

(2003) 08 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4161 of 2003

Surat Singh Punia

APPELLANT

Vs

Rajasthan Service Appellate Tribunal and Others

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Citation : (2004) 2 RLW 1021 : (2004) 1 WLC 663

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : G.R. Punia, for the Appellant;

Final Decision : Dismissed

Judgement

H.R. Panwar, J.—The instant writ petition has been filed without any prayer clause but the factual matrix and the grounds taken therein lead to presume that the same has been filed seeking direction for quashing the transfer order Annx.8 dated 15-6-2002 and setting aside the order dated 29-4-2003 (Annx.21) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur.

2. The facts and circumstances giving rise to this writ petition, in succinct, are that petitioner, who is a Ranger Grade 1, had been transferred from Bhadra to Nohar, vide order dated 3-10-97, on humanitarian ground to lookafter his old parents and family members after sad demise of his wife and elder brother. Again, vide order Annx.5 dated. 11-4-2000, he was transferred to Churu and joined his duties at Rajgarh (district Churu) on 17-7-2000. Vide impugned order Annx.8 dated 15-6-2002, he has been transferred from Rajgarh to Nohar. He challenged the impugned transfer order before the Rajasthan Civil Service Appellate Tribunal and the learned Tribunal, vide order dated 25-7-2002 (Annx.9) stayed the operation of the impugned transfer order Ann.8 and directed to file a representation before the Principal Chief Conservator of Forest, which has been rejected vide order Annx.11 dated 26-8- 2002, perhaps on the false and fabricated complaint filed by one Inder Pal Singh Punia. Petitioner submitted an

application before the Principal Chief Conservator of Forest to inquire into the correctness of the complaint and ultimately joined his duties at Nohar. He again filed an appeal before the Tribunal challenging the impugned transfer order Annx.8 dated 15-6-2002 and the order dated 26-8-2002 (Annx.11) passed by the Principal Chief Conservator of Forest rejecting his representation. The Tribunal, vide impugned order Ann.21 dated. 35-7-2002, dismissed the appeal. Hence this writ petition.

3. I have heard learned counsel for the petitioner and perused the record.

4. The Court can interfere with the impugned transfer order only if the transfer order is in contravention of the statutory provisions or had been passed on malafide reasons. The issue of transfer and posting has been considered time and again by the Apex Court and law has been settled by catena of decisions. It is entirely upto the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Reference is made to the judgment of the Hon''ble Apex Court in Union of India v. S.L. Abbas (1), Shilpi Bose v. State of Bihar (2), Union of India v. N.P. Thomas (3), Chief Manager (Tel.) N.E. Telecom Circle v. Rajendra Ch. Bhattacharjee (4), State of U.P. v. Dr. R.N. Prasad (5), Union of India and Ors. v. Ganesh Dan Singh (6), N.K. Singh v. Union of India and Ors. (7), and Abani Kante Ray v. State of Orissa (8).

5. An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer order/posting which is made in public interest or on administrative exigency. In Gujrat Electricity Board v. Atmaram Sungomal Poshani (9), the Hon''ble Supreme Court has observed as under:-

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking 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."

6. Similar view has been taken by the Apex Court in Chief General Manager (Telecom) N.E. Telecom Circle v. Rajendra Ch. Bhattacharj''ee (supra).

7. In Union of India v. H.N. Kirtania (10), the Hon''ble Apex Court observed as under:-

"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 malafide."

8. Thus, it is clear that Court can interfere with the transfer order only on the grounds of malafides or if the order is found to be in violation of statutory Rules.

None of such ground exists in this case. Moreso, if the allegations of malafides are to be alleged, it becomes the duty of the employee to implead the person(s) against whom the allegations are made. (Vide J.M. Banawalikar v. Municipal Corporation, Delhi and Ors. (11), State of Bihar and Ors. v. P.P. Sharma (12), I.K. Mishra v. Union of India and Ors. (13), and All India State Bank Officers Federation and Ors. v. Union of India and Ors. (14).

9. In Shilpi Bose (supra), the Apex court has held that order of transfer/posting "issued by the competent authority did not violate any of her legal right." The employee holding a transferable post cannot claim any vested right for his posting at a particular place. The Apex Court further held as under:-

"In our opinion, the Courts should not interfere with a transfer orders which are 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 orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest."

10. In State of Madhya Pradesh v. S.S. Kourav (15), it has been held by the Apex Court that it is not permissible for the writ Court or Tribunal to go into the relative hardship of an employee which may be caused by his transfer/posting. It is for the competent authority/employer to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. If the employee makes a representation before the Competent Authority against the impugned transfer order ventilating all his grievances, the employer is under a solemn duty to consider his representation and the said authority cannot brush-aside the grievances of the employee being personal in nature. Therefore, it is for the employer and not for the Court to consider the grievances of the employee, if the same are personal in nature.

11. In the instant case, petitioner had made representations earlier and he is seeking the same relief again and again. Looking to personal problems of the petitioner, after death of his wife and elder brother, he had been accommodated at the his desired place. Thereafter he remained continued at his home district in terms of the stay order. He has concealed the material facts that after the death of his first wife, he contacted re-marriage within one year from the date of death of his first wife; he has other brothers to look-after his parents; and his nephews are studying at Churu and the distance between Rajgarh and Nohar is only of ten kilometers. No person has a right to remain posted at a particular place and transfer is an exigency of service. A transfer order can be interfered with only if

it is an out-come of malafide exercise of power. He cannot claim to stay at a place of his choice under a camouflage human-tarian ground. The learned Tribunal rightly refused to interfere with the impugned transfer order for the reasons given in its impugned order. No case for interference is made out.

12. The writ petition lacks merit and it is accordingly dismissed summarily. There shall be no order as to costs.