
(2023) 03 CAL CK 0034
In the Calcutta High Court
Case No : WPST No. 108 Of 2022

State Of West Bengal & Ors

APPELLANT

Vs

Amal Krishna Roy

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 03 CAL CK 0034

Hon'ble Judges : Harish Tandon, J;Prasenjit Biswas, J

Bench : Division Bench

Advocate : Arjun Roy Mukherjee, Saheli Mukherjee, Debapriya Mitra, Kallol Basu, Suman Banerjee, Nilanjan Pal

Final Decision : Allowed

Judgement

Prasenjit Biswas, J

This writ petition is filed for setting aside the order dated 02.08.2022 passed by the Central Administrative Tribunal, Kolkata, by which the prayer for interim order filed in the Original Application by the respondent is allowed.

By passing the impugned order the Tribunal has been pleased to stay the operation of transfer order dated 8th July, 2022 and release order dated 13th July, 2022 of the Respondent firstly till 2nd September, 2022 and subsequently the said stay order has been extended on time to time by the Tribunal.

The facts and circumstances giving rise to this case are that the Respondent was promoted to the post of Special Revenue Officer-II and joined as Block Land and Land Reforms Officer, Kanksha, Paschim Bardhaman in the month of October, 2015. A show cause notice was issued to this Respondent on 24th October, 2016 by the District Magistrate and District Land and Land Reforms Officer inter alia seeking clarification of his purported actions. Thereafter a disciplinary proceeding was initiated against the Respondent by submitting charge sheet against him on 17th March, 2017.

During pendency of the said disciplinary proceeding the Respondent was transferred from his place of posting at Kanksha, Paschim Bardhaman to Purba Medinipur and posted as Block Land and Land Reforms Officer, Moyna on 17.07.2017 and he joined therein on 18.07.2017. The disciplinary proceeding was challenged by the Respondent before the Tribunal by filing application being O.A. No. 670 of 2019. The Tribunal disposed the application directing the petitioners herein to proceed with de novo enquiry and complete the same within a period of six months and accordingly de novo proceeding was commenced by the disciplinary authority. Thereafter this Respondent was transferred from Moyna to Cooch Behar vide transfer order dated 8th July, 2022 and he was released on 13th July, 2022 with a direction to report to the Special Land Acquisition Officer, Cooch Behar.

Respondent challenged the said order of transfer before the Tribunal on various grounds, inter-alia that he underwent a surgery on 15.02.2022 and is still in need of regular checkups. Wife of the applicant is also suffering from Fatty Liver and Diabetes and is under constant medical supervision, the transfer order suffered from mala fide, illegal, improper, unjustified, harrasive, arbitrariness and it would cause extreme hardship to the Respondent if he is transferred to Cooch Behar.

After considering the rival claim of the parties, the Tribunal passed the impugned order dated 02.08.2022. Hence the present petition.

Learned counsel Mr. Arjun Roy Mukherjee appearing for the petitioner has reiterated the submissions agitated before the Tribunal and the same has been controverted by, learned counsel appearing for the respondent.

Mr. Kollol Basu, learned counsel appearing for the Respondent submits that as the Tribunal has found that the order of transfer is tainted with malice and therefore the impugned order was passed.

We have given serious considerations to the said submissions and have perused the impugned order.

We are not unmindful about the proposition of law that it is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested right to be posted at a particular place.

No Government servant has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration.

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 the transfer order illegal on the ground of violation of statutory rules or on ground of mala fide.

Reliance is placed by the Learned Advocate of the petitioners Mr. Arjun Roy Mukherjee upon the decision rendered by the Apex Court in case of Mohd. Masood Ahmad vs. State of U.P. and Others wherein it is held as under:

Since the petitioner was on a transferable post, the High Court has rightly dismissed his writ petition because transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions of the Supreme Court, transfer is an exigency of service. It should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders were not competent to pass the orders.

In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights.

The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to the places of their choices. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background or foundation. There has to be very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition as the same cannot merely be presumed.

It is profitable to quote the observation of Hon'ble Apex Court in State of Punjab v. V.K. Khanna and Ors., reported in AIR 2001 Supreme Court 343, wherein the Hon'ble Court examined the issue of bias and mala fide, observing as under-

"Whereas fairness is synonymous with reasonableness- bias stands included within the attributes and broader purview of the word 'malice' which in common acceptation means and implies 'spite' or 'ill will'. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice.... In almost all legal inquiries, 'intention as

distinguished from motive is the all-important factor' and in common parlance a malicious act stands equated with an intentional act without just cause or excuse."

In this case, we have seen that on the administrative grounds the transfer order came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place. The Respondent has failed to produce any cogent and convincing evidence to establish the allegation of mala fides specifically alleged in the petition and therefore the presumption is in favour of bona fides of the transfer order unless contradicted by acceptable material. At the time of hearing our attention was drawn to the fact by the Ld. Counsel for the petitioners that since the Respondent has been released and a new incumbent has joined no interim order might be passed by the Tribunal.

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. Learned counsel for the Respondent did not point out any statutory provision which has been violated while passing the transfer order, which warrant this Court to interfere against the impugned transfer order.

We are also not unmindful about the fact that transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee. If a party alleges mala fides, the burden to prove it lies upon him and it is to be proved by taking appropriate pleadings. The Court must examine the case from all angles to find out whether the order is punitive or not.

We are of the view that the Tribunal has failed to appreciate that an order of transfer should not be interfered with unless it finds that either the order is mala fide or the Rules governing the service prohibit such transfer.

So, the impugned order passed by the Tribunal dated 02.08.2022 suffers from illegality, irrationality which warrants the interference of this Court.

Thus, the writ petition is allowed.

Accordingly, the impugned order dated 02.08.2022 passed by the Tribunal in O.A. 453 of 2022 is hereby set aside.

The Respondent is hereby directed to join his new place of posting immediately.

No costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.