

(1997) 01 DEL CK 0081

In the Delhi High Court

Case No : Letters Patent Appeal No. 223 of 1996

Union of India

APPELLANT

Vs

D.B. Bhide

RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Citation : (1997) 1 AD 697 : (1997) 41 DRJ 83 : (1997) 1 ILR Delhi 172

Hon'ble Judges : M. Jagannadha Rao, C.J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Rakesh Tikku, Gaurav Duggal and A. Ahlawat, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) ADMIT. Aggrieved by the order dated 7-8-1996 passed in C.W.P. No. 284/96, hereinafter referred to as the impugned order, Union of India has preferred this Letters Patent Appeal. Vide the impugned order, learned Single Judge quashed the order dated 10- 1-1996, transferring and posting the respondent as Joint Director, Missile System Quality Assurance Agency, Secunderabad. The learned Single Judge held that the respondent having been posted in Delhi from April, 1993 till 10th January, 1996 had not completed the normal three years tenure. Further the petitioner who was due to retire from November, 1997, having less than three years of residual service, was exempted from the purview of the transfer policy as set out in the Ministry of defense letter dated 13-12-1982. The learned Single Judge held that the Union of India had failed to give any reasons for departing from the general policy, which was permissible in exigency of service. Union of India had failed to make out a case for that and the record placed before him did not establish any such exigency. He held that the plea of transfer, being in exigency of service was an after thought and not supported from record. Accordingly, the learned Single Judge quashed the order of transfer/posting of respondent to Secunderabad.

(2) Before we go into the submissions made by the learned counsel, the facts in

brief may be noticed:

(3) The respondent presently a Colonel in the Army had permanently seconded to the Director General Quality Assurance (Electronics) in 1983. From 1983 to 1989, he was posted at bangalore and from 1989 to 1993, he was posted at Secunderabad. On being promoted as Colonel in 1993, he was posted in Delhi at Head Quarter Directorate of Quality Assurance (Electronics) as Joint Director till September, 1995. On 14-9-1995, the respondent was posted as Commanding Officer, Senior Quality Assurance Establishment (Electronic). The respondent's case "is that the normal tenure of a Commanding Officer was two and a half to three years. He should not have been retransferred after being posted as Commandant only in September, 1995. The date of retirement of respondent being 30-11-1997, he had less than three years of residual service. Therefore, having not completed the normal tenure of posting as Commanding Officer in Delhi and admittedly having less than three years of residual service, he was not liable to be transferred in accordance with the existing policy.

(4) It would be worthwhile to reproduce the relevant para 3 of the policy: It has, accordingly, been decided that officers of Dgi Cadres (civilian, military, non-gazetted - both Technical and Scientific) would hereafter be transferred from one station to another on completing a service tenure of five years inclusive of the period of service rendered in lower rank or grades, if any, in the same station. As far as possible such posting orders would be issued in April/May each year so that moves can take place during summer vacation creating little hindrance or disruption in the education of the children. Officers and non-gazetted personnel with three years or less residual service to retire will be exempt from the purview of this scheme.

(5) The respondent's case in the writ petition and as accepted by the learned Single Judge was that the posting order dated 10-1-1996 did not speak of any exigency of service. No reason had been disclosed for departing from the policy. It is not disputed before us that departure from the policy can be made in exigency of service. The representation made by the respondent against his posting order was rejected on 23-1-1996, without disclosing any reason.

(6) It may be noticed here that the respondent as a disciplined officer of the Indian Army had pursuant to the order dated 10-1-1996 and upon rejection of his representation, joined posting at Secunderabad and assumed charge. Even though, writ petition as noticed earlier was allowed by the Court on 7-8-1996, the respondent continues to serve at Secunderabad pending the disposal of this appeal.

(7) Learned Counsel for the appellants, Mr. Rakesh Tikku, submitted that the posting of the respondent to Secunderabad was in exigency of service and on administrative grounds in organizational interest. The post of Joint Director, Missile System, Quality Assurance Agency, had fallen vacant in June 1995 upon the promotion of the then Joint Director, CoL J.S. Kapoor, as Brigadier. The

Missile System Quality Assurance Agency at Secunderabad required the specialised expertise as it was handling the project of national importance, viz. the Integrated Guided Missile Development Programme (IGMDP). The respondent who had earlier exposure to such specialized work, on account of his expertise was found to be eminently suitable and given the posting order. It is stated that the posting had been made with the due approval of the Secretary to the Government of India, Department of Science and Technology, and that the record had been shown to the learned Single Judge. It was urged that the proposal and approval of the competent authority for the respondent's transfer, was shown to the learned Single Judge, who, on 24.1.1996, did not stay the posting order and it was only on 7.8.1996 that the impugned order was passed." Mr. Tikku further argued that the respondent's representation was duly considered by the competent authority but, considering the officer's suitability and exigencies of service, the same was rejected. However, the reasons which necessitated a departure from the policy were not communicated to the respondent. The reasons existed on the record for rejection of the representation against the transfer and the same were not required to be communicated.

(8) The appellants have produced on record the nothings on the representation of the respondent against transfer. It would be useful to reproduce the same: "The transfer of Col. D.B. Bhide was ordered in exigencies of service to meet the requirement of Qa at Integrated Guided Miscible Development Programme (IGMDP), Secunderabad: a project of national importance. It appears that personal interest has outweighed the national/organizational interest in this representation made by the Officer. Dgqa may kindly endorse his decision; so that the officer can be informed accordingly. sd/- Brig. Dgqa I regret the Addl. Dir. (QA) posting order cannot in January 96 be cancelled as work will suffer. sd/- 22-1-1996 It was contended that it was sufficient if the reasons existed on record for rejection of the representation and non-communication of the same to the respondent was not fatal.

(9) It was argued by learned counsel for the appellant that the posting of Joint Director at Msqaa was a specialised posting and could be Filled from a limited number of officials. The officers who could be posted there and the circumstances of their present posting were fully known to the concerned officials in the Dgqa dealing with the posting and, as such, the various alternatives were not formally recorded.

(10) Ms. Avinish Ahlawat, learned counsel for the respondent apart from stressing that the transfer and posting was not warranted under the policy submitted that the plea of posting being in exigency of service was a bogey and an after thought. She argued that the post had been lying vacant since June 1995. While this post continued to lie vacant, the respondent was posted as Commandant in September 1995 at Delhi. It was also not correct that the respondent Filled the vacancy arising from the posting of Col. (now Brig.) J.S. Kapoor, who was Joint Director (Prithvi) while the respondent had been posted to

the statistical post of Joint Director (Documentation), which hardly required any special skill or expertise.

(11) Considering that there was delay in Filling up the post of Joint Director, which had fallen vacant in June 1995, as well as appellant's submission that in view of limited number of officials who could be considered for the said post, the appellant was called upon to produce the communications and record relating to the requisition for filling up the said post and to File affidavits disclosing the particulars _of the officials who were available for the said posting. This was done in view of the peculiar, circumstances of this case and to satisfy ourselves that the departure from the policy was, indeed, due to exigency of service and the posting was not vitiated by extraneous and irrelevant considerations as claimed by respondent.

(12) The appellants have Filed the additional affidavit dated 20.11.1996, wherein the Assistant Director, Dgqa, has deposed that the vacancy of Joint Director was required to be filled by a suitable officer having quality assurance experience in Missile System. The appellants, in another affidavit dated 5.12.1996, have explained that the posting of the respondent at Msqaa at Hyderabad was to the post of Joint Director. It was immaterial that the respondent was posted as Joint Director (Documentation) while Shri V. Uma Maheshwar Rao, was holding charge as Director General (Prithvi), the charge earlier held by Col-J.S. Kapoor continued. It was explained that once an officer reported at the establishment it was the prerogative of the head of the establishment to allocate the portfolios/ duties and that the duties of the Joint Directors at Msqaa were inter-change-able. The Brigadier-in-charge was fully justified in assigning to Shri V. Uma Maheshwar Rao, who was then available, to perform the duties of Joint Director (Prithvi) and to continue him in the same position. Accordingly, the posting of the respondent as Joint Director (Documentation) cannot be faulted with, which is also an integral part of the MSQAA. Both the posts are that of Joint Directors from Electronics discipline and are technical in nature, requiring experience in the field of electronics. It cannot be disputed that the respondent had been posted earlier and worked in Coa (S, Secunderabad) from September 1989 to January 1993. The appellants have also produced on affidavit details showing how in the past portfolios/ duties of the Joint Directors in the Msqaa have been inter-changed.

(13) On perusal of the material on record produced before us, we are satisfied that the posting of the respondent was to Fill, up the existing vacancy of Joint Director. Further, mere delay in making the transfer/posting would not negate the factum of exigency . of service, although it would have been desirable to avoid the delay.

(14) In the additional affidavits filed by the appellants on 21.12.1996, the appellants have explained that the Director-General, Dgqa was requested by the Dgqa in the month of December 1995 for filling up the post of Joint Director at Msqaa by an experienced officer of the rank of Colonel. It is further disclosed in the affidavit that there were, in fact, four officers, including the respondent in the

rant of Colonels, having background and experience of the Missile System who could be considered for the posting. Details in respect of eight other officers, though Colonels but who did not have experience in Missile System, are also given. The appellants have explained the circumstances in which Col. V. Raju was not considered for the posting as he had expressed his desire to take voluntary retirement; while Col. P.K. Mago had been posted only for one year at Chandigarh and his experience in Missile System was very limited. The third officer, Col. S.S. Ahluwalia had experience in Missile System only for Five months and had been selected as a faculty member to be posted to the defense Institute of Quality Assurance. It is, thus, stated that Col. D.B. Bhide, respondent was the only officer available at the disposal of Dgga who had earlier served in the establishment dealing with the Missile System having requisite experience and expertise and thus found suitable for the posting. We find the Explanation and justification tendered by the Appellants reasonable and plausible deserving acceptance.

(15) It is not the function or within the jurisdiction of this Court to question the decision on transfers and posting or to evaluate the comparative merits of the officers who could have been posted or considered, which falls exclusively within the domain of the concerned authorities. This is so since transfer and posting is an incidence of service and unless the same is vitiated by malafides or is on totally extraneous considerations, this Court would not interfere with the transfer or postings made.

(16) Learned counsel for the respondent had placed reliance on the case *Ranndhar Pandey v. State of Uttar Pradesh* 1993 (4) Scr 349. She relied on certain observations made in this case wherein the Court had quashed the transfer order since it did not disclose any public interest. It was observed that if a transfer could be affected only on certain conditions then it was necessary to adhere to those conditions. Such conditions being absent in the cited case and there being no public interest involved, the order of transfer could not be supported. respondent in our view, cannot draw any assistance from this case as the same is clearly distinguishable on facts and we have come to the conclusion that the transfer and posting of the respondent was on account of exigency of service.

(17) Learned counsel for the appellant, on the other hand, placed reliance on the decision in the case of *State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others*, . In this case the transfer order had been questioned on the ground that during the President's Rule ban had been imposed on transfers without prior approval of the Governor. The Advisor to the Governor had approved the order of transfer. The order was held to be valid, based on business rules which permitted delegation by the Governor to the Advisor. The Court also repelled the argument that there was no justification to re-transfer the appellant to Jagdalpur where he had earlier worked for seven years, observing as under:

"The courts or tribunals are not appellate forums to decide on transfer of officers

on administrative grounds. 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 considerations without any factual background foundation. In this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the Court."

(18) Reference may also be usefully made to the decision of the Supreme Court in the case N.K. Singh Vs. Union of India and others, . The Apex Court in this case laid down that while challenging the order of transfer on the ground of being prejudicial to public interest, the petitioner claiming so must plead and establish that the transfer was avoidable and that the successor was not suitable. This was a case where the Joint Director, Central Bureau of Investigation) had been posted as Inspector- General of Police in the Border Security Force. The question of posting being prejudicial to public interest does not arise in the present case. However, the following observations of the Apex Court may be usefully noted:

"23.....Transfer of a government servant in a transferable service is a necessary incident of his service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

(19) In Union of India and Others Vs. S.L. Abbas, the Apex Court has held that unless the transfer order is mala fide or is made in violation of statutory provisions, the Court cannot interfere merely because instructions or guidelines are not followed. It is not sufficient to quash orders as being mala fide. The executive instructions for transfer of government servants are in the nature of guidelines and they do not confer any legally enforceable right. It would be useful to quote the following observations of the Apex Court:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is "made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the

same place. The said guidelines, however, does not confer upon the Government employee a legally enforceable right."

"10.The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the respondents contention that if such an order is questioned in a court or the tribunal, the authority is obliged to justify the transfer by adducing the reasons therefore. It does not also say that the court or the tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as mala Fide for that reason. To reiterate, the order of transfer can be question in a court or tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions."

(20) Keeping in mind the principles laid down in the aforesaid pronouncements of the Supreme Court and the limits of judicial review on transfers, we are satisfied that the transfer and posting of the respondent was in exigency of service and was not liable to be interfered with in writ jurisdiction. We cannot accept the submission of the learned counsel for the respondent that officers, other than respondent were duly qualified and available and should have been posted since it is not for this to consider the comparative merits of the various officers who could have been posted instead of the respondent. Admittedly, this is not a case where the respondent has-even pleaded any malafides.

(21) In view of the foregoing discussion, we are of the view that the appeal deserves to be allowed. Accordingly, the appeal is allowed and the order of the learned Single Judge dated 7.8.1996, quashing the transfer and posting of the respondent is set aside.