
(1998) 04 CAL CK 0004
In the Calcutta High Court
Case No : M.A.T. No. 1578 of 1997

Surendra Sharma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Protection Force Act, 1957 — Section 15
Railway Protection Force Rules, 1987 — Rule 93(1), 93(2)

Citation : (1998) 1 ILR (Cal) 417

Hon'ble Judges : Satyabrata Sinha, J;D.B. Dutta, J

Bench : Division Bench

Advocate : Subrata Roy and Achin Kumar Majumder, for the Appellant; Monoranjan Basu, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—Aggrieved by and dissatisfied with a judgment and order dated May 15, 1997 passed by Tarun Chatterjee, J. in Writ Petition No. 7700 (W) of 1997 whereby and whereunder the Petitioner's writ petition questioning an order of transfer dated March 21, 1997 as contained in Annexure "C" to the writ application has been dismissed, the Appellant has preferred this appeal.

2. The facts of the matter lies in a very narrow compass.

The Appellant admittedly is a Constable of Railway Protection Force of South Eastern Railway administration of the Union of India. He has posted at Ranchi. He was transferred on May 26, 1995 along with 227 other Railway Protection Force staff to Burnpur. The Petitioner filed a representation for his re-transfer to Ranchi on the ground of his wife's illness and children's education. By reason of the impugned order dated March 21, 1997 as contained in Annexure "C" to the writ application the Petitioner has been transferred to Bilaspur.

3. Mr. Achin Kumar Majumder, the learned Counsel appearing on behalf of the

Appellant, inter alia, submitted that the learned trial Judge erred in passing the impugned judgment without taking into consideration the provisions of Rules 93.1 and 93.2 of the Railway Protection Force Rules as also the guidelines issued by the Respondents as contained in Annexure "B" to the writ application. According to the learned Counsel as in terms of the said Rules the Petitioner could not have been transferred from one division to another division. The learned Counsel contends that the said order has been passed mala fide as the Petitioner's wife filed a representation before the Hon'ble Minister of Railways of Union of India. In support of his aforementioned contention the learned Counsel has relied on in *Mukul Mitra (Mrs.) v. Union of India* and Ors. 1982 (2) C.H.N. 157, *Rajendra Roy v. Union of India* and Anr. 1993 (1) S.L.R. 126, *C. Ramanathan v. Acting Zonal Manager, Food Corporation of India, Madras* and Ors. 1980 I L.L.J. 1 and *Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others*, and an unreported decision passed by Altamas Kabir J. in Civil Order No. 8902 (W) of 1994 (*Kamala Prasad Sinha v. General Manager, South Eastern Railway and Ors.*) disposed of on July 6, 1994.

4. Nobody has appeared on behalf of the Union of India. From a perusal of affidavit-in-opposition to the stay application filed by the Petitioner it appears that a contention has been raised therein that Rules 93.1 and 93.2 of Railway Protection Force Rules, 1987 are not mandatory. It has further been stated that keeping in view the provision of Section 15 of the Railway Protection Force Act, every member of the Force would be considered to be always on duty and shall attend at any time and liable to be employed in any place within India. It had not been pointed out that the Appellant had been posted in Bihar for a period of more than 11 years whereafter the order of transfer had been passed. It has been stated that the Petitioner was heard by the Divisional Security Commissioner on March 12, 1997 and March 13, 1997 and the matter was discussed with him for about 21/2 hours. The grievances of the Petitioner as regard the order of transfer was not found satisfactory in view of the fact that it was found that the Petitioner's wife had not been ailing at the relevant time. It is further stated:

No objection relating to inter-divisional transfer was raised before the Divisional Security Commissioner, Adra during hearing on 12.3.97 and 13.3.97.

5. The law as regards transfer is no longer res judicata. It has been held by the Apex Court in innumerable cases that an order of transfer should not be interfered with by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India unless the same is mala fide or has been passed for extraneous consideration or in violation of mandatory provision of the statute.

6. In *Pranab Kumar Mukherjee v. State of West Bengal and Ors.* 1995 (2) C.L.J. 21, while a transfer as regard a police personnel was questioned on the same ground, this Court held:

In terms of the Police Rules mid-term transfer is not prohibited. The guideline

has only been issued to the effect that as far as practicable no such mid-term transfer should be effected. The said guideline is contained in Police Order No. 2 of 1980 dated 22.2.80. The Apex Court in a number of decisions has clearly held that High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot interfere with an order of transfer, except on the ground of mala fide or violation of mandatory provisions of Statute. The Supreme Court held that the right of an employee is to bring his difficulties to the notice of the employer by filing an appropriate representation wherein a contention can be raised that such order of transfer has been passed in violation of such guidelines. Reference in this connection may be made to D.S. Dala Vs. State Bank of India and others, and the recent decision of this Court in C.O. No. 1714 (W)/94 Prabhu Nath Singh v. Union of India and Ors. disposed of on 16.2.95.

In the aforementioned Supreme Court decisions it has also been laid down that such guidelines are directory in nature and not mandatory and violation of such guidelines therefore/do not confer any legal right upon the Petitioner to question the order of transfer.

7. In Mrs. Shilpi Bose and others Vs. State of Bihar and others, it was held:

Since they held transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority which did not violate any mandatory rule, therefore the High Court had no jurisdiction to interfere with the transfer orders.

8. Recently in Kiriti Majumder v. State of West Bengal A.P.O. No. 466 of 1996 disposed of on November 25, 1997, this Court upon taking into consideration a large number of decisions including in Sreedam Chandra Ghosh Vs. State of Assam and others, Ch. Rama Rao Vs. The Lokayukta and others, Jayantilal Purshottamdas Panchal v. Commissioner of Motor Transport, Gujarat State 1997 Lab. I.C. 1982 and Union of India and Others Vs. S.L. Abbas, has clearly held that no order of transfer can be interfered with unless the same violates mandatory provisions of statute in the following terms:

It is now well settled principle of law that normally this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot interfere with an order of transfer. An order of transfer can inter alia be interfered with in a case of malice or if such order of transfer is passed in gross violation of mandatory provision of a statute.

9. In State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, it has been held that personal hardship is no ground for interference with the order of transfer. It is further well settled that courts are not appellate forums to decide a question of transfer. Reference in this connection may be made to State of Madhya Pradesh and Anr. v. S.S. Kourov and Ors. 1995 L.I.C. 1574.

10. Although it is a well settled principles of law that a rule validly made would be read as a part of the Act, in a case of conflict between the Act and the Rules,

the provision of Act shall prevail over the Rule. Section 15 of the Railway Protection Force Act in no uncertain terms states that a member of the Force may be posted anywhere in India. The members of the Railway Protection Force are employees of a disciplined organisation. They must maintain discipline despite personal inconveniences.

11. Rules 93.1 and 93.2 upon which strong reliance has been placed by Mr. Majumder are not mandatory in nature. Rule 93.1 is a general principles for effecting periodical transfers. Rule 93.2 starts with the terminology "ordinarily" and thus, there cannot be any doubt whatsoever that Rule 93(2) is not and cannot be said to be a mandatory provision.

12. Only if a person is at a station for less than a period of one year, the approval of the Chief Security Commissioner concerned would be necessary.

13. The circular letter as contained in Annexure "B" to the writ application does not also contain a mandatory provision inasmuch as the same merely states the transfer of constables and Nayaks "as far as practicable" may be done within the Division. If in the public interest a person has been posted outside the division, the same cannot be said to be illegal.

14. The decisions relied upon by Mr. Majumder may now be considered.

15. In *Mrs. Mukul Mitra v. Union of India* Supra, a division bench of this Court, inter alia, held that the impugned order of transfer suffered from malice in law inasmuch as the reason for transfer stated in the affidavit-in-opposition was held to be untrue and in that view of the matter the court held that the employer cannot be permitted to take recourse to its general power of transfer.

16. In *Rajendra Roy v. Union of India and Anr.* Supra, an order of transfer was questioned on the grounds of personal difficulties and mala fide. The court held that no case for interference with the order of transfer has been made out. But while doing so, it made an observation that unless such an order is passed mala fide or in violation of Rules and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. The decision of the Supreme Court must be read along with other decisions of the Supreme Court of India where it has clearly been held that a right of a person to question the order of transfer arises only when the same is in violation of a mandatory provision of the Rules as contradistinguished from a directory provision.

17. The impugned order of transfer is not contrary to any mandatory provision of law.

18. In *C. Ramanathan v. Acting Zonal Manager, Food Corporation of India, Madras and Ors.* Supra, a division bench of Madras High Court quashed the order of transfer, inter alia, on the ground that the same had been passed on extraneous consideration. The observation upon which reliance has been placed by Mr. Majumder is contrary to the decisions of the Supreme Court. The decision

of a learned single Judge of this Court in P.K. Sinha v. General Manager, South Eastern Railway and Ors. C.O. No. 8902 (W) of 1994 disposed of on July 6, 1994, with utmost respect to learned Judge, does not lay down the correct law. The learned Judge held relying on the decision of the Apex Court in State of Punjab and others Vs. Joginder Singh Dhatt, and Mrs. Shilpi Bose and others Vs. State of Bihar and others, held that the courts ordinarily would not exercise jurisdiction to interfere with the orders of transfer, but held that as the order of transfer was in violation of Rule 93(1), the same is bad in law.

19. Rule 93(1) or 93(2) are not mandatory in nature. The said judgment does not lay down a correct law and, therefore should be overruled. We do not understand as to why the learned Counsel for the Appellant has relied upon the decision in Jagathigowda C.N. and Ors. v. Chairman, Cauvery Gramin Bank and Ors. Supra wherein the Supreme Court was concerned with an order of promotion and not an order of transfer.

20. For the reasons aforementioned we are of the opinion that the learned trial Judge rightly held that as the order impugned was not passed in violation of mandatory provision of law the said order cannot be interfered with by this Court in exercise of its writ jurisdiction.

21. The judgment and order passed by the learned trial Judge is, therefore, affirmed and consequently the appeal is dismissed but in the facts and circumstances of this case there will be no order as to costs.

D.B. Dutta, J.

22. I agree.