 836 provides that in the case of Inspectors, no Inspector should remain for more than 10 years in one district, without the approval of the Inspector General, and for more than 5 years in a Sub division without the approval of the Deputy Inspector General.

12. Having regard to the aforesaid provisions, Mr. Ghoshal urged that while it was the intention of the makers of the Regulations that transfer should generally be avoided unless it became absolutely necessary and could not be avoided in the circumstances, generally the reverse was being followed by the Police administration in West Bengal.

13. Mr. Ghoshal contended, that, although, the petitioner had not completed 5 years of his tenure as Circle Inspector, Bagdogra, he had been sought to be transferred to Cooch Behar as Inspector DIB in order to accommodate Shri Mani, who wanted to be posted to his home district, namely, Darjeeling. Mr. Ghoshal claimed that the transfer order had been passed by the competent Authority on receipt of a request made by the respondent No. 5 to transfer him to his home district and that in order to accommodate him, the petitioner had been directed to move to Cooch Behar as Inspector DIB.

14. Mr. Ghoshal submitted that, as has been pointed out earlier an order of transfer made with the intention of accommodating another officer must be held to have been made in colourable exercise of power and must, therefore, be quashed.

15. Mr. Ghoshal then urged that apart from the mala fide indicated by virtue of the decision taken by the Police administration to accommodate the respondent No. 5, the other aspect of mala fide involved in the present case is the frequent transfer to which the petitioner has been subjected. Mr. Ghoshal submitted that from the application for variation filed on behalf of the police authorities it would be clear that the petitioner had been transferred several times during his tenure as Inspector.

16. Mr. Ghoshal pointed out that from November 1978 when the petitioner was posted on promotion as Circle Inspector, Raghunathpur, the petitioner had been transferred six times without being allowed to complete his tenure of 5 years in any of the postings. In fact, on one occasion, the petitioner was transferred even before he had completed 7 months in such posting.

17. Mr. Ghoshal submitted that not only had the respondents concerned acted in a mala fide manner in subjecting the petitioner to frequent transfers, but they had also violated the provisions of the Police Regulations of Bengal while doing so.

18. Mr. Ghoshal urged that on the above grounds the impugned order of transfer was liable to be quashed and all benefits to which the petitioner was entitled should be made available to him at an early date.

19. In support of his contentions, Mr. Ghoshal referred to the decision of the Supreme Court in the case of B. Varadha Rao Vs. State of Karnataka and Others, wherein while observing that transfer is always understood and construed as an incident of service and that a Government servant is liable to be transferred to a similar post in the same cadre and no Government servant can claim to remain in a particular place or in a particular post, unless his appointment itself is to be specified non-transferable post. The Supreme Court also deprecated frequent unscheduled and unreasonable transfers, which could cause irreparable harm to a Government servant and drive him to desperation, and went on to observe that if the power of transfer is abused, the exercise of the power is vitiated.

20. Mr. Ghoshal also referred to a Single Bench decision of the Andhra Pradesh High Court in the case of Major C.V.V. Reddy v. Team Leader, Army Team, Bharat Dynamics Ltd. and Ors. wherein various decisions of the Supreme Court relating to challenges thrown to orders of transfer were considered and it was held that the said decisions made it abundantly clear that if there are strong and pressing grounds rendering an order of transfer as illegal on the ground of violation of statutory Rules or on the ground of mala fides, it is open to courts to interfere. It was also observed that in the decision in B. Varadha Rao's case (supra) the position was made clear that frequent unscheduled and unreasonable orders of transfer were looked upon with disfavour and could be interfered with on the ground of arbitrariness under Article 14 of the Constitution.

21. Mr. Ghoshal also relied upon the decision of the Supreme Court in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, , in this regard.

22. On the question of transfer to a post which was lower in status than the one enjoyed by the officer prior to the transfer, Mr. Ghoshal referred to and relied upon the decision of the Supreme Court in the case of P.K. Chinnasamy Vs. Government of Tamil Nadu and Others, wherein it was observed that a public officer has to be given some posting which was commensurate to his status.

23. Mr. Ghoshal urged that in the circumstances, the impugned order of transfer was liable to be set aside and the petitioner should be allowed to complete his full tenure of five years as Circle Inspector, Bagdogra.

24. Opposing the writ application on behalf of the State and the State respondents, Mr. Prafulla Ghosh firstly denied that the impugned order of transfer had been made in order to accommodate the respondent No. 5, as alleged by the petitioner. He submitted that it could not also be said that the petitioner had been transferred to a post which was lower in status than the enjoyed by the petitioner in his previous posting as Circle Inspector, Bagdogra.

25. Mr. Ghosh contended that the post of Circle Inspector, Inspector-in-charge and Inspector DIB all belonged to the same cadre and carried the same pay and it could not, therefore, be contended that the post of Inspector DIB was lower in status than that of Circle Inspector.

26. Mr. Ghosh pointed-out that as Circle Inspector, the petitioner was not in charge of a number of police stations, as had been contended on his behalf, but was required to coordinate between several police stations comprising a Circle. Mr. Ghosh submitted that the duty of a Circle Inspector was to act as a liaison between the different police stations forming a Circle.

27. Moreover, it was pointed out by Mr. Ghosh that as Inspector, DIB at Cooch Behar, the petitioner would be entitled to draw Special Pay of Rs. 100/- per month over and above his usual pay.

28. Mr. Ghosh also denied the allegation made on behalf of the petitioner that the petitioner had been subjected to frequent transfers in violation of Regulation 835 and 836 of the Police Regulations of Bengal, 1943. Mr. Ghosh pointed out that except for a short tenure as Inspector-in-charge, Siliguri police station, for about six months, and as Inspector, Highway Patrol, Nadia, for about one year and two months, the petitioner had all along been allowed to remain in his different places of posting on an average for about three years which was the normal tenure of an Officer of the rank of Inspector. Mr. Ghosh pointed out that even in his last posting as Circle Inspector Bagdogra, the petitioner had been allowed to remain in the said post from 26th March 1991, till 30th September, 1993, which period was again extended by six months on the petitioner's representation, so that, in all, the petitioner completed three years as Circle Inspector, Bagdogra, on 31st March 1994.

29. Mr. Ghosh urged that the petitioner's transfer was a routine measure and was made in the interest of public service, as would be evident from the impugned Signal, being Annexure "C" to the writ petition.

30. In support of his aforesaid submissions, Mr. Ghosh firstly referred to the decision of the Supreme Court in the case of Union of India and Ors. v. H.N. Kirtania, reported in (1989)3 SCJ 445, wherein it was observed that the respondent, being a Central Government employee, held a transferable post and he was liable to be transferred from one place to the other in the country and that he had no legal right to insist upon being posted at any place of his choice. It was observed further that transfer of a public servant made on administrative grounds or in public interest, should not be interfered with unless there are strong and pressing grounds rendering a transfer order illegal on the ground of violation of statutory Rules or on grounds of malafide.

31. Mr. Ghosh then referred to the decision of the Supreme Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, wherein while considering certain orders passed by the District Education Establishment Committee relating to the case of certain lady teachers in primary schools in the State of Bihar, who had been transferred on their request to places where their husbands were posted, the Supreme Court held that if the Competent Authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same could not be interfered with by the Court merely because the

transfer orders were made on the request of the employee concerned. In fact, the Supreme Court went on to observe that the courts should not interfere with an order of transfer which was made in public interest and for administrative reasons, unless the transfer order was made in violation of any mandatory statute or on the ground of mala fide

32. Mr. Ghosh also referred to the decision of the Supreme Court in the case of State of Punjab and others Vs. Joginder Singh Dhatt, wherein similar sentiments have been expressed and it has been observed that an order of transfer should not ordinarily be interfered with by the Courts since transfer was an incident of public service and an employee could have no choice of being posted in a particular place of his choice.

33. In this regard, Mr. Ghosh also relied on another decision of the Supreme Court in the case of Rajendra Roy Vs. Union of India (UOI) and Another, wherein similar sentiments have been expressed.

34. Mr. Ghosh urged that in the absence of any malafide intent on the part of the authorities and since the impugned order of transfer had been made in accordance with the Rules, the writ application was liable to be dismissed with costs.

35. Mr. Debashis Kundu, who appeared on behalf of the private respondent No. 5, adopted the arguments advanced by Mr. Ghosh and submitted that the writ petition was liable to be dismissed since no case had been made out by the petitioner which warranted interference with the impugned order of transfer, which had been made as part of a routine transfer of several officers and not in respect of the petitioner alone.

36. Having considered the submissions made on behalf of the respective parties, the materials on record and the various decisions cited by the learned Counsels, it appears to be well-established by judicial pronouncement that an order of transfer should not ordinarily be interfered with by the Court, except where a case of malafide on different grounds is made out, or where such order is made in violation of statutory rules and guidelines, or where such order is made in order to victimise an employee.

37. On the question of an order being malafide on the ground that it had been made in order to accommodate a particular employee, there appears to be a divergence of opinion.

38. In the instant case, the first ground of attack of the impugned order of transfer is the frequent transfers to which the petitioner was purportedly subjected. From the facts as disclosed, however, such contention does not appear to be correct, since except for on two occasions the petitioner was retained in a posting on an average of at least three years. The tenure prescribed in Regulation 836 of the Police Regulations of Bengal is the upper limit during which an officer should not ordinarily be transferred, but it does not mean that in

every posting the concerned officer has to be allowed to remain for the full period for which the upper limit is prescribed. Accordingly, in my view, the ground of frequent transfer and violation of Regulations 835 and 836 of the Police Regulations of Bengal will not be available to the petitioner and the attack of the Impugned order of transfer on such ground must, therefore, fail.

39. The another point taken on behalf of the petitioner regarding transfer to a post which was lower in status to that enjoyed by the petitioner prior to his transfer, also appears to be mis-conceived, inasmuch as, as pointed out by Mr. Prafulla Ghosh, a Circle Inspector and Inspector DIB belong to the same cadre, enjoying the same pay and other benefits. In fact, a Circle Inspector of Police does not control the several police stations comprised in a Circle, but he only coordinate between the said police stations. For that view of the matter, a Circle Inspector enjoys the same rank and privileges as that of an Inspector-in-charge of a particular police station.

40. It cannot, therefore, be contended that posting from the post of Circle Inspector to Inspector to Inspector, DIB amounted to lowering the petitioner's status and such argument made on behalf of the petitioner must also fail.

41. On the question of the order of transfer; being malafide merely because the same was made to accommodate the respondent No. 5, it cannot automatically be said that the impugned order of transfer was malafide, since, in my view, something more has to be attributed to the intention of the authorities in making such an order of transfer, such as bias and the Intention to deliberately victimise or penalise the concerned employee for something which may have occurred earlier. A transfer made on the request of an employee cannot always as a matter of course be said to be malafide, as was observed by the Supreme Court in the case of Mrs. Shilpi Bose (*supra*).

42. While there can be no two views with regard to the various decisions cited on behalf of the petitioner, I fail to see how any of the said decisions can come to the aid of the petitioner, inasmuch as, in my view, the impugned order of transfer was neither malafide nor was it made in violation of any of the statutory provisions relating to such transfer.

43. In fact, as would be apparent from Annexure "C to the writ petition, the transfer of the petitioner was not an isolated transfer, but forms part of an order of transfer concerning four officers, including the petitioner.

44. The writ petition must, therefore, fail and is, accordingly, dismissed. There will be no order as to costs.

Prayer for stay of this order made on behalf of the petitioner is considered and refused having regard to the findings arrived at hereinabove.

Let xerox copies of this Judgment be made available to the learned Advocates of the respective parties on the usual undertaking.