
(2012) 05 DEL CK 0191

In the Delhi High Court

Case No : Writ Petition (C) 1652 of 2012

Union of India and Another

APPELLANT

Vs

Sahib Singh

RESPONDENT

Date of Decision : 16-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0191

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Geetanjali Mohan, for the Appellant; Jyoti Singh, with Ms Saahila Lamba, for the Respondent

Judgement

V.K. Jain, J.—This petition is directed against the order dated 16.02.2012, passed by the Central Administrative Tribunal, Principal Bench, whereby the order dated 10.06.2011 transferring the respondent in this petition from Delhi to Lucknow as well as the order dated 22.09.2011 rejecting his representation against transfer were set aside and it was directed that the respondent would be allowed to re-join the post he was occupying before the transfer and would also be entitled to payment of regular salary, during the intervening period. The facts giving rise to the filing of the petition can be summarized as under:- The respondent working with Indian railways, on his promotion as Group "B" Gazetted Officer, was posted as AFA in Railway Claims Tribunal, Chandigarh. He made representation seeking transfer to Delhi. Acceding to the request made by him, the respondent was transferred to Delhi by downgrading the senior scale post of senior AFA/FE/HQ, vide order dated 22.06.2009. Vide order dated 10.03.2009, he was transferred from Delhi to Amritsar. The respondent was again brought back to Delhi vide order dated 06.01.2011. On 10.06.2011, he was transferred to Lucknow. The order transferring the respondent from Delhi to Lucknow was challenged before the Tribunal by way of OA No. 2273/2011. The O.A. No. 2273/2011 was disposed of vide order dated 09.09.2011 by directing the respondent to pass a speaking order on his representation. The General Manager (Railways) rejected the

representation of the respondent vide speaking order dated 22.09.2011. The Tribunal vide impugned order dated 09.09.2011 quashed the transfer orders as well as the order rejecting the representation of the respondent on the grounds that :-

- (a) the respondent had been subjected to as many as five transfers;
- (b) the normal minimum tenure at a place was three years;
- (c) the applicant had been singled out for transfer and the transfer was not justified on the ground of reasonableness or as per the instructions issued vide circular dated 29.07.2010.

2. We have carefully perused the OA. We find that no specific allegation of mala fide was made in the OA against the authority which transferred the respondent from Delhi to Lucknow. A perusal of the order dated 10.06.2011 would show that the order transferring the respondent from Delhi to Lucknow was passed with the approval of the competent authority. During the course of arguments, we were informed that CAO was the authority, competent to transfer the respondent. The OA does not indicate who the officer approving the transfer of the respondent from Delhi to Lucknow was. There is no specific allegation of mala fide against any particular officer. It is not the allegation in the OA that the person who approved his transfer from Delhi to Lucknow was for some reason inimically disposed towards the respondent and that is why he had been transferred from Delhi to Lucknow. If the respondent was imputing mala fides to any particular officer of Northern Railways, he was required not only to name such officer but also to implead him as a party, besides giving details, as to why that officer was inimically disposed towards him. That, however, was not done, while filing the OA. Even the Tribunal did not attach credence to the general allegation of mala fide made in the application. Therefore, it cannot be said that the transfer of the respondent from Delhi to Lucknow was actuated by any mala fide intention on the part of the authority which approved his transfer.

3. It is not in dispute and in fact is clearly mentioned in the speaking order dated 22.11.2011 passed by General Manager, Northern Railways that the respondent holding a gazetted post, was liable to be posted anyway in the jurisdiction of Northern Railways. It is further stated in the order that transfers are done as a matter of incidence of service and in administrative exigencies without any discriminative treatment. During the course of arguments before us, the respondent did not dispute that as per the service conditions applicable to him, he was liable to be transferred anywhere within the jurisdiction of Northern Railways.

4. This is also not the case of the respondent that the Chief Accounts Officer who approved his transfer was not competent to do so. Therefore, it cannot be said that the order of transfer was passed by an authority, which was not competent to pass such an order.

5. The Tribunal has taken a view that the normal period before an employee can be transferred is three years. However, no rule/order/circular fixing a minimum three years period to stay at a particular place has been brought to our notice. Consequently, we are of the view that in the exigencies of service and for administrative reasons, it was open for the petitioner to transfer the respondent even before he had stayed for less than three years at a particular place.

6. During the course of arguments, the learned counsel for the petitioners submitted that the respondent was staying in Delhi region for as many as 25 years prior to him being posted at Railway Claims Tribunal, Chandigarh, on his promotion to Group "B". This factual assertion was not disputed by the learned counsel for the respondent. The learned counsel for the petitioners also submitted that as a matter of policy an employee is transferred to another station on his promotion, and, therefore, the respondent can have no grudge with regard to his transfer from Delhi to Chandigarh vide order dated 15.01.2008. The learned counsel for the respondent also did not assail the order whereby the respondent was transferred to Chandigarh on his promotion to Group "B", which is a gazetted post in Northern Railways. As regards the second transfer of the respondent, admittedly this was made on his request and not due to exigencies of service. The second transfer to Delhi, having been invited by the respondent, he has no ground to complain against that transfer. The transfer from Delhi to Amritsar on 10.03.2010 was made in the exigencies of service and in fact was the first transfer while in the cadre of Group "B" post in Northern Railways. As regards the transfer of the respondent from Amritsar to Delhi vide order dated 06.01.2011, since the respondent had persistently been pressing for his transfer to Delhi, this transfer also must have been pursuant to the efforts made by him to come back to Delhi. In any case, this transfer being to the place where the respondent wants to continue, nothing really turns on this transfer. As regards transfer from Delhi to Lucknow vide order dated 10.06.2011, which is the transfer that was impugned before the Tribunal, the grievance of the petitioner is that since he is under treatment of a Railway Doctor at Kishanganj in Delhi, he needs to continue to stay at Delhi so that his treatment is not disturbed on account of his transfer. A perusal of the letter dated 09.08.2011 written by FA & CAO of Northern Railway to the respondent would show that Lucknow, being the capital of the State of Uttar Pradesh, has well developed medical facilities. Lucknow is also the headquarter of two Railway Divisions, two railway workshops, Research, Design and Standard Organization (RDSO) and a training organization (IRITEM). It further shows that there are developed railway townships, railway hospitals, clinics and welfare infrastructure at Lucknow, which is adequate to take care of the health problems of railway employees. It is difficult to dispute that being a large city and also the capital of the largest state in the country, Lucknow has well-developed and modern medical facilities including a very well-reputed hospital Sanjay Gandhi Post-Graduate Institute of Medical Science. It is, therefore, difficult to accept the contention that if he is transferred from Delhi to Lucknow, the treatment of the respondent would be

adversely affected.

7. In *Union of India and Others Vs. S.L. Abbas*, the Supreme Court, considering a challenge to the transfer of a Government employee, inter alia, observed as under:-

Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated of by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it.

In *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, , the Supreme Court, inter alia, observed and held as under:-

4. In our opinion, the Courts should not interfere with a transfer Order 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, his 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. 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.

Since this is not a case of transfer for mala fide reasons, or transfer by an authority which was not competent to do so, or a transfer in contravention of any rule/instruction or declared policy of Northern Railways, it was not open to the

Tribunal to set aside the order of transfer whereby the respondent was transferred from Delhi to Lucknow.

For the reasons stated above, we are of the view that the Tribunal was not justified in setting aside the order whereby the respondent was transferred from Delhi to Lucknow. We, therefore, set aside the impugned order 09.09.2011. In the facts and circumstances of the case, there shall be no order as to costs.