

(1996) 10 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 24266 of 1996

Suresh Kumar Mittal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:

Citation : (1996) 10 AHC CK 0012

Hon'ble Judges : R. Dayal, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : M.D. Sing, for the Appellant;

Final Decision : Allowed

Judgement

R. Dayal, J.—The Petitioner is working as District Agriculture Officer, Moradabad, which is a Class II Service. By order dated 20.7.1996 of Director, Agriculture, Uttar Pradesh, Lucknow, a copy of which is Annexure 7 to the petition, he was transferred from Moradabad to Dogadda, Pauri Garhwal as land Conservation Officer. There is no dispute that Dogadda, Pauri is a hill area. The Petitioner has sought a writ of certiorari quashing the order of transfer and also a writ of mandamus directing the opposite parties not to transfer the services of the Petitioner to a hill region since he never opted for the hill sub-cadre and also because no prior permission of Uttaranchal Vikas Vibhag was obtained before passing the impugned order of transfer.

2. Under Rule 5(1) of the Uttar Pradesh Hill Sub-Cadre Rules, 1992, a separate hill sub-cadre was constituted in respect of the posts mentioned in the appendix comprising Groups "B", "C and "D" except for what is specifically mentioned therein. Under Sub-rule (1) of Rule 6 the existing members of service were required by the Appointing Authority to exercise their option for allocation to Hill Sub Cadre or for continuing in the General Cadre within three months. Sub-rule (3) provides that in case no option is exercised within the time specified in Sub-rule (1), it will be deemed that the member of the service wants to remain in the

general cadre and does not want his allocation to the Hill Sub-Cadre. Sub-rule (4) says that Appointing Authority shall prepare list of persons who have exercised their option for allocation to the Hill Sub-Cadre in accordance with the seniority of the persons as it stood in the service. Sub-rule (6) says that in case the number of persons in the list prepared under Sub-rule (4) is less than the number of posts in the Hill-Sub-Cadre, the posts remaining vacant will be filled in accordance with the relevant Service Rules or executive instructions, as the case may be, applicable to Hill Sub-Cadre, provided that so long as the posts are not filled in accordance with the relevant service rules or executive instructions, as the case may be, the posts may be filled by transfer from general cadre.

3. It Is not disputed that the petitioned" never opted for the Hill Sub-Cadre and as such he never became a member of that sub-cadre. Annexure 2 to the petition Is Government Order No. 1733/1, dated 28.4.1993, which says that it is expected that before an officer or employee is transferred to northern area, prior permission of Uttaranchal Vikas Vibhag is necessarily obtained and in this connection Government orders issued from time to time are complied with strictly, violation of which would be a serious matter. It further says that in case of such violation, the concerned officer should be held responsible and disciplinary proceedings should be taken against him. Not only this, the order further states that transfer order without prior permission of Uttaranchal Vikas Vibhag would be treated to be Ineffective and would not be implemented. It also slates that it is essential that in the northern region no officer or employee is posted by way of punishment and only competent and well-reputed officers and employees are posted there. It is also mentioned that no officer or employee transferred to such area should be relieved of his duties unless the transfer order clearly mentions about the prior permission of Uttaranchal Vikas Vibhag having been obtained. There is no dispute that Dogadda, Pauri is an area covered by this Government order. It is also not disputed that no prior permission of Uttaranchal Vikas Vibhag was obtained before the impugned order of transfer was issued. Undoubtedly, the impugned transfer order is in violation of this Government order. The Petitioner made a representation dated 22.7.1996 to Director of Agriculture, U.P., Lucknow, a copy of which is annexed as Annexure 8 to the petition, wherein he specifically mentioned that he neither belonged to the hill sub-cadre nor any permission from Uttaranchal Vikas Vibhag had been obtained before passing the impugned order. It is a sad commentary on the administration that the representation of the Petitioner cid not receive due consideration and he found himself compelled to approach the Court for relief.

4. Sri. I.S. Singh learned standing counsel, has submitted that requirement of obtaining prior permission of Uttaranchal Vikas Vibhag is an administrative matter and failure to obtain such permission does not confer any right on the transferred officer of the Government to complain against his transfer. We are not impressed with this argument. The fact that the Government issued order for not transferring the officers from non-hill area to hill area without the prior consent of the Uttaranchal Vikas Vibhag must be with a view to remove the

cause of discontent caused by the feeling and belief amongst the people of hill areas that inefficient officers and employees who are not found suitable to work in the plain areas are posted to their area and their area is neglected by the Government. It is necessary that no impression should prevail in the minds of the people of any area that their area is neglected or is accorded step-motherly treatment. This is essential to promote the feeling of oneness amongst the people and thus emotional and national integration. Besides, the fact cannot be ignored that if any transfer is affected to such area in violation of the Government order, the officer concerned may not be accepted willingly by the people of that area and he may find himself to be not in congenial atmosphere. Furthermore, the Government order is calculated to mitigate to some extent the hardship involved by transfers. The fact that the Government order itself provides that a transfer order to northern area passed without the prior consent of the Uttaranchal Vikas Vibhag would be ineffectual, not capable of being implemented, vests in the circumstances and also in the absence of a contrary statutory rule, a right in a Government servant, not to be transferred in violation of the terms of the Government order. Thus, a Government servant who is not a member of the hill sub-cadre cannot be transferred to the northern area without the prior consent of the Uttaranchal Vikas Vibhag and if any such transfer is made, that would be ineffectual, not capable of being implemented.

5. In the result, the petition is allowed with cost computed at Rs. 3,000 (Rupees three thousand only). The transfer order dated 20.7.1996 (Annexure-7 to the petition) is quashed in so far as it relates to the transfer of the Petitioner.